The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 3 September 2013

Session 4

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EDUCATION AND CULTURE COMMITTEE
21st Meeting 2013, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Findlay (Lothian) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Clare Adamson (Central Scotland) (SNP)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Neil Bibby (West Scotland) (Lab)
Joan McAlpine (South Scotland) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Marco Biagi (Edinburgh Central) (SNP) (Committee Substitute)
Mike Burns (Association of Directors of Social Work)
Professor Kenneth Norrie (University of Strathclyde)
Susan Quinn (Educational Institute of Scotland)
John Stevenson (Unison)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 4

Scottish Parliament

Education and Culture Committee

Tuesday 3 September 2013

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Stewart Maxwell): Good morning and welcome to the 21st meeting in 2013 of the Education and Culture Committee. I welcome all members back to the committee after the recess and hope that you have all had a good summer. Indeed, I hope that it has been restful, given the amount of work that we have over the next wee while, particularly in relation to the Children and Young People (Scotland) Bill.

I also remind everyone present that all electronic devices should be switched off at all times, as they interfere with the sound system. We have received apologies from Joan McAlpine, and I welcome Marco Biagi as her substitute and thank him for coming along.

Before we start, I should also say that this is Neil Findlay's last meeting as a member of this committee, as he is moving on to pastures new with a promotion. Is it a promotion, Neil? I think that it probably is.

Neil Findlay (Lothian) (Lab): Some might say that.

The Convener: I congratulate Neil Findlay and formally thank him on the record for his work on the committee since he joined us. Thank you very much, Neil.

The first item on the agenda is to decide whether to take item 3 in private. Are members agreed?

Members *indicated agreement.*

Children and Young People (Scotland) Bill: Stage 1

10:01

The Convener: Our next item is an evidence-taking session on the Children and Young People (Scotland) Bill. I welcome to the committee Mike Burns from the Association of Directors of Social Work; Professor Kenneth Norrie from the University of Strathclyde; Susan Quinn from the Educational Institute of Scotland; and John Stevenson from Unison Scotland. In what is our second evidence session on the bill, we intend to cover its key principles and consider how it would work in practice. I thank the witnesses for their very interesting written submissions, which of course will inform some of our questions this morning.

Before I bring in other members, I want to ask the panel a general question. What, in your view, will be the practical effect of the bill's proposed duties? What real difference will, for example, the report-writing duties make to people's lives? In other words, my question is more about the bill's practical effects than about its principles.

John Stevenson (Unison): It will very much depend. We would like the practical effects to be an integrated plan for every child and every child getting the help that they need when they need it but, as we have said in the introduction to our submission, the issue is resource critical and we need to know what resources will be available on the ground to deliver that in practice. The fact is that social work, health and education departments are inundated with reports, forms and assessments. I think that all the services are pretty good at assessments, but we are less good at delivering practical help on the ground, which after all requires resources to be in place.

The key issue for us is clarity about how all this will be funded. We absolutely support the approach in principle and know that there is already good practice around Scotland and that many local authorities are operating integrated assessments and such things to some or other level. As a result, the next step towards what the bill is proposing will not be a huge one, but the big issue is that we are going to uncover a whole lot of things that we did not know about and which will require action—which, in turn, will require resources.

Susan Quinn (Educational Institute of Scotland): I do not disagree with John Stevenson's assessment of what might happen. The EIS sees very clear potential in a single assessment and plan for young people that carries across all the services. Indeed, one of the

challenges over the past few years has been the number of different assessments and plans, how they speak to each other and how we ensure that our young people get the best service available.

However, given the backdrop of the cuts and the difficulties facing education and all the services that will work together, the plans will need in some way to help us to deal with the issue that fewer people will be working in each of those services. We need to be clear about the need for the resources to ensure that that happens, particularly in education, given that a range of other initiatives across other aspects of our performance will be introduced at the same time. We are being called on not just to be the named person who delivers on an education support plan in conjunction with other services but to deliver the curriculum for excellence, the new qualifications and all the other aspects. Therefore, resources will be key. However, the potential is there for better communication within and across the services, if we can get that right.

Mike Burns (Association of Directors of Social Work): Echoing some of those points, I think that the duties in the bill will certainly consolidate getting it right for every child and the aspirations of the Christie commission. However, a critical issue was highlighted in the work that Susan Deacon did in relation to early years. She talked about the fact that, in Scotland, far too much time and attention is focused on the plan and not enough is focused on delivery. We would like to see the bill providing critical leverage in converting those aspirations into tangible outcomes for our most vulnerable children.

Professor Kenneth Norrie (University of Strathclyde): If the question is what practical effect the bill will have, it seems to me that it is almost impossible to give an answer at this stage, because there are so many ambiguities in the bill's terminology and structure.

If the question is about the aspirations of the bill, as far as I can understand it, those are about creating a changed culture and changing people's mindsets. The bill is about changing the way in which service providers throughout Scotland develop and deliver the services that they have been set up to provide so that the wellbeing of children and young people is put at the forefront of everybody's minds. If, as a society, we are able to achieve that change of mindset, that will be a wholly good thing as a matter of principle. Whether legislation is the best way to go about achieving that mindset depends on the precise legal obligations and rights that the legislation encapsulates.

The Convener: Thank you very much. Before I open up the discussion to members, I want to ask Professor Norrie a specific question about the incorporation of the United Nations Convention on the Rights of the Child. Could you expand on the view that you expressed about that in your written submission and say why you think that that is unwelcome—if that is not too strong a word?

Professor Norrie: The UN Convention on the Rights of the Child itself is by no means unwelcome and I would not like to suggest that it was—

The Convener: Sorry, I meant why the convention's incorporation would be unwelcome.

Professor Norrie: I think that to incorporate the convention into the domestic legal system of Scotland would be bad policy, bad practice and bad law. I say that primarily because the UN convention was not drafted or worded to create directly enforceable legal rights in the domestic legal system.

The convention has an aspirational purpose that is attempting to change governmental mindsets across the world so that children are at the forefront of the attention of all Government policy. That is good—we want Governments to be able to do that—and that is what the UN convention tries to do. That is how it is drafted. However, if you take a document that has been drafted for one purpose and then try to pretend that it sets out strict legal rules that are enforceable in a court of law, you will get all sorts of complexities.

For example, judges would be given far more political power than we probably want them to have. To use an example that is given in my written evidence, article 4 provides:

> "With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

That is really good, but do you want judges to determine the maximum extent of the state's available resources? That is not a judicial matter but a matter for social policy and for the democratic process. That is for Parliaments to decide rather than for judges. The UN convention is full of good aspirations for government, but it is also full of wide, broad statements that you cannot possibly ask judges to determine.

Liam McArthur (Orkney Islands) (LD): I appreciate the basis of those concerns about incorporation, but it has been put to us that there are countries that have incorporated the UNCRC into their domestic law. Is there anything from their experience that would substantiate your concerns about the way in which that is then applied, or are there aspects of their legal systems that are different from ours to the extent that those concerns do not arise?

Professor Norrie: I do not know what problems those countries have had, but my understanding is that only a tiny number of countries—three or four at most—have incorporated the convention into their law.

Historically, the United Kingdom and what we call the common-law countries have been much more specific in the way that they design their legislation. European countries, for example, tend to go for grand statements and then leave it to the judges to work out what those statements mean. We do not tend to do that in our country. We like our legislation to be much more specific so that people can understand very precisely what Parliament is trying to do, and we leave it to the judges to give the proper interpretation with appropriate guidance. I suspect that countries that have incorporated the UN convention are countries that are much more comfortable than we are with legislative grand statements.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. Staying on the general principles of the bill, I want to ask Professor Norrie about his written submission, which states:

"The point is that defining a person as a 'child' increases the protections that the law offers them, but decreases their own personal freedoms. Section 75 of the Bill defines 'child' as a person who has not attained the age of 18 years. I should have been more comfortable if the limit of childhood were set at 16".

Obviously, there are some issues there. Can you expand on your concerns about that?

Professor Norrie: My general concern, I suppose, is that growing up is a gradual process. The law likes clear cut-off points. In Scotland, we have always had a number of important ages at which a child increases the ability to take control of their own life. The age of 12 is important because you can make a will at the age of 12 and, for example, you can have a veto to an adoption order. The age of 16 is crucially important because that is the age of marriage and is basically the age at which compulsory education might come to an end. The age of 18 is actually less important, but one of the few remaining consequences of reaching the age of 18 is that you are allowed to vote—although even that might not last, at least in Scotland, for terribly much longer. The age of 25 is also important.

As the child increases in age, they increase in capacity. Another way of saying that is that they increase in self-determination and have an increased right to make their own decisions and to determine how they will lead their own lives. The flip-side of that is that the younger a child is, the more other people have control over them. A balance has to be struck so that we protect vulnerable people who cannot protect themselves—obviously, an infant needs full protection—but there comes a point at which the child or young person should properly be given the freedom to make their own mistakes. Traditionally, Scotland has taken the view that 16—previously, it was 12 or 14, but it was increased to 16 in the 1920s—is the age at which we tend to regard children as being free from adult interference.

10:15

Liz Smith: Would you prefer the bill to set the age at 16 rather than 18?

Professor Norrie: I would much prefer the bill to define "child" as a person up to the age of 16 and "young person" as a person between the age of 16 and whatever the upper limit is set at. That is slightly different, so one would then need to consider what the implications are of being a "young person". However, I think that it would be more coherent to stick to the age of 16 and say that a "child" is a person under the age of 16.

Liz Smith: That is my next point. You and others have mentioned that the proposals are about trying to change a culture, so this is not necessarily about trying to change the law. The ambition behind the bill is about trying to develop a culture of thinking. Do you feel that the use of that terminology within a legal context—whether the age is 16 or 18—slightly complicates some aspects of the bill?

Professor Norrie: I think so, and I think that that is uncomfortable. An example that I gave in my written submission was children in the armed services. Children should not be in the armed services, but we actually think that 16-year-olds are not children but young people. If that is what we really think, why do we not call them "young people"?

Liz Smith: Let me probe a little bit further. On the issue of how much could be achieved without legislation in trying to adopt a new culture, both Mr Stevenson and Mrs Quinn have mentioned their concern that it will be difficult to bring in the measures in the bill without very substantial new resources in the wider dimension. Do you have any concern that, as it stands, the bill will take away resources from the most vulnerable children because we are trying to make it universal? Is that a concern?

John Stevenson: On the issue of complexity, what we so often see is that, although there are big principles at the beginning, once everything is drafted and the policy comes out the other end, there are unintended consequences and complexities. There was something clear about the all-encompassing Children (Scotland) Act 1995 when it was brought in. One issue is that there are all these other bits that create

complexities in terms of how things are delivered and what that means for delivery.

However, I am not sure that the bill will take resources away immediately. In order to operate, more resources will be needed. For example, the named persons will need more resources in order for people to have the time to do that, because it is not as if people are sitting around with space in their day.

My concern—you mentioned the issue of culture—is that there is a different culture across different services as to what they consider wellbeing and welfare to be. In their daily life, a social worker might see living conditions that they would assess to be good enough but which might not be viewed as such by a health visitor or by a teacher. The difficulty is where you draw the line or set the threshold. We could end up with an interference in people's family life at a very confused threshold between what is a welfare problem and what is a wellbeing problem. There would then be a risk that the resources that could have been used at the high end would be going into issues that could quite readily be sorted through other methods. A final point on that is that we already know from implementing GIRFEC that we will pick up high-end stuff at an early stage that we do not pick up at the moment.

Liz Smith: You made the very interesting point that the interpretation of welfare, as opposed to wellbeing, might be different at different ages. Will you elaborate on that?

John Stevenson: That is very difficult to do without giving an example. The interpretation of what is an acceptable family environment and what is the threshold for intervening can vary dramatically between police officers, social workers and health visitors who regularly go into people's houses. A house that might seem to a social worker to be not very clean and a bit chaotic might seem to a police officer to be a place in which a child should not be brought up.

Liz Smith: Right. Thank you. That is helpful.

Susan Quinn: On resources, work on the issue of the named person is on-going in schools. Every establishment will have someone who is responsible for ensuring that the very best is given when it comes to child protection and additional support needs. Time will tell whether the bill will change that and how much being responsible for every single child will take hold. A school would imagine that it already has a responsibility—a corporate parenting responsibility, if you like—for every single child or young person in it. From establishment to establishment there are differences in the number of young people who meet the criteria for child protection, additional support needs or wider partnership working. That is where the resource implication of what is new will have an impact.

In the beginning, the very immediate resource implication will be for additional training on what the new plan looks like. Whether it will be a single document that sits within one system or whether it will involve a number of systems talking to each other, if there is a change from the current situation, there will be a training implication for the relevant people in our schools and other education establishments. Training will be needed right from the outset. If we do not put in additional resource, one can only imagine that there will be a knock-on effect. One person in an establishment—or indeed more than one person—can only do what they can do. You cannot expand their day and their life so that they continue to take on additional things without taking things out or putting more resource in.

In the longer term, if the paperwork and plans take away some of the bureaucracy that we have mentioned in the past, that will be a good thing, which will mean that the resource can be used in a different way. However, at the very beginning of a new scheme you need to put in additional resource, as other panel members have said, to make sure that there is not an impact on what goes on elsewhere in establishments.

Liam McArthur: Susan Quinn has just articulated the resource implications very well. We have also heard from Professor Norrie about the risk that is inherent in incorporating the UNCRC wholesale into domestic law. We have heard quite a bit of evidence from stakeholders that the duties that are being introduced through the bill are not as wide ranging or significant as many had hoped and fall short of full incorporation. Do others share that view? If so, where might the duties be strengthened?

Professor Norrie: Part 1 of the bill is headed "Rights of children", but that is not an accurate description of what part 1 does, which is to impose duties—that is entirely appropriate and it is what legislation should do—on the Scottish ministers to make everybody aware and remind them that the legislation must take account of the UNCRC. That is all to the good, but the wording in section 1(1)(b) is very weak. Section 1(1)(a) states that

"Scottish Ministers must ... keep under consideration whether"

to take any other steps, but subsection (b) states they are to take such further steps only

"if they consider it appropriate to do so".

Therefore, the Scottish ministers are legally obliged to look at that, but then it is completely up to them and within the Government's discretion whether they do anything about it. That weakens very substantially the duty that is imposed. Even

without the incorporation of the UNCRC, you could do much more to strengthen the duties that the bill imposes.

Susan Quinn: In terms of specifics, the EIS has articulated its case about children at the pre-school stage having access to a General Teaching Council for Scotland-registered teacher. We continue to wish to see something in the bill that would strengthen the right to that access and quantify it in some way. Without that, what we see across the country is a clear reduction in the hours of access to a teacher at the pre-school stage.

We work very closely with our colleagues in the pre-school sector, but we continue to come back to the evidence that shows that quality early years education requires a teacher or someone who has pedagogy as part of their qualification, and the three-to-18 curriculum makes that even clearer. However, the extension of the hours for early years care and education does not make that clear. Access at the moment in some areas simply means that a teacher passes through once a fortnight or once a month to check the plans that are in place. The young people are never taught by the teacher in the terms that you would expect for a primary 1 child or, indeed, by somebody whose qualifications would allow them to do that. We continue to want to see that access as a much more specific aspect in the bill.

Mike Burns: There is also the point that social work has raised about the protection of rights, particularly for aftercare and support beyond the age of 18 and up to 25 or 26. Much more decisive action is being taken on thresholds in relation to children, and higher numbers of children are being looked after and accommodated across the country. The responsibility on us as corporate parents remains significant, as do the financial implications.

John Stevenson: We are disappointed that the initial stuff that came out about the bill was stronger on rights than the duty in the bill is. No matter what duty is applied at the level of ministers, the issue is what that translates to on the ground. Certainly, the sense of our members is that children's rights, especially those of younger children whose welfare has been severely affected in one way or another, are not as up top as they were maybe five, six or seven years ago. The area has become much more litigious and there is much more accent in children's hearings on thinking first about parent's rights to contact than there is on children's rights. Those are the things that seem real to us on the ground and which I hear about day in and day out.

The issue is not just to have a duty at the level of ministers, important though that is. We suggested in our written response that, whatever comes out of the bill, there must be some independent monitoring at the front line of whether it translates in reality to addressing the rights of children. The basic right to be protected is the most important one for younger children. Young people exercising their rights to aftercare services that they are entitled to is a different issue. We are speaking for the ones who in most circumstances cannot speak up for themselves.

10:30

Neil Bibby (West Scotland) (Lab): I will follow up on Liam McArthur's question. Around 15 children's charities, as well as Scotland's Commissioner for Children and Young People, have called for a children's rights impact assessment to be carried out on the bill. That would appear to be a reasonable request. If the bill is about changing culture, the Scottish Government could take a lead by agreeing to it. Do you agree with the request for a children's rights impact assessment on the bill?

John Stevenson: Unison has supported that position before. We have asked some councils, in their reorganisations, to consider doing a children's rights impact assessment. I am not aware of anyone having actually done one, but the commissioner's website has an easy-to-follow system to do so. We would align ourselves with that approach with respect to the need to work out what is going to happen on the ground as opposed to just in principle.

The Convener: Not everybody has to answer. If you agree with that idea, fine; if you disagree, please speak up.

Mike Burns: From the point of view of the Association of Directors of Social Work, we would not be against that approach in any shape or form. Within the body of social work practice, social workers are out on the front line every day, promoting and seeking to protect the rights of children. The bill highlights, secures and promotes that work. The point has been well made by John Stevenson regarding the current experience in the children's hearings system. We would echo that point. As I say, we are not against the approach that has been described.

Clare Adamson (Central Scotland) (SNP): I wish to examine the dichotomy between protecting privacy and promoting wellbeing, referring to some of the issues that have been raised in evidence.

In relation to the named person, the bill uses the language of information that "might be relevant" to a child's wellbeing and that "ought to" be shared. We all agree that serious welfare concerns would be raised and shared with the named person; the issue is the general wellbeing of a young person. I am interested to know what implications there are for decision makers who are working with families

and young people and making the decisions as to when to share, and what impact the level of information might have on services.

John Stevenson: We are very concerned about that. On a day-to-day basis, it is unclear to people what they can share, how they can share it and how much they can share it. It is not clear to the people we work with, particularly the social workers, how much information is shared.

As we say in our written submission, the critical point is that, because of different thresholds for what is acceptable parenting and so on, there will be different thresholds for each professional as to what they think they should share. In some circumstances, we have a situation of almost blanket information sharing, particularly in child protection. You can understand why that is the case. If there is a real risk to a child, people do not want to leave out anything that might be relevant, so in practice everything is shared.

In theory, what should be shared is what needs to be shared for the purposes of what we are doing. The concern that our members have is that, if a woolly approach is taken and not enough guidance is given, they will, by default and in order to cover people's backs, end up sharing information that is not necessarily needed. At the moment, if there is a dispute in a household and the police are called, even if the child is not even there that information will be transmitted to the school, the social worker and the health visitor almost automatically—to what purpose I am sometimes not entirely sure.

There is also the individual responsibility of social workers. I have said for quite a long time that until someone takes some kind of data protection case—I am not aware of anyone having done that—we will never know where the rule lies. Many of our members feel somewhat at risk because of the tendency of lawyers in recent years to single out specific acts of social workers when they do appeals and so on, when social workers do not have a forum to reply. People are worried about that. The concern that not enough information was being shared is legitimate, but we need some guidance on what information needs to be shared or whether everything needs to be shared—and that will be extremely difficult.

Susan Quinn: In addition to the question of what is to be shared, there is the issue of consistency. The example was given that if the police are called to a household, even if the child is not there, information will be shared with the school automatically. In some areas of the country that is a threshold, but in others it is not, so the information is not shared automatically.

The training for all the groups involved needs to be clear in explaining what information it is appropriate to share at different levels of intervention. The same threshold needs to be applied across the country so that we are not in a position in which information is not shared automatically in a city area because there is a much higher level of police intervention in family disputes and to share information would mean a higher workload than there is in other parts of the country. The two parts need to go hand in hand: there needs to be a threshold, and it needs to be applied consistently across the country so that a teacher in Shetland will know to share the same kind of information as a teacher in the north-east of Glasgow or in the Scottish Borders.

We need consistency, because children—and families—move around the country. It quite often seems to be the case that our most vulnerable children are the ones who, for one reason or another, move around most often in our education system. We need to have thresholds, but we also need consistency, which will come only by having joined-up training for all the organisations involved. We all need to hear the same messages, and it is hard to deliver that consistency.

Mike Burns: The point about information sharing being proportionate is well made. I think that practice in Scotland at the moment is proportionate. On occasions, a genuine attempt is made by health visitors, early years educators and social work in localities to reflect on thresholds and the process. People in social work are very clear—the Association of Directors of Social Work certainly is—that social work is not the panacea, nor does it seek to be involved inappropriately in individuals' lives.

In fact, the bill, in endeavouring to highlight the move from child protection to concern about children, is about saying that we need to intervene earlier and in a way that allows parents to exercise a degree of informed choice and which puts them in a position to draw down support. GIRFEC endeavours to provide a single system for drawing down support to a child at an early stage, and that may not involve social work. Therefore, we are seeing a much more proactive approach to providing assistance to children and to nipping problems in the bud that involves earlier intervention, more assertive outreach and the provision of critical support to parents at an early stage in a way that is, in a sense, open and part of a modern society. We welcome that, and we welcome the role of the named worker in that respect.

Professor Norrie: Conceptually this might be the most difficult part of the whole bill, and it taps into a number of issues that we have already discussed. Going back to Liz Smith's question about children and young people, I should add that children and young people are entitled to privacy

and confidentiality; indeed, the older they are, the more important that becomes for each individual.

The issue also illustrates the huge ambiguities in the drafting of the bill, which, if passed in its current form, will lead only to lots and lots of litigation. That might be good for lawyers but not necessarily good for children and young people.

Section 26, for example, stipulates:

"A service provider or relevant authority must provide ... information"

that

"might be relevant"

and

"ought to be provided".

Those terms are contradictory, and if you leave them in you will be leaving it to the courts to strike the balance.

The worst section in the bill is section 27. If you manage to strike it out and leave everything else, you will have achieved quite a lot. It states:

"The provision of information under this Part is not to be taken to breach any prohibition or restriction on the disclosure of information."

In other words, it trumps every other piece of legislation from this or any other Parliament anywhere that provides law for Scotland. The Children's Hearings (Scotland) Act 2011, which is now in force, contains a very strong prohibition on the publication of information about children who appear before a children's hearing, because children are entitled to confidentiality. The idea seems to be that it is okay to disclose such information within the very ambiguous parameters of this bill. However, it is not okay.

Clare Adamson: May I ask a quick supplementary, convener?

The Convener: As long as it is quick and as long as we have quick answers from the panel. We have a lot that I am keen to get through.

Clare Adamson: Professor Norrie has made it clear that he would like the drafting of the bill to be changed, but could many of the ambiguities that he has highlighted be dealt with in guidelines?

Professor Norrie: The problem with leaving everything to guidelines is that, given the sort of bill that this is, the legislation itself is what will lead to court cases. It will be the interpretation of the legislation, not the guidance, that will give rise to litigation.

The Convener: I will now have to ask a supplementary on this issue myself. [*Laughter*.]

Given the points that you have raised, do you think that the bill is fundamentally unsound or are we merely talking about minor drafting issues?

Professor Norrie: The bill is fundamentally sound. It has good aspirations for Government, public services and Scottish society.

The Convener: So you are suggesting that amendments be made to the drafting because of the ambiguity of the language that has been used.

Professor Norrie: That would be my primary concern.

John Stevenson: I agree. However, I think that this exposes a problem relating partly to children's privacy when they are quite young that does not arise simply from this bill but which is in fact a long-term problem.

In the case of a child who is a victim of a crime, it is not unusual for the procurator fiscal, the police and all the rest to requisition the files in order to find out everything about the child. Given the amount of confusion on the issue across all the legislation covering children's services, we have to start thinking harder about how children exercise their right to privacy in a safe way.

Neil Bibby: We have already touched on the issue of resources and the named person. The EIS has highlighted the need for resources for the public sector to pursue the bill's intentions and that "financial constraints" on local authorities lead to "barriers to effective" partnerships. Unison has already said that staff workload and lack of resources are an impediment to GIRFEC and that there is a need to increase the number of front-line staff. Is it fair to say that you do not believe that there are enough resources to realise the bill's ambitions?

10:45

Susan Quinn: It is fair to say that we are very concerned about the possibility.

In our schools, the named person is not named at the moment even though they are doing the job—the job is already there. It will be the same with our social work colleagues; people are doing those jobs already. What we have indicated is that it will not be the named person's sole, single job. If the named person is the headteacher of a primary school, they will have the whole school to oversee, financially and with regard to teaching, learning and staff development. If the named person is a depute head, a pastoral care teacher or someone else in the secondary sector, they will have teaching duties and other remits.

It would be unusual for a school to say that, because 25 per cent of their young people are involved in stages 3 and 4 of intervention, it is too

big a job for the named person to have anything else to do. Schools just will not have the resources to do that. The crunch point comes when attendance at a meeting is required but it clashes with one of the named person's teaching commitments. If the school does not have anyone to cover, what is the crunch? Does the person attend the meeting and leave a class behind without somebody to teach them?

The Convener: What happens now? That must happen at the moment.

Susan Quinn: Until very recently, a supply teacher would have come in to provide cover—although that is a whole different debate that is going on at the moment. Such requirements would be covered internally or otherwise, but if the duties are increased and become clearer, as is possible under the bill, there will be problems.

Our concern is that, as the impact of the cuts in resources has taken a bite in our establishments, schools have found it much more difficult. Before, members of a senior management team in a secondary school would not have routine class commitments and would rarely be called on to do a "please take", but we are now seeing evidence of that happening more and more. Teaching commitments for all members of staff in schools are becoming tighter, and that has an impact on what else can be done.

Another concern that we raised in relation to the named person is what happens beyond the school year, into the holiday period. That has been a great cause of concern to me in my job as a headteacher. If there are going to be routine hearings, where does the resource come from to undertake that duty?

We have concerns about the squeezing. We need the new resources in order to get the training in place for the changes proposed in the bill, but our schools and establishments have much tighter budgets for the people who are there, so there is a conflict in where their duties lie.

Neil Bibby: I understand that the Scottish Government has said that, for school staff, it is expected that after initial training there will be no increased time commitment. What would you say to the Scottish Government in response to that?

Susan Quinn: I would say that, if there is no increased time commitment, that is fine if schools are working on the same resource as they had five or 10 years ago, but we are not working on the same resource. It is the same in other areas. Schools are squeezed in terms of what they can deliver in relation to the school day and beyond.

It will be fine if duties are not increased and the resource level remains the same. Our organisation and others want more resources, but resources are tighter and it is harder for our establishments. Only time will tell whether an increased level of work will be required—and we will not know that until the changes are in place.

Mike Burns: There is also an assumption that early intervention is less intense. However, what we see on the ground—most welcome though this is—is the emergence and referral on of earlier difficulties. Therefore, it is no less intense. To address, divert and secure better outcomes for children involves significant additional resource on occasions.

Neil Findlay: I am beginning to feel that my departure from the committee is rather timely. I sense that, as was the case with the Post-16 Education (Scotland) Bill, a blizzard of amendments will be lodged. Good luck with that. [*Laughter*.]

The financial memorandum estimates that for most children the additional role of the named person described in the bill will result in an extra two hours a year per child from midwives and one hour a year per child from health visitors. I am not very good at maths, but I have worked it out that that will mean midwives get two and a half minutes with each child a week and health visitors will get just over a minute with each child a week. What will that contribute?

John Stevenson: We have said that a significant input of resources for health visitors and other health staff will be required. We are in a position in which health visitors are overworked. The refocusing of health visiting towards the most vulnerable has meant that things such as the two-year check are missed out and lots of developmental issues are not picked up. The reintroduction of that check without the required resources alongside it, but with the named person role on top, will make the situation almost critical for health visitors and midwives on the ground.

We are aware that the pilots in Edinburgh have been with pre-school children. Where the system is working already, people find it difficult to get their head round it but they are fine once they have done so—although we are then stuck with a lack of time to carry out the role. Health visitors have sizeable case loads. As a named person, they might have to attend several meetings a week relating to children, which is time that they will not be out visiting children. A significant and on-going investment of resources is needed; it cannot just be a one-off investment.

Neil Findlay: The reality is that it has taken you longer to give that answer than health staff will have each week to address the issues. Even so, those staff will be time rich compared with teachers because, apparently, they will not need any extra time to carry out the role. On a basic

level, it is incredible that that has been said. If I train a person to do something and then they go and do it, that must take some time. Perhaps we need Professor Hawking to come before us to explain the physics behind doing something that does not take any time. It must take time for teachers to act as a named person.

Susan Quinn: That probably reflects the fact that many of the areas in which we are to be trained under the bill are already dealt with in schools. Our difficulty is that, in the beginning, people will possibly become more concerned about or afraid of litigation. Therefore, more time will be taken to ensure that any new legislation or processes are embedded.

Time has been spent training staff, which is why additional time will not be required. However, the time requirement has not necessarily been resourced. We must consider how we resource and, in particular, staff our schools based on need.

Over the years, things have changed in terms of what is recognised in deciding staffing levels in schools that are in areas that are high on the index of multiple deprivation. There has been a move to using the free school meals and clothing grants entitlement, rather than the deprivation index, as the fraction that is factored in. That approach changes quite significantly the resource that our schools get in relation to staffing levels for the named person role. Although that is not the only thing that will determine the level of need and the workload of a named person, it is quite clear that it has an impact.

It may well be that there is not any additional work, but the reality is that the work is on-going and, as I have said before, it is only one part of the job that the named person will be doing. Although some of my colleagues might like to have a named person who only does that job, in reality the person will be doing a plethora of other things in relation to the wellbeing, teaching, learning and so on of young people. The named person role will become part of those things.

Whether the role becomes overwhelming in that person's workload really depends on the make-up of their establishment at any one time. Schools might see a greater need one year and then the need could change—that is where things become difficult. We would argue again that resource has been squeezed over the years, which affects people's roles. A secondary school that had five depute heads in the past may well now have only three. Those three have a bigger workload than they had when there were five depute heads.

Neil Findlay: In some of the large secondary schools, we are talking about rolls of a few thousand. Are we really trying to say that there will be a named person in such a school who is responsible for, say, up to 3,000 young people and that that role is not going to take any extra time? I am sorry—I just do not wear that at all.

The Convener: I want to clarify something, given that line of questioning and the statements that have been made. I presume that much of this work—as I think Susan Quinn has indicated—already goes on. We have teachers who take on a pastoral care role as part of their current duties. Is it not the case that, in effect, we are quantifying and focusing the responsibility more accurately and detailing what the role is in order to ensure that what already happens with good teachers happens across the country? Is that not what we are attempting to do?

Susan Quinn: That may well be the intention of the bill, but only time will tell what the impact is and whether that happens, because the detail of the duties of the named person is massive.

It is not just a matter of the impact of the bill in its own right and whether it comes with no additional resource. We also have to set the bill in the current context that our establishments find themselves in: yes, we have teachers who take on a pastoral care role, but in lots of areas their role has changed over the years. Their teaching commitment has increased in recent years compared with the past, with a knock-on effect. Therefore, only time will tell whether the duties of the named person simply quantify what is currently happening or increase their workload. We will not know until we see what everything looks like on the ground.

The Convener: Okay. Thank you very much. Time is rushing on, so we need to move on.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I will touch again on a point that Professor Norrie raised in connection with a single child's plan. The bill provides for a child's plan to be developed if an individual child has a "wellbeing need" that requires a targeted intervention. Professor Norrie indicated that there are some deficiencies in that, and that if guidelines were laid down by the Government they would not compensate for those deficiencies because the bill does not make any reference to existing legislative duties. I am interested to hear a little bit more about that, and whether the whole panel agrees with that.

Professor Norrie: If you are referring to my written evidence, the point that I was making was about when we should take account of the child's views. The bill suggests that we should take account of the child's views when deciding whether a child's plan is necessary. It struck me that it is much more important to take account of the child's views when we are designing the content of the child's plan.

11:00

That taps into a slightly broader concern that I had about children's views. Most child law of the past 20 or 30 years traces the duty from article 12 of the UNCRC and most of our children's legislation specifically requires bodies to take account of the views of the child, but there is very little of that in the bill. I would have preferred there to be more of a requirement on service providers—in drawing up not only the children's plans, but their general strategies—to speak to children and find out what they need in particular areas.

Colin Beattie: I appreciate that. However, we have existing legislative requirements. Do they adequately feed in to the bill? With no specific reference to those legislative requirements, will guidelines compensate?

Professor Norrie: In that context, guidelines serve a useful purpose.

Mike Burns: Core social work practice—and what we do when we are working with children—has to have at its heart the views of the child. A plan is most effective when its focus is specifically on what the child needs.

There are sufficient safeguards in the system, through child protection reviews, looked-after and accommodated reviews, relationships with schools and health visitors, and the children's hearing system itself, to ensure that core practice—whether it involves issues to do with wellbeing or welfare—has at its heart the securing of the child's view, irrespective of his or her age. Even when a child is very young, the social worker and the other professionals who are around the child are obliged to think with empathy about the absolute needs of the child and to convert some of those needs into the plan.

Susan Quinn: On the single plan relating to wellbeing, we have raised the point that education services will have plans that relate to additional support needs but not to wellbeing. We had hoped that the bill would free us from having different plans for different things, but if the plan is simply about wellbeing, there is no potential for that.

The Education (Additional Support for Learning) (Scotland) Act 2009 requires that a young person's voice is heard in their plan. That is used and developed in our schools. We hope that we will not have one plan that looks one way, at wellbeing, and another that looks a different way, at additional support needs; we hope that there will be a single document so that a plan in relation to overtaking education-related barriers to learning would look the same as a plan in relation to overtaking wellbeing barriers to learning. It would be the same document, so that if anything changes in the young person's life, people would not have to redraft the whole thing. The document will just provide the information, but expectations need to be made clear.

If that is not what comes out, and there is simply one single plan that relates to the concern about well-being, it will not change my members' workload, because people will still have to have a separate plan under the Education (Additional Support for Learning) (Scotland) Act 2009. We hope that the two will start to look the same.

John Stevenson: The issue for us was the sharing of information without consent and how we define that in terms of wellbeing. Good practice means sharing with consent and engaging people in the process. If you start off by excluding the child from the decision about whether to share their information, the next step will be a bit of an uphill struggle.

ADSW made a very important point about advocacy: children require assistance to communicate or interpret their views. That is the nuts and bolts of what social workers do every day; they must put that in their report. My own area holds to the tenet that it should never be reported that a child is too young to express a view. Children express views in all sorts of ways, which we need to interpret. There is a kind of advocacy industry and it is thought that there must be an advocate for children to express their views. That should not be considered to be a separate structure; it should be ground into every part of the structure from its roots upwards.

We are looking at a system that takes a universal approach to children's wellbeing using services that have, by and large, been targeted in the past. For example, health visitor services and social work services serve only parts of the population. Schools serve the whole population and the bill is a major issue for them. We need to get our heads around the universality of the service that we are providing, which will bring into the net a whole lot of people who in the past had no connection with agencies at all.

Colin Beattie: From your experience, do you think that the practical issues around combining the child's plan with other existing plans might turn out to be bigger than we think?

John Stevenson: In giving evidence on other legislation previously, Unison made the point that we discovered that in one local authority, for a child to come into care something like 11 different forms needed to be filled in. That situation has got much better.

We have also guarded against the oversimplification of a single child's plan. The temptation is to come up with a bureaucracy and with a form that is so simplistic that it tells us nothing. We need the single child's plan to pull

together all specialist plans. We would not expect a paediatrician to be able to do their report on a single sheet of paper and we would not expect an education plan to be done in that way either. The single child's plan needs to be a hub that brings such reports together but does not replace them. Unfortunately, we sometimes see on the ground attempts being made to replace those reports with something far more simplistic.

Colin Beattie: Do you think that there is enough clarity about which organisation might be responsible for providing and paying for the services that would be required under the child's plan? I am thinking of instances when children might use services outside their own local authority area.

Mike Burns: If the bill captures current practice, there are well established arrangements for the team of professionals. I cannot think of a time when there has been significant dispute. There is often clarity, and professionals need to work together to be clear about how a child's needs will be best served by the local resources that are at their disposal. The system works well at the moment.

Neil Findlay: In a previous job, I was responsible for writing individual education plans, and refreshing them made for what were probably the hardest couple of weeks of the year. It was time consuming and very difficult, at times. When I first went into the job, the plans were written in very dry education terminology and mentioned numeracy, phonics, linguistics and all the rest. They were sent to parents to be signed off and agreed, but many of the parents had not a clue what they were about. The plans would come back signed, but if we discussed them with parents, we found that they did not know what they had signed. It was not until the school completely revamped the process so that the plans were written alongside the child, who could say, "I can do this and that, but I need help with that other thing", that the parents and the children began to realise what they were all about. That was very refreshing.

I acknowledge John Stevenson's caution against making the plans overly simplistic. However, we need to rethink how we engage the people whom the plans are supposed to be assisting and how we get them to buy into the process. Simplifying the plans does not necessarily mean throwing out a lot of information, but the information must be presented in a way that allows people to understand what is being said.

Susan Quinn: The changes to the way in which plans are developed in schools mean that we now involve parents and young people through face-to-face meetings. However, that is a real challenge for schools, because it has to be done during the school day. We cannot say to children, "Go and wait behind, will you, so I can sit down with you, because I have had to take the class today?"

Neil Findlay mentioned large secondaries with large numbers of pupils. Some of our smaller schools face even greater challenges. Although the numbers of young people are lower, the school might have a teaching head; if they are teaching during the day, they cannot sit down with a young person or a parent and listen to their views on a plan, because they have people in front of them. Real challenges already exist in the current system.

It does not particularly matter what the paperwork looks like; teachers need time without a class in front of them to discuss a plan. Our members have said that it has in the past few years become harder to find the time for that in the school day, because there are things that they have to do. The head can sit with the class teacher at the end or the beginning of the day and develop strategies, but the part that involves young people must take place when they are there during the school day. Otherwise, we are asking our most vulnerable children to get a detention and stay behind so that we can work on their support needs. That is where the squeeze with regard to people having a bigger role has had an impact.

Mike Burns: To go back to one of the first points, the law and the plan by themselves will not deliver the cultural change that we are seeking. The important element is the ethos and the thinking behind the bill, particularly with regard to getting it right for every child, which concerns the set of attributes that early years educators and health visitors can, without a doubt, bring to the table. The third sector is critical in early engagement, and a social worker simply filling in a plan or a report by themselves will not secure the necessary engagement and outcomes. It is the set of attributes and the quality that are critical.

Marco Biagi (Edinburgh Central) (SNP): Panel members should feel free to give yes or no answers, as I am aware of the time.

The difference between welfare and wellbeing has been mentioned quite a bit today. Professor Norrie's written submission characterises the difference as being that welfare is an imperative—almost a tripwire to trigger intervention—whereas wellbeing is much broader and is about maximising good things in a child's life. Do the other panel members agree with that?

11:15

Professor Norrie: That is a fair summation of my view. The critical distinction that is traditionally

used with regard to the state stepping in to do something compulsorily—to interfere with family life, if you want to put it that way—is the welfare test. As far as I understand it, the bill is more about avoiding the need for compulsory state intervention, which is a quite different process. Indeed, it uses the term "wellbeing" instead of "welfare", which struck me as being quite useful.

Marco Biagi: Given that I managed to get that right, I wonder whether Mike Burns also finds that to be useful.

Mike Burns: It is certainly helpful; in fact, it is critical that we in Scotland enhance wellbeing in order to deal with some of our welfare and child protection issues. As a collective community, we need to parent better and to see parenting as a kind of active citizenship. I understand—indeed, I adhere to—the views that have been expressed about differentiating with regard to family life and protecting privacy, but the point is that a lot of situations that we have had to deal with have ended up as very acute child protection issues when the system collectively could have—and should have—intervened earlier on the basis of wellbeing.

Marco Biagi: Do the other two panel members disagree with that?

John Stevenson: I disagree only with regard to definitions and where the threshold should be set. As we have said, that will be tested in the same way that welfare continues to be tested by lawyers arguing more and more at children's hearings. We do not disagree with the principle, except on the compulsory sharing of information, which is a state intervention with regard to wellbeing.

Marco Biagi: Does the duty to promote wellbeing complement or conflict with other duties—for example, corporate parenting and supporting and promoting welfare?

Mike Burns: I do not think that that would be an issue.

Marco Biagi: Lastly, some of the written evidence has commented on the use of the safe, healthy, achieving, nurtured, active, respected, responsible and included—or SHANARRI—indicators. Do any of you have views on that matter?

John Stevenson: Unison has commented not on whether the SHANARRI indicators themselves are good but on whether thresholds might be considerably blurred as a result of one person thinking that they might or might not be good. Going back to Neil Findlay's earlier point about forms, the fact is that things are much better when people are involved right at the beginning. The best way of involving people is through co-operation, but our concern is that if something that should be enabling or involving merely becomes a way for officialdom to share information, we will lose them at the beginning of the process.

Susan Quinn: My only concern about the SHANARRI indicators is that we do not change them. People in schools are only now getting to grips with them in their current form, so if you were to come along and say, "Actually, we're going to have to change them before you've even started to use them for anything much", their heads might explode.

The Convener: We could not have that.

Susan Quinn: The SHANARRI aspect of GIRFEC has taken a while to permeate through many of our systems. The indicators provide a general service, but other aspects of SHANARRI will lead to much more precise and considered interventions than we have at the moment.

Marco Biagi: Would putting each of the SHANARRI indicators into the bill as headings provide people with some confidence that the system will be used, and avoid the danger of anyone's head exploding in the near future?

Susan Quinn: Yes—having the indicators in the legislation would achieve that aim. It comes back to whether the indicators need to be in the legislation or the guidance. If the indicators are in the guidance, that will—provided that the guidance is clear—give people in our schools confidence that that is where we are going in the future and that the indicators match what we are doing in the curriculum and other aspects of our work. People will therefore begin to gain confidence in use of the indicators, which are not the only assessment tools and plans that are considered under GIRFEC, but are only one part of what schools use.

George Adam (Paisley) (SNP): Good morning. My question, which is about kinship care, is for Mike Burns. Kinship care is a massive issue and I know about the challenges at local authority level and the difficulties that families face when they try to navigate the administrative minefield that is put before them. What discretion should local authorities have over how they support kinship carers, and to what level?

Mike Burns: Our submission says that kinship carers have made a very positive contribution and that we welcome the securing of kinship carers through the financial support that they have been given. We have said that it is critical that the provision in the bill, rather than referring to counselling, should be about assessed need alongside the role of kinship carers and the informal supports that kinship carers have access to—or to which they have access on occasion.

A big effort has been made in three cities to try to facilitate the pathway to support to which George Adam refers. Carers whom I speak to often say that it is almost as if they have to break down barriers to get support, whether in relation to welfare rights or legal issues. We seek to provide much more assistance and much quicker access to support.

There should be significant local determination of what is required in an area. Kinship carers refer to a number of issues—such as trauma or loss—that might require counselling, but there can also be significant issues about establishing routines for meal times or sleep, about family group conferencing and about contact.

To be too prescriptive—rather than saying that counselling is part of the assessed need and bearing in mind some of the principles that we have discussed—may, in a sense, narrow what is required for the child.

George Adam: You mentioned welfare rights. Nine times out of 10 it becomes quite difficult for the kinship carer to look after the family financially. We have agreed that it is quite difficult for carers to go through the system. If the benefits system does not support the families financially, do local authorities have the right to step in to support them?

Mike Burns: A number of authorities have provided kinship care payments specifically on the basis that access to payments that would be made through the Department for Work and Pensions and so on is protected. There is probably still a postcode lottery to some degree; there are differences between authorities. The differences are partly down to the fact that some local authorities have viewed kinship carers as being similar to foster carers, whereas other local authorities took the view that kinship carers are different and felt that they had to ensure that the financial burden was not simply assumed by the local authority and that finances that would otherwise have been available to kinship carers were protected and, indeed, enhanced if the local authority decided that, in the circumstances, the child could not remain with his or her parents.

The decision comes back to the principle of the protection of private life, which we discussed. If that threshold is met, the local authority intervenes to move the child, whether it is to the aunt, the uncle or the grandparents. The kinship care payment should be made at that point. It has made a significant contribution to supporting such children. We have looked at and even audited such things and many children have, through that payment, remained within their extended family, which is to be welcomed.

Neil Bibby: I want to ask the ADSW about its submission. The start of the submission mentions the "Removal of functions" and what it interprets as "a very centralising power" that could take away the planning for children's services and transfer assets and money from local authorities to a joint body or board. What case has the Scottish Government made to you on the need to do that?

Mike Burns: We commented on the fact that that did not form part of the consultation. We wanted to flag up that a lot of the work that the Scottish Government has led on in relation to the early years collaborative, which really does capture the GIRFEC principles and the direction of travel in the legislation, says that we need to look specifically at communities, neighbourhoods, access to services and the points that we have raised about kinship care and bringing local resources to people.

Even in my local authority—Glasgow City Council—there is at times the notion of the centralised plan, but what remains critical for me is my ability to convert that meaningfully to Possil and Drumchapel.

All that we flagged up was the fact that the deficit in performance is not often in relation to the quality of the plan. I have looked at many plans that are incredibly well written; many bright people have been at the back of them, and their aspirations and what they want for children are excellent. The critical thing is to convert those aspirations into tangible outcomes on the ground in neighbourhoods. We flagged that up in order to say that it seemed to be incongruent with the direction of travel of the early years collaborative and the GIRFEC principles to say that there will at times be a centralised solution to what could be the local determination of local issues. That was our issue.

The Convener: Thank you very much for that.

I thank all the witnesses very much for their evidence at the start of our in-depth look at the Children and Young People (Scotland) Bill. The meeting has been a helpful start. Again, I thank the witnesses for the written evidence that they supplied to the committee before their appearance this morning.

That concludes the public part of the meeting. Earlier, the committee agreed to take agenda item 3 in private.

11:28

Meeting continued in private until 12:45.

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e-format first available
ISBN 978-1-78351-561-5

Revised e-format available
ISBN 978-1-78351-575-2

Printed in Scotland by APS Group Scotland