



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION AND CULTURE COMMITTEE

Tuesday 26 February 2013



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**EDUCATION AND CULTURE COMMITTEE**

**6<sup>th</sup> 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:**

Mark Batho (Scottish Further and Higher Education Funding Council)

Michael Cross (Scottish Government)

Ailsa Heine (Scottish Government)

Michael Russell (Cabinet Secretary for Education and Lifelong Learning)

Tracey Slaven (Scottish Government)

**CLERK TO THE COMMITTEE**

Terry Shevlin

**LOCATION**

Committee Room 1



## Scottish Parliament

### Education and Culture Committee

*Tuesday 26 February 2013*

[The Convener *opened the meeting at 10:02*]

### Decision on Taking Business in Private

**The Convener (Stewart Maxwell):** Good morning. I welcome members to the sixth meeting of the Education and Culture Committee in 2013. I remind members and people in the gallery to ensure that all electronic devices are switched off at all times, particularly mobile phones because they interfere with the sound system and that is not helpful.

We are hoping that Liam McArthur will be able to join us, but due to technical difficulties with his aircraft from Orkney he may not make it this morning. He may be able to join us later on, but I give his apologies now just in case.

The first agenda item is a decision on whether to take agenda items 3 and 4 in private. Do members agree to take those items in private?

**Members** *indicated agreement.*

## Post-16 Education (Scotland) Bill: Stage 1

10:03

**The Convener:** The next item is our final oral evidence session on the Post-16 Education (Scotland) Bill. Before we take evidence from the Cabinet Secretary for Education and Lifelong Learning, I welcome to the committee Mark Batho, who is chief executive of the Scottish Further and Higher Education Funding Council. Thank you very much for coming this morning. We will go straight to questions, if that is all right.

**Liz Smith (Mid Scotland and Fife) (Con):** With reference to policies on university governance, tuition fees and access, will you give your view on why you think a legislative approach would be better for delivery of education, rather than the conditions that are already in existence when the funding council makes its grants?

**Mark Batho (Scottish Further and Higher Education Funding Council):** Clarity is the order of the day. We have reflected on this in the funding council. Following the "Putting Learners at the Centre—Delivering our Ambitions for Post-16 Education" report, there has been a change in the policy environment for post-16 education.

From our perspective, it is not unhelpful to have greater clarity on the issues that Liz Smith has mentioned being set out in legislation. That way everyone knows more clearly where they are. For example, at the moment our duty in terms of provision is to secure coherent provision—and that is it. A bit of underpinning in legislation of what that might look like is helpful to the funding council and, potentially, to others.

**Liz Smith:** You make the point that you think there will be greater clarity as a result of the legislation. Could you be more specific about where the bill will deliver on the intentions because of that clarity? For example, what specific things in the bill will deliver widened access and lead to better governance?

**Mark Batho:** I will not go into the nitty-gritty of the specific provision on widening access because I understand that the Government is looking at the detail of some of the wording.

It is intended that there will be clear agreements between the funding council and institutions on their widening access ambitions, and that there will ultimately be an obligation on those institutions to abide by them. Setting out that intention in legislation gives extra force to what already exists—namely, the outcome agreements that we are developing at the moment, which are not referred to in statute. Outcome agreements just

happen; they are agreements. The underpinning legislation's inclusion of an obligation to fulfil what is in the widening access agreement—as it will be termed—is helpful.

On governance, what the relevant section in the bill says is simply about agreement on the “principles of governance”. The funding council will not tell universities how to run themselves; it is about the underpinning of principles. There is no real statutory reference to that, at the moment.

The funding council has a direct interest in there being well-governed institutions because we are distributing £1.6 billion of public money and we need to be sure that it is being used effectively and efficiently. The statutory underpinning makes clearer the obligation of institutions to be well governed and well managed, which contributes to greater accountability for use of that resource. It will ensure that in all the institutions there is real compliance with the obligations that come with public funding.

**Liz Smith:** In the first part of your answer you said that you do not want to comment on specific details because the Government is still considering the matter. Is it your understanding that, although the intentions of the bill are reasonably clear, the detail of how some of it would be put into practice is not clear?

**Mark Batho:** I did not quite say that. My point is that the Cabinet Secretary for Education and Lifelong Learning has indicated that he will examine the wording in a number of places to ensure that the intention that he has expressed is articulated in the right legal language. I am not sure where some of those discussions have reached because I am not directly in that loop.

There is clarity—for example, with the widening access section of the bill—on what the Government wants, but I understand that the cabinet secretary is considering whether the wording is exactly right. He will, if required, lodge amendments to make sure that any doubt about the wording is resolved. That is not my specific responsibility. My responsibility is to take the legislation as we ultimately find it and to implement it.

**Liz Smith:** At last week's committee meeting, Alastair Sim from Universities Scotland said that his belief is that many people in the sector feel that the policy intentions have come adrift from some of the detail. It is not for me to ask you about that, and it would not be right for you to answer on whether you think that is correct, but do you acknowledge that there is concern about that?

**Mark Batho:** I have read the evidence that others have given. I am not concerned; I can see clearly the direction of policy and it is a direction with which the funding council feels comfortable.

**Liz Smith:** If you are prepared to say that, why do you think that Universities Scotland has made that comment?

**Mark Batho:** I do not want to enter into Universities Scotland's mind on that and I cannot remember the specific issue that it was talking about. It was something to do with whether the bill provides for agreement or enforcement. That is for Universities Scotland to articulate.

**Liz Smith:** The Universities Scotland comment was in the context of my next question. Is there concern about the degree of responsible autonomy—that is the key phrase—in the sector? Do you feel—from any part of the bill—that ministers' oversight is increasing and that the funding council's role will, as a result, be more to be at the Government's bidding and to carry out its instructions, than to have responsible autonomy? I think that that was Mr Sim's point.

**Mark Batho:** I do not see that shift in the bill. The starting point is ministers' clear articulation of their respect for the autonomy of the institutions, and their acknowledgement that autonomy delivers the best results, according to international comparisons. The funding council has not read the bill as being something that will intrude on that autonomy in ways that could adversely affect it. If the Government wanted to intrude on autonomy and take a more significant role in running universities, the bill would be a slightly odd approach to take—in particular the governance and widening access sections.

I am conscious that in the rest of the bill the Government is taking a more significant role—for example, in appointment of chairs of regional strategic bodies and of other regional colleges. That is a matter of process. Will the institutions be less autonomous because of the route by which their chairs have been appointed? That is a matter of judgment. Some people who have given evidence have formed one view, but I would form another.

**Liz Smith:** To be clear, I say that the Educational Institute of Scotland has raised that concern and has made the point that it feels that good governance would be more at the discretion of ministers than of the institutions. Is that something that concerns you?

**Mark Batho:** There is a general interest in there being good governance by whatever route. Chairs of colleges and regional bodies being appointed by an acknowledged public appointments process is an entirely legitimate route for such appointments in institutions that typically receive about 70 per cent of their funding from the public purse.

**Liz Smith:** That point is valid. The institutions are taking a substantial amount of public money

and good governance is crucial. However, many people in the college sector are making the point that good governance would be decided more by the Government, and potentially by the funding council as it is involved in that process, than by the institutions. Do you accept those comments that the committee has heard? They have been substantial.

**Mark Batho:** The Government and the funding council have a legitimate interest in scrutinising governance of institutions. That is different from doing the governance of institutions.

**Liz Smith:** Does that include the powers to remove the whole board?

**Mark Batho:** My understanding is that those powers already exist in the Further and Higher Education (Scotland) Act 1992.

**Liz Smith:** The powers will be slightly extended.

**Mark Batho:** I am getting beyond my specific area.

**Liz Smith:** There are powers, but I think that you will find that they are to be extended. Does that concern you?

**Mark Batho:** If an institution that is in receipt of tens of millions of pounds of public money is failing in its responsibilities, it is not unreasonable for there to be accountability for that. The ultimate sanction—which has never been used—of removal of a board that is persistently failing to fulfil its duties and responsibilities seems to me to be a not unreasonable sanction. There are many steps along the way, which is why the process has never been carried through since the 1992 act was passed.

10:15

**Neil Findlay (Lothian) (Lab):** Throughout the evidence that we have heard during our scrutiny of the bill, concern after concern has been raised about different elements of it. What concerns do you have about the bill?

**Mark Batho:** The specifics that we have been talking to the Scottish Government about have been very much linked to our responsibilities. We want to ensure that there are clear lines of accountability for the resource that we distribute. Ultimately, I am the accountable officer for all the £1.6 billion that is accountable to the Scottish Parliament; therefore, it is important that the line of accountability is clear down to where that resource ends up.

For most of the college sector—I am talking about the college sector—that is going to be very clear anyway, because in most areas there will be a single regional college. There will also be clarity in the Highlands and Islands because the single

University of the Highlands and Islands will ultimately be responsible for all the resource.

The two areas that will be multicollege regions are, at the moment, Lanarkshire and Glasgow. In continuing discussions with the Scottish Government, we have raised what is essentially a technical point. It is not about policy; it is a question of ensuring in the legislation that the resource moves from the funding council to the regional strategic body to be distributed to the assigned colleges.

I will give you an example. If something were to go wrong in one of the assigned colleges for which I was accountable financially, there ought to be clarity around the funding council's capacity to resolve the difficulties or the issues in that particular assigned college. There are a number of ways of addressing that, either through legislation or administratively. Potentially, someone in the regional strategic body could be an accountable officer as well.

A number of different approaches are being discussed at the moment. I would not say that those are concerns; they are things to be got right. That is the main area of focus.

We must also ensure that there is clarity about who does what, particularly in relation to quality and the securing of coherent provision within a region. Who is responsible, between the funding council and the regional strategic body? Such questions are, again, potentially resolvable by administrative means or through amendment of statute, and discussions are continuing. They are technical issues, but it is important that there is clarity about them.

**Neil Findlay:** I have heard you use the word “clarity” six times this morning. That is six times more than anybody has used that word in relation to the bill in all the evidence that we have heard previously. Nobody has said that the bill provides clarity on anything.

You said that you do not really have any concerns, despite the weight of evidence that we have received, which you say you have read. You say that the funding council has only minor technical concerns about governance and all the rest of it, and that you will comment only on the narrow parts that relate to your organisation. Is that right?

**Mark Batho:** I think that that is right—yes.

**Neil Findlay:** Okay. The von Prondzynski review recommended that the funding council commission the drafting of the governance code. Why did that not happen?

**Mark Batho:** I do not know how we have arrived at the process that has been agreed, but it has been—

**Neil Findlay:** You are the chair of the funding council. Your organisation was tasked with commissioning the code and did not do it. Why did that not happen?

**Mark Batho:** I think that there was discussion between Universities Scotland and the Government around an approach to doing that. It was agreed that, just as the committee of university chairs has, on a UK basis, drafted the existing guidance, so the opportunity should be given to the chairs of the Scottish higher education institutions to draft a Scottish code, which is what is happening at the moment. We are entirely comfortable with that.

**Neil Findlay:** Is that what you think happened, or is that what happened?

**Mark Batho:** I am sorry. I will not be definitive because I do not have a clear picture in my mind.

**Neil Findlay:** Your organisation was asked to commission a review. Did the Government speak to you about that?

**Mark Batho:** We were not asked. The von Prondzynski review was a recommendation to Government—

**Neil Findlay:** Let us be absolutely clear. Was there no discussion between the funding council and the Government of the funding council commissioning that review?

**Mark Batho:** There was not, to my recollection.

**Neil Findlay:** Thank you. Does that concern you in any way?

**Mark Batho:** Our concern is about ensuring that there is proper governance. I come back to the fundamental point that there must be proper accountability for the resource that goes out to institutions. We deal closely with Universities Scotland and the Government at all times. I have no doubt that, as the university chairs produce their recommendations on governance, the funding council will be involved in the discussions about what they have produced, as will the Scottish Government, and that we will input to any areas that we think need to be improved, added to or whatever.

**Neil Findlay:** Have you been involved so far?

**Mark Batho:** No—because the university chairs are pursuing the matter at the moment. They are the people who have been tasked with pulling together the guidance.

**Neil Findlay:** They told us last week that they are consulting, although other people say that they are not consulting. To date, have they consulted you?

**Mark Batho:** We have not had a formal meeting with that review group yet, but its work is continuing.

**Neil Findlay:** Are you concerned about the lack of parliamentary scrutiny of the code of governance?

**Mark Batho:** I am not concerned, although if Parliament is concerned, I accept that entirely. We have not yet seen the code, and we need to see what it looks like. It is not for me to comment on whether Parliament should have a role in that.

**Neil Findlay:** Thank you.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** My question follows on from what Mr Findlay just said. When the code of conduct is produced, who will sign it off?

**Mark Batho:** As things stand, it will be a voluntary code that the autonomous institutions will sign up to. If the section in the bill that talks about governance comes into effect, the Government could ask for a review of specific aspects of the principles that underpin the governance of universities. At that point, the Government would plainly have an interest in all the issues involved.

As things stand, the sign-off of the voluntary code will be by the institutions themselves. We have a financial memorandum that has been agreed with both sectors—colleges and universities—and under its terms we require good governance. Underpinning that is the question of whether the institutions comply with the existing code.

The direct answer to the question is that the universities will sign off a voluntary code. We will look at that code and if, from our perspective, it delivers what the existing code covers and we are satisfied that it provides good governance, our job will be to ensure on a regular basis that institutions comply with it.

**Colin Beattie:** Okay. In his written evidence, Professor Russel Griggs stated:

“In the report we said we were not convinced that those who set targets or monitor Colleges were equipped to create and manage an outcome system well and I still have concerns in this area.”

Can you comment on that?

**Mark Batho:** I read that comment last night. We have been moving quickly on outcome agreements for the academic year 2012-13, which we are still in. Because of how the policy development unfolded, we started the process only about a year ago. We have already been doing the outcome agreements for the academic year 2013-14 in order to get them in place in time for universities and colleges to have the



appropriate planning assumptions in front of them well before the start of the academic year. It has therefore been quite a fast learning process.

As Russel Griggs acknowledges, we have been learning in the process, but we have also been obliged to move quite fast to get some hard edge to the outcome agreements in fairly quick order. That has meant that, because outcomes by their nature tend to be long term, we have to agree some intermediate measures. Sometimes those measures are inputs—asking what a university is doing to achieve a particular objective on, for example, knowledge exchange—and sometimes they are outputs: what do the first results show? To an extent, therefore, we are getting to a level of granularity and having to concentrate on that detail in the early stages of outcome agreements.

In our guidance letter, the cabinet secretary made it clear that he sees outcome agreements being a rolling process covering a number of years. In other words, he envisages that we will move much more to the monitoring of the development of outcome agreements—the clean water out of Russel Griggs's pipe, in fact. That is very much the funding council's direction of travel.

**Colin Beattie:** To what extent have the outcome agreements that you have been producing been the subject of negotiation on both sides? Has there been good negotiation?

**Mark Batho:** Absolutely. They have been negotiated in every case. We have reorganised our own staffing structures to ensure that people are assigned to particular regions for colleges and to groups of universities, which have been conducting what I would term as negotiation.

The negotiations have not always been easy. Some of them have been quite tough, and some institutions are more or less happy depending on how the negotiations have gone. Where there is unhappiness, we seek to resolve that. For example, this Friday I am going out to an institution—I will not name it—where there is some unhappiness about the way the process has gone in order to see what underpins that unhappiness and whether we can do things to resolve it in a pragmatic way.

**The Convener:** Two other members want to come in, but Liz Smith can ask a quick question first.

**Liz Smith:** It is just to clarify something. When we spoke with university chairs last week, it was clear that they were not making the decision about the new code of governance but that they were setting up the steering group and that there would be a consultation process. Mr Batho, can I clarify that you said that the funding council, the Government and the universities would all be

involved in the process, once the draft code of governance appears in April? Is that correct?

**Mark Batho:** I would expect that to be the case and that others would be involved, including the National Union of Students and probably the trade union side. I am not being definitive and I am not making up a process, but—

**Liz Smith:** But that is your understanding.

**Mark Batho:** Yes.

**Liz Smith:** Thank you.

**Neil Bibby (West Scotland) (Lab):** Mr Batho, you said that the code would be voluntary and that universities could sign up to it if they wanted to. Are you sure about that? I got a different impression.

**Mark Batho:** I meant that there is no compulsory code of guidance or statutory obligation that everybody must abide by.

My point was that we require good governance in the funding council as a condition of our grant, through our financial memorandum. There is an existing code in place and, when there is a new code, we would, to all intents and purposes, require that all institutions are signed up to it. It is not voluntary; in other words, it is not a case of "I don't think I'll sign up to this code—I'll go and do something else." Once the code is in place, we will expect all institutions that we fund to abide by the terms of the code. If they do not, we will require them to explain why.

10:30

**Neil Bibby:** I am sorry but how is it voluntary if you require them to sign up to the code?

**Mark Batho:** I am saying that it is not a statutory code. That is my point. However, if a code has been agreed by the universities as the method of governance by which they will operate and if we as a funding council, having scrutinised that, agree that the code is acceptable for our purposes, we will expect as a condition of grant that the universities will comply with the code. That is how the system operates at the moment.

**Neil Bibby:** Why do you need legislation if it is going to be a voluntary code?

**Mark Batho:** I hesitate to use the word clarity again since there is a word count on it, but nevertheless it is helpful that there should be continuing scrutiny of the code. Nothing is for ever when it comes to governance, particularly in a rapidly changing environment. It is therefore useful that, if at some point in future there are those who perceive that there is a weakness in the way in which governance is operating, there should be an

opportunity to look again at some of the principles and to take action accordingly.

**Neil Findlay:** Alan Simpson at the University of Stirling said:

"We believe that the principles of good governance should be developed in a collegial manner with the sector, through discussions."—[*Official Report, Education and Culture Committee*, 19 February 2013; c 2013.]

However, the bill says that the Scottish ministers will have the power to impose certain things. Is that news to you?

**Mark Batho:** Section 2 of the bill states:

"The Scottish Ministers may ... impose a condition that the Council must, when making a payment to a higher education institution ... require the institution to comply with"—

the—

"principles of governance or management".

That is where the imposition comes in: the bill states that the ministers may "impose a condition" that, when we make payment, we are ensuring that the institutions comply.

**Neil Findlay:** Is it not part of the problem with the bill that you take one slant on it and the universities say something else? There is clearly confusion over what the heck is going on here. Let me be charitable, as I always am, and say that there are different interpretations.

**Mark Batho:** It is a statement of fact that different interpretations have been presented to the committee.

**The Convener:** Is there a difference between the way that governance operates under the current code and the way that you envisage that it would operate under the new code?

**Mark Batho:** Not significantly, no.

**The Convener:** Is the way in which the process works effectively the same?

**Mark Batho:** There is a code at the moment that, as a funding council, we expect universities to comply with, in effect as a condition of grant.

**The Convener:** I think that that is reasonably clear.

**Neil Findlay:** So this is clarity.

**The Convener:** I think that it is, Neil.

**George Adam (Paisley) (SNP):** Good morning. One of the biggest challenges of the bill, and an exciting part of the bill, relates to widening access. There has been some discussion of that in the committee.

University principals are effectively saying, "There's nothing to see here," as are the chairs of court. The NUS says that it would take 40 years to

reach the level of access that we need universities to be at. Within the past 10 years, there has been only a 1 per cent change in the number of people going to university from lower socioeconomic backgrounds. How will the bill widen access? Is improvement expected?

**Mark Batho:** The bill makes a clear statement that universities will be expected to improve their performance in widening access.

You are right that progress has been very slow this year. Different people will offer different reasons for that, but the fact is that progress has been very slow and that, across the piece, the performance of institutions in Scotland is not as good as it is in other parts of the UK.

The ministers are responding to that by saying that, from a policy perspective, they want to increase pressure on universities to improve the position. That has partly come about for the coming academic year when, in response to the guidance from the Government, we are creating additional places for widening access. We have put that guidance out to institutions and will monitor the situation carefully to make sure that the places are filled and that there is no displacement activity in the filling of them. In other words, there should be an increase in widening access as a result of the extra investment.

**George Adam:** That was going to be my next question. Much has been said about the fact that students will be displaced. What is the way forward with using the bill to deal with potential displacement?

**Mark Batho:** Fundamentally, we need more students from areas of deprivation to come to university than have done so in the past. At a certain level within the funding council, we can monitor where students come from and where they go. If there was evidence of displacement within, for example, Glasgow—I use Glasgow because it is a major conurbation that has a number of institutions—we would be getting in among the numbers with the individual institutions and asking them questions. We want more people from the more deprived parts of Glasgow to go to university when they have the capacity to thrive in a university environment.

**George Adam:** I have seen some of the representations from the institutions, and I agree that they could do with a wee bit of a demographic shake-up.

Retention is another big issue. It is not just about making sure that someone gets access; it is about making sure that institutions retain them. The University of the West of Scotland at Paisley has succeeded in getting the level of people coming from lower socioeconomic backgrounds up

to 20 per cent, but retention is still a challenge. How will that go in the future?

**Mark Batho:** It absolutely must be a part of the widening access programme. Retention will be an integral part of the outcome agreements that we will agree with the universities. It is simply not acceptable for individual students to be pulled into university to find themselves without adequate support.

Widening access and retention are two sides of the same coin as far as the funding council is concerned and, as we go through the monitoring process for the outcome agreement, we will look at the issues very carefully.

**George Adam:** There is some extra money in the budget for new places, is there not? What is the amount?

**Mark Batho:** I am sorry but I do not have the figure in my head. We have put in about 700 new places for 2013-14 for widening access and just over 1,000 for articulation. Articulation means moving into the second or third year of a degree programme when the student has a higher national certificate or higher national diploma. In itself, that is a widening access measure because it is a strong entry route into university for people from non-typical backgrounds, if I can put it that way.

**George Adam:** That is the route that my daughter might take so I am aware of it.

**Mark Batho:** There has been very strong demand from the universities for articulation places. I am sorry that I do not have the figure in my head for the extra resource that we are putting into that, but I can write to the committee with the details.

**Neil Bibby:** Why do you believe that the legislation is necessary to ensure widening access? For example, could the Scottish funding council not use a compliance clause or a condition of grant in its current funding arrangements?

**Mark Batho:** We could do that, but putting the issue in legislation gives it an extra sense of force. The legislation will give a clear and strong signal that the Government and Parliament have not a short-term commitment but a long-term commitment to widening access. The legislation will give an extra sense of commitment by the Government. That is how I would describe it.

In addition, the kinds of methods that we have been describing so far have not really worked in increasing access from more deprived parts of Scotland to a level that either the Government or the funding council wishes to see. Although the legislation is to some extent only a signal, it will nevertheless be a signal with some teeth. The funding council will be able to use the fact that

there is a statutory provision behind the widening access agreements to give extra force to our enforcement, if you like, of the figures that universities are agreeing.

**Neil Bibby:** Following any legislation, will you use a condition of grant to enforce widening access in universities?

**Mark Batho:** If that is required.

**Neil Bibby:** So you will do what you already could do just now.

Have you had discussions about the actual levels of increase that you intend to achieve through the widening access agenda? How many extra people do you anticipate will go to university following the legislation?

**Mark Batho:** We have not got into figures. There has been a long-term programme of seeking to widen access through the widening access hubs that have operated between universities and colleges. However, I am not in a position to name a target right now—and in any case I think that it will be a moving target.

There will be a range of different interventions, including those articulation places, which I hope will raise the game as we move through the process of increasing the number of places. Of course, those places will continue to increase year on year over a four-year period throughout the four years of the degree. In other words, this is a significant ramping up of the widening access places in universities.

As we ramp up the numbers coming from the widening access articulation, our hope and expectation is that universities will ensure that they do not fall short of their commitments by improving their own practices, in both how they reach out to students and—this comes back to George Adam's point—how they retain them. That will itself create a circumstance in which universities will get better at widening access, which is fundamentally what needs to happen.

**Liz Smith:** Mr Batho, is it your understanding that there is likely to be a national target for widening access, or will there just be targets in each of the outcome agreements with the different universities?

**Mark Batho:** My expectation is that we will continue to negotiate on the basis of the universities' targets for their performance.

**Liz Smith:** So, it is specifically a university target.

We have had it put to us—in particular, by the four principals who attended the committee—that the method that is used to define those from poorer backgrounds is perhaps a little too narrow and is not sufficient when it comes to all the things

that you should be considering. Would you accept that as a fair assumption?

10:45

**Mark Batho:** Using the Scottish index of multiple deprivation areas 20 and 40 is a good start. However, that perhaps does not capture significant pockets of deprivation in rural communities and in other places. That is one of the significant points that the university principals have been making to us, too.

We get a good start using the SIMD 20 and 40 data, because there are strong correlations in operation, but everybody acknowledges that, if we can get a more sophisticated methodology that—putting it slightly crudely—does not let universities off the hook but which delivers the objective that people from a deprived background, wherever they are from in Scotland, have the same opportunity to go to university, that is of course a goal worth pursuing.

**Liz Smith:** I entirely agree, and everybody agrees that we have to do more—there is no question about that.

In their evidence, the principals of the University of Edinburgh, the University of Strathclyde, the University of Stirling and the Glasgow School of Art all said that, by widening their approach to the measure, they were already improving the facility for students from poorer backgrounds to attend their institutions—never mind having legislation. If that can be achieved using the rigorous process that you have referred to, under the outcome agreements as they stand, why do we need the extra legislation?

**Mark Batho:** I return to the point that I was making earlier. Fundamentally, there is extra capacity for us to engage in effective negotiations with institutions if our approach is backed up by statutory provision to which we can refer. We can negotiate better results in widening access through our outcome agreement negotiations if there is an appropriate section in the bill than we can if there is not.

**Neil Findlay:** Two distinct and separate funding models are emerging for college regionalisation. A number of witnesses have raised concerns about regional boards and whether that additional level of bureaucracy is required. There are issues around confusion over funding, what role is whose and so on. Would you care to comment on that?

**Mark Batho:** Given that the focus is on putting learners at the centre and on moving to the general regionalisation policy that we are now pursuing, and that the objective is for college education to be planned and delivered on a regional basis, which makes sense both

economically and for students, there must be some means in every region of taking a strategic overview of the requirements under the legislation and of the economic demands. There must also be a regional place where discussions with stakeholders such as businesses can take place. In the two areas where there will not be a single regional college—Glasgow and Lanarkshire—there must be a place where that can be focused on.

One of the concerns about the existing structure of colleges was that—for very good reasons, and with a lot of good effect, but nevertheless with some downsides, too—they have found it quite difficult to stretch their horizons to that regional level. They were concentrating very much on their local market. If there is going to be a regional approach in Glasgow and Lanarkshire, there must be some capacity to think regionally that does not constantly refer back to the smaller boundaries of the individual colleges. The concept of having a regional strategic body is therefore the right one.

A lot of discussion still has to take place about how big that body should be and how much resource it should consume, and the Government has signalled that it does not want huge new layers of bureaucracy that would consume resources that would otherwise go into front-line education services. As we move through the process, the trick will be to establish a relatively uncostly administration at regional level that has the capacity to think regionally and distribute provision across regional colleges in a way that works for students and businesses in the area. It is not an easy ask, but it is the next task.

**Neil Findlay:** Do you think that things have become a bit messy and confused? That is certainly what almost everyone who has given evidence has told us.

**Mark Batho:** Aside from those two areas, I think that across most of the country there is much more cl—[*Interruption.*] I am sorry—I nearly used that word. I really must stop doing so. [*Laughter.*]

**Neil Findlay:** It is good to hear that word—we need to have it in this committee.

**Mark Batho:** There will be a much more focused delivery of college education in the regions.

There is a risk in Lanarkshire and Glasgow that it could get messy, but there is also an opportunity to ensure that it does not. We need to strike the right balance between the assigned colleges—there are three in Glasgow, with a slightly moving feast in Lanarkshire—to ensure that we do not have an intrusive and costly bureaucracy but that we have a system that nevertheless gives businesses in Glasgow and Lanarkshire a real

point of focus to allow them to discuss the needs of both areas.

**Neil Findlay:** At the moment, we are seeing in Edinburgh College the impact of regionalisation on local access with the closure of the construction section in Midlothian. A number of us have raised concerns about local access and provision. Do you share the same concerns as we move towards this model?

**Mark Batho:** I would not say that I have concerns; I think that we need to watch and manage the issue very carefully. We have always said that with certain non-advanced further education the capacity—or indeed the willingness—of some students to travel very significant distances is limited. That must be managed in a regional model but whether that happens through the provision of minibuses services, as has been discussed in Edinburgh, or through provision in non-advanced centres to begin with and an increasing expectation that people will travel as they move through their learning and reach more advanced levels is for the regional college to sort out. However, in our outcome agreements with the colleges, we will make it clear that we expect access to provision to be a part of the overall regionalisation.

**Neil Findlay:** Do you accept that in the specific example that I highlighted access for people in Midlothian and East Lothian is likely to be reduced?

**Mark Batho:** Unless it is managed properly.

**Neil Bibby:** You said earlier that you had technical concerns about the relationships between assigned colleges and regional strategic bodies.

**Mark Batho:** Yes.

**Neil Bibby:** And you have just said that there is a risk that it could get messy in Glasgow and Lanarkshire. What would happen if there were a dispute between an assigned college and a regional strategic body? Who would step in to decide who was right and who was wrong if things were to get messy?

**Mark Batho:** The regional strategic body's role is to plan provision on a regional basis; it has that authority. The nature of the powers that it will have under the bill is such that, in Glasgow and Lanarkshire, they will in a way replace the powers of the funding council. The answer to your question, therefore, is that the regional strategic body will have that authority—that is how it will work.

By the way, I do not think that I was saying that it could get messy. I was saying that there is a potential for it to become messy, and work needs to be done now to ensure that that does not

happen. Messiness is not an absolute result of what is proposed in the bill—it does not have to be.

**Neil Bibby:** You have said that there could be, in effect, mini Scottish funding councils in Glasgow and Lanarkshire. In terms of the ministerial powers over mismanagement that you referred to earlier, if there was a dispute between an assigned college and a regional strategic body, would that be your responsibility or the Government's?

**Mark Batho:** That comes back to my point about accountability. If something had gone wrong in, say, one of the assigned colleges in Lanarkshire—if there had been some mismanagement—it would be the responsibility of the regional strategic body to resolve that. That is where the authority will lie.

**Clare Adamson (Central Scotland) (SNP):** You spoke at length about accountability, especially with regard to the £1.6 billion that you are responsible for. Are you confident that the regionalisation model improves accountability?

**Mark Batho:** In the areas of the country that have regional colleges, the lines of accountability will be much the same, but there will be fewer colleges. That simplifies things and improves accountability.

In the two areas in which there will be regional strategic bodies and assigned colleges, there is the opportunity to ensure that the accountability remains at least as clear as it is at the moment, although there is a risk that, if the approach were not got right, that accountability could be blurred. Others have given that evidence. The job is to ensure that that accountability is delivered through this model.

**Clare Adamson:** How will the funding council engage with the further education strategic forum, and what will that mean for the regions?

**Mark Batho:** My understanding is that the nature of the FE strategic forum is still up for discussion. Who will be on the forum and how it will operate is still being discussed by the Government. Until I see the nature of the beast, I do not think that I can answer your question.

**Joan McAlpine (South Scotland) (SNP):** I understand that the bill enshrines your ability to review further and higher education. However, university principals have expressed some concern about the possible impact of reviews on their ability to determine course provision. How do you respond to those concerns?

**Mark Batho:** We already review provision, because we are required to secure coherent provision. That means that we consider whether the right provision is in the right place, at a national level. There is nothing in the bill that says

that we would be doing anything other than that. It seems to me to be an entirely reasonable thing to do, particularly given that public resources are always limited, to ensure that the provision across our university and college system is the best that it can be for the resource that is put in. That has to be an obligation.

11:00

This is not about the funding council going in and closing medieval French at the University of Edinburgh. It is about engaging in discussion with the universities, as we did a while back on modern languages, to ensure that there is good provision in our universities for the good of students and of Scotland, that there is not undue duplication and that, if a university decided to close, for example, its Japanese department, Scotland would not lose out as a result. We want to have a system in place that means that there is a constant overview. Universities move in and out of courses all the time. They close departments and open departments according to demand. We therefore need to have an overview that enables us to see the overall picture and make recommendations—to the universities, apart from anything else—if concerns emerge.

**Joan McAlpine:** You seem to be saying that you already have that ability and have used it, in the case of modern languages, and that the bill will tidy up the situation. Is that accurate?

**Mark Batho:** The bill goes beyond the words, “securing the coherent provision”, which are not particularly clear to the average reader. It articulates the strategic role in the overall management of provision across Scotland in a way that is helpful.

**Joan McAlpine:** “Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education” says that work by the funding council shows that

“there is too much duplication and unnecessary competition within colleges and regional universities”.

How damaging has that been?

**Mark Batho:** It is never desirable to have wasteful competition but, in times of plenty, it has not been too damaging. Do not get me wrong: I am not saying that we should have one university that delivers medieval French and no other. Competition is good and helpful, not least because the offerings in various institutions in any given subject—whether it is medieval French or engineering—are a bit different, as each tackles different aspects of it. There is not a black-and-white approach to the issue. Nevertheless, there have been examples—particularly in the college system, in which colleges are quite close to one another—of institutions competing for students for

exactly the same course, which is not the best use of money.

As the overall fiscal circumstances have tightened—universities have had a reasonable settlement over the past three years, but money is still not growing on trees—it makes sense to try to identify such situations and work with the providers to determine whether that is the best way of doing things.

**Joan McAlpine:** In terms of the outcomes for students, how damaging is that competition between institutions for students?

**The Convener:** I ask you to be brief, Mr Batho.

**Mark Batho:** I would hope that it has not been damaging, as our quality mechanisms ensure that, even if there is competition, it must deliver quality for the individual student.

**The Convener:** I thank you for coming to give evidence on the bill.

11:03

*Meeting suspended.*

11:07

*On resuming—*

**The Convener:** I welcome Michael Russell, the Cabinet Secretary for Education and Lifelong Learning, and the Scottish Government officials Michael Cross, deputy director, colleges and adult learning division; Tracey Slaven, deputy director, higher education and learner support division; Gavin Gray, team leader with the bill team; and Ailsa Heine, senior principal legal officer with the legal services directorate. Good morning to you all. I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Education and Lifelong Learning (Michael Russell):** The bill is an ambitious one that has at its heart the aim of making the system better for the people who matter most: our learners. It has been designed to support the key objectives of our post-16 reforms, improve the life chances of our young people, support Scotland’s economic ambitions and create a more sustainable and secure system. It will do that by putting in place a new structure that will help to make colleges more responsive to the needs of learners and employers. It will support our ambitions to widen access to higher education and to deliver opportunities for all. It will ensure that we can have confidence that our significant investment in post-16 education of more than £2.5 billion a year delivers the best possible outcomes.

The evidence that has been presented to the committee so far appears to reflect that. The

evidence sessions that I have seen have focused on the overarching policy goals that the bill seeks to deliver. I expect that members might want to pursue similar lines of inquiry this morning. I have been pleased that the evidence so far has been supportive of the principles of the bill. The clear message is that we have identified the right solutions to improve governance, widen access and make a better system for learners.

There is a great deal of common ground on the bill, but I do not for a moment suggest that there is complete consensus on every provision. Were that so, the bill would be an extremely unusual piece of proposed legislation. I have been and am listening carefully to all that is said in the committee's considerations, and in my discussions with universities, colleges, staff, students and others. I will continue to take full account of all interests and perspectives on how the bill could be improved—all proposed legislation can be improved during the legislative process.

Where there are differences and disagreements, they largely centre on the interpretation of how certain provisions will work in practice, rather than on the fundamental principles that are at the heart of the bill. Indeed, even the strongest critics of particular provisions often agree whole-heartedly with the goals that those provisions seek to achieve. I put on record my commitment to work with partners, including the committee, on any differences and suggestions for improvement to produce the best possible piece of legislation that will deliver real benefits for learners. I am clear that partnership has got us this far. We have been through an extensive period of consultation and we have discussed the issues that are involved in the bill all over the place. Therefore, it is right that the bill should be a product of continuing partnership.

I hope that that brief statement has been helpful. I am passionate about Scottish learners and about learning in Scotland. I believe that the bill will deliver real benefits in that regard. I have put forward a clear case for reform, and the bill is an essential part of the process. I welcome the scrutiny of the bill, because it is critical that we work together to make it as strong as it can be. I am happy to answer questions from members.

**The Convener:** Thank you. As you will imagine, we have a lot to get through, so we will move straight to questions from members.

**Liz Smith:** Cabinet secretary, notwithstanding the fact that you are right that the general direction of the bill is not in doubt, have you been surprised by the level of concern about many of the technical aspects of the bill and one or two substantive points?

**Michael Russell:** No. I have been heartened by the evidence that the committee has received because, where there are concerns, we need to address them. Many of the concerns have been addressed and I am happy to address those that remain. No doubt we will touch on some of them. Liz Smith has taken a special interest in governance issues so, for example, we can look at the issue of responsible autonomy and ensure that we have the wording of the provisions exactly right. We are engaged in what I think is a positive process, and I will be positive about it.

**Liz Smith:** How do you respond to the point that Alastair Sim made last week that the principles of the bill have come adrift from the detail of it?

**Michael Russell:** I disagree with that statement from Alastair Sim. He is here in the public gallery, and I am happy to have a debate and discussion with him. I meet him often. I disagree with him on that, because I think that the principles are entirely clear and that they are expressed in the bill. As I understand it, Universities Scotland would like the bill to be amended in various areas. That can be discussed during stage 2. However, the principles of the bill are very clear indeed, and they have been supported by Universities Scotland and by the principals of the universities in evidence to the committee.

**Liz Smith:** How do you respond to the feeling of the college and university sectors that, although they agree with the general direction, it is not necessary to legislate?

**Michael Russell:** I disagree. I have often been on the member's side of the table, in opposition, and said that we do not need legislation. However, actually, I think that there is a need for legislation for a variety of reasons, which are outlined in the bill. This morning, I was looking at Ferdinand von Prondzynski's "Report of the Review of Higher Education Governance in Scotland", and I was struck by the quote with which it opens from Sir William Hamilton, who said in 1835:

"a University is a trust confided by the State to certain hands for the common interest of the nation."

He went on to say:

"a University may, and ought, by the State to be from time to time corrected, reformed or recast ... looking towards an improved accomplishment of its essential ends."

That is precisely what we are trying to achieve, almost 200 years later. We are getting "an improved accomplishment" of the ends of further education. There will always be a debate about how we do that, but I think that, in principle, the bill is correct and that the provisions are the ones that will help. However, provisions in a bill are never cast absolutely perfectly or in stone, so let us have

a debate about how we change those provisions, if they need to change.

**Liz Smith:** An important point, which von Prondzynski echoes in his paper, is that some of the timings around the bill are difficult. Not least of the difficulties is that the committee is being asked to decide whether to pursue legislation on the governance code, yet the new code does not exist and, as we understand it, will not be produced until April. We do not have that piece of information, which therefore makes our judgment rather difficult. Professor von Prondzynski referred to that in his paper.

**Michael Russell:** Where does he refer to that in his paper?

**Liz Smith:** It is in paragraph 4 of the paper that he provided to the committee during the weekend.

**Michael Russell:** I have not seen that. Can I have sight of it? It would be useful.

**The Convener:** We can get you a copy, cabinet secretary.

**Michael Russell:** I would be happy to address the point. The code is not part of the bill. It is referred to in the final recommendation in von Prondzynski's report.

**The Convener:** We received the paper in response to a request for further written information from Professor Russel Griggs and Professor von Prondzynski.

11:15

**Michael Russell:** It would be very useful to see that.

When the code is made available—it is not mentioned in the bill—I will be happy for the committee to discuss it. That is entirely appropriate. In the past, there have been occasions when such a document has been made available to the committee at stage 2, and I understand that that is what will happen here. If I read the committee's report correctly, the convener has given a commitment that evidence will be taken on the code at that stage. That seems entirely appropriate. Indeed, because the code is based on von Prondzynski's principles and is referred to in the report, we look forward to seeing how those principles work out. However, until the new code is produced, the existing code will continue in operation.

**Liz Smith:** With respect, we are having to make our decision without seeing the new code and on the understanding that another bill will be produced in 18 months' to two years' time. What is the second piece of legislation intended to do?

**Michael Russell:** Von Prondzynski's report contains some deep recommendations. The report was agreed unanimously, with the exception of two recommendations that are both to do with the position of university chairs. The report is backed by the university chairs as well as everybody else. It contains a number of recommendations that it will require a considerable amount of time and work to implement: one concerns the role of the Privy Council and the other concerns the underpinning statute. Those recommendations could not be implemented very quickly. However, there was wide agreement across the sector—I have read that agreement—that we should endeavour to move forward without further delay on the things that do not require that legislation.

That is why we are acting as we are on a number of the recommendations, including on the code. The report states:

“the Scottish Funding Council should commission the drafting of a Code of Good Governance for higher education institutions.”

That did not happen, because the university chairs of court volunteered to do the work on that. We accepted that initiative and they have done that work, which will be made available.

I quote the bill on the matter—it is important that we always go back to the legislation. Section 2, which deals with the code, states:

“The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance or management”—

we can return to that word in a minute—

“which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions.”

I have indicated that the best way in which we can do that is to follow von Prondzynski's independent report and to have the code in place. The code is in the process of development and will be provided, but it is not referred to in the bill. There is an existing code of good practice in governance, which the evidence that you received said will continue to exist. I think that that is a satisfactory way in which to proceed. I do not imagine that the chairs of court will be dreadfully subversive in the matter; I think that we will get a code that the committee will, I am glad to say, consider and take evidence on. That is entirely in keeping with the scrutiny that should take place.

**Liz Smith:** Cabinet secretary, this is quite a serious issue.

**Michael Russell:** I am treating it seriously.

**Liz Smith:** It is not about any party line on the bill; it is to do with the process. I appreciate that, for some reason, you do not seem to have the von



Prondzynski paper that we have, but in it he raises some concerns about some of the timescales. Our job is to scrutinise specific pieces of legislation, which may or may not be important in the final outcome, and our difficulty is that we are being asked to do that when we have concern about a code of governance that is being produced at a later date—beyond the intended start of stage 2—and when there is a second bill to come, whose intention we are not entirely clear about.

**Michael Russell:** You do not have to be entirely clear about the intention of the second bill, because it is not the bill whose general principles you are considering at this time. You are considering the general principles of the current bill, which are very clear on the issue of governance. I have quoted it and I will quote it again. It states clearly what is going to take place if the bill is passed.

I think that the code is the best way to move forward as a sort of bridging position between the bill and the recommendation that Ferdinand von Prondzynski's committee made on

"a statute for Scotland's higher education sector setting out the key principles ... and serving as the legal basis".

I have said that the code will come to you and the committee has said that it will take evidence on it. I do not think that I can say fairer than that. That is where it is—that is what is going to take place—and I do not think that that delays you for a moment in considering the principles of the bill. The bill's principles are quite clear on the matter.

**Liz Smith:** This will be my final question on this point. This morning, we heard from Mark Batho, who was consistently asked by committee members about what will be different, post-legislation, from what happens now. In other words, what specific parts of the bill will deliver the better outcome for learners that you spoke about in your opening remarks? What are the specific governance issues that will improve the situation?

**Michael Russell:** You need to go back to Ferdinand von Prondzynski's report and look at the role of governance, particularly the four characteristics of governance that he lays out, which are:

"effective stewardship of the university to secure its sustainability over the medium and long term; safeguarding the mission of the university and the services it provides for the public benefit; securing the proper and effective use of public and other funds; and ensuring stakeholder participation and accounting to the wider society for institutional performance."

Those four characteristics will be enhanced by a variety of provisions in the bill, and that is our intention.

**Liz Smith:** Forgive me, but what is it that will actually make the improvement? Where is the

evidence that the governance of universities is not as good as it should be and that the bill will deliver an improvement?

**Michael Russell:** The widening access outcomes of governance are not as good as they should be. In last week's evidence-taking session, Neil Findlay read out a list of the chairs of the courts and indicated perhaps that that was not as representative a group as it could be. I think that he is right. The bill will address a range of such issues and make positive changes. The general principles of those are entirely clear.

**Liz Smith:** This morning, Mr Batho said that the outcome agreements for widening access are already working well and that they are rigorous. He said that the funding council has had lots of discussions with universities and that he is satisfied that they are working well.

**Michael Russell:** Absolutely. In my view, the presence of the intention to legislate has accelerated the widening access process. However, that is not solely my point; both the National Union of Students Scotland and the University and College Union Scotland have made exactly that point. We have had inadequate progress over a period and we are getting better progress as a result of the outcome agreements because we have said that we will place in legislation the need for widening access. We have made that commitment and we are honouring it, and the process is accelerating. I do not think that that process would have progressed in the way that it has done had we not shown that clear intention. In my view, that is a justification for what we are doing.

**The Convener:** Clare Adamson has a brief supplementary, which I presume is on this point.

**Clare Adamson:** Yes, it is. Last week we took evidence on the process of the code of conduct consultation. Some concern was raised about the lack of opportunity for student and staff representation and the lack of such representation on the committee conducting the consultation. Do you share those concerns?

**Michael Russell:** Yes, I have shared those concerns since the beginning of the process. On two separate occasions, I have drawn to the chairs' attention the need for more intensive consultation with students and staff. I have no lack of confidence—indeed, I have great confidence—in Robert Smith and the other members, including the former Lord Advocate, but I regret that the chairs did not take my advice to cast the net more widely at the beginning of the process.

I am sure that the work that is being done and its intensity will produce a good result, but, yes, I would have liked to have seen more such representation. I operate and have operated in

such a way as to ensure the widest involvement of staff and students, and I will go on doing so in all parts of this.

**Neil Findlay:** What will the second bill contain?

**Michael Russell:** If you go back to von Prondzynski's recommendations, you will see what the intentions are. This is not a surprise; I have spoken about it on a number of occasions. Von Prondzynski is very clear in a range of recommendations. Some of them can be implemented without legislation, some can be implemented in this bill and those remaining will require further legislation, which will take much longer.

The first recommendation—item 2.2 in the list of recommendations at annex A—is on the Privy Council's role, which is a difficult issue to resolve at this stage. It will be much clearer after independence, but it requires to be sorted.

Item 2.3 is on a new statute. The underpinning legislation has worked well. Ferdinand von Prondzynski's evidence about and experience in Ireland have been great; such legislation works extremely well there.

A range of things will require us to move on, but we are making a considerable step towards that in the bill. The bill is therefore worth supporting, even on those terms.

**Neil Findlay:** I admit that I was surprised that you did not get von Prondzynski's second paper for the committee. As you do not have it, I will read you a section from it. It says:

"The controversy surrounding this provision in the Bill may in part be related to the fact that the Chairs' code has not yet been finalized or published. In these circumstances, it is not yet clear what particular principles of good governance might be enforced by the legislation ... There are potentially two ways of dealing with this situation. One is to suggest that the timing of the provision is wrong, and that it should be addressed (if at all) when the legislation promised for higher education is published a year or two from now."

That sums up the questions that the committee is asking. Are you concerned that the architect of the reforms is posing such a question at this late stage?

**Michael Russell:** No—that does not concern me at all. Ferdinand von Prondzynski is right to pose the question and I am right to answer it in the way that I am. The bill does not refer to the code. There is an existing code. The provision emphasises the need for good governance, which can involve the existing code or be improved by the better code. That code will come to and be discussed with the committee, which will take evidence on it. Given that, I do not see the problem, to be frank.

**Neil Findlay:** Will the code be voluntary?

**Michael Russell:** No—well, the bill says:

"The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions."

In a sense, all codes are advisory, because we expect them to be followed, but there is a financial sanction in the provision, which is important to good governance.

I have indicated what the principles of good governance are. It is important that the bill provides a sanction, which we felt was required and which the universities have seen as something that we wanted to do. I am comfortable with that.

**Colin Beattie:** We have heard conflicting evidence about whether college principals should be on boards. Some people are comfortable with them not being on boards, others have been indifferent and others have been strongly in favour. What is your opinion?

**Michael Russell:** Russel Griggs has been clear about the subject and has been misquoted a bit. He thought that the question should be up to the board, and that is my opinion. I am interested in the diverse opinions—the EIS argued against the idea and principals argued strongly in favour of it. The matter should be up to boards, which is essentially what the bill suggests.

**Colin Beattie:** At the moment, principals have the right to attend and speak at board meetings, but they seem to be excluded from becoming board members.

**Michael Russell:** No—the bill gives the right flexibility in the circumstances. Because there are diverse opinions, it would be wrong to say 100 per cent no or 100 per cent yes. Boards will make their decisions and should be allowed to do so.

The general approach has been to free up the composition of boards. The previous legislation was pretty prescriptive about who could and could not be board members. The only disqualification in the bill is that MSPs, members of the House of Lords, MPs and other elected people cannot chair a regional board—that is about it.

**Joan McAlpine:** The issue of university principals' salaries featured highly in last week's evidence session. Robin Parker of the NUS said:

"more than £4 million is spent each year on university principals' salaries."—[*Official Report, Education and Culture Committee*, 19 February 2013; c 1979.]

How will the changes in governance that the bill introduces address concerns about inflated salaries for principals?

11:30

**Michael Russell:** Professor von Prondzynski's report has some recommendations on this issue, some of which can be—and I am sure will be—in the code. Again, that section was unanimously agreed by the committee, so it appears to have the support of the chairs of court. I back Professor von Prondzynski's interesting comments on the issue. First, he does not think that there should be continuing increases. Secondly, he says that any payments must be transparent and that the bonus culture should be abolished. In addition, he says that remuneration committees should include staff and student members, and that that again should be a transparent process. I have been on record as saying that I do not agree with a lot of the decisions that have been made. What Professor von Prondzynski has given us is a means by which we can ensure that those difficulties are not met in the future.

**Neil Bibby:** In his latest written evidence to the committee, on the proposed code of governance, Professor von Prondzynski says:

"The other possibility would be to allow this matter to be handled outside of any legislative framework. It could be addressed by the Cabinet Secretary, writing in his usual guidance to the Funding Council, asking the SFC to make it a condition of grant that principles of good governance are applied, on a 'comply or explain' basis."

What is your response to that?

**Michael Russell:** Section 2 addresses how we should proceed on that. It allows the funding council to have discretion over the code, but it also provides a sanction. I think that that is the right way to proceed. If there are 19 different institutions that are all working on the code, there will always be flexibility, as there should be. Section 2 does what we need to do at this stage, which is why I believe it is the right way to move ahead.

**The Convener:** We have spent a reasonable amount of time on university governance. I want to move on to section 3, which covers widening access.

**George Adam:** Cabinet secretary, you said earlier that the bill is ambitious. Widening access is one of the very ambitious parts of the bill.

You mentioned that the bill will improve the life chances of our young people. When the committee heard evidence from university principals, they said that there was nothing to see here—that everything was okay and they were going to get there eventually in widening access. However, there has been improvement of only around 1 per cent over 10 years. The NUS also gave evidence that it could be about 40 years before we get anywhere near where we need to be. Do you agree that that is why we should have legislation to try to move things forward?

**Michael Russell:** When I started out in this position, I was agnostic on the question of legislation and access. There had been a lot of voluntary codes and voluntary activity, but it seemed to me that progress had been far too slow. I do not think that anybody at this table would disagree that the progress was unsatisfactory. I became more and more convinced that we needed a legislative underpinning for this issue. Since we said that we want to provide that, we have begun to see progress. That speaks for itself.

In those circumstances, it is necessary to ensure that there is legislation. We are taking a carrot-and-stick approach. On the other side of the issue, you could say that the 1,700 additional places that we established—1,000 for articulation and 700 for wider access—have been a substantial contribution at a cost of around £10 million. We should continue down that route, but the legislation is important and I agree with the NUS on that.

**George Adam:** The potential for displacement of students has been mentioned at various points in our discussions. The retention of students is important. In Paisley, the University of the West of Scotland has quite a high proportion of people from a lower economic background. How will the bill address retention and ensure that there is not displacement?

**Michael Russell:** On the issue of retention, we want to ensure that those who get the opportunity and get into the system profit from it—that they finish the course and come out of the system with the degree that they sought. We must do everything that we can to support that.

Some of the work that the University of Glasgow has done to help young people prepare for going to university has been very positive. Young people who have that preparation are more likely—sometimes more likely than other students—to finish the course. That is great. We must do more of that and we will look to do that.

On the issue of displacement, adding places is an important element of ensuring that there are more opportunities. We have perhaps not talked enough about the 1,700 additional places. We have been very careful to ensure that the number of places available for students is retained and increased. That is an important part of our offering.

At the end of the day, decisions on whom to admit to university are a matter for the universities. There is no other way that we should do that. However, widening the context by ensuring, for example, that the concept of rich attainment, which exists in other parts of education, is understood will be very positive. I do not think that that will have a negative effect at all.

**Neil Findlay:** What practical advantages will be gained by legislating on widening access?

**Michael Russell:** I think that we have seen an increased focus, and sanctions will be available. I hope that sanctions do not need to be used, but there will be a sanction if any higher education institution is not prepared to treat this issue as seriously as it should and to show evidence that it has done so. The widening access agreement that sits alongside and within the concept of the outcome agreement but has distinct force will mean that this becomes something that must be delivered. Everything that we have had up until now has been aspirational but has not always been delivered.

**Neil Findlay:** What I am trying to get at is this: what practical things will happen as a result of the bill that will help widening access?

**Michael Russell:** More young people who would otherwise not get to university will get there—

**Neil Findlay:** Let me try again. Within institutions, what practical things will be done to ensure that more young people go to university and complete their course? What are the actual things that they will do?

**Michael Russell:** You would need to go and look at the work of each university—

**Neil Findlay:** Could you give us some examples?

**Michael Russell:** I have talked about this a lot, but I am happy to refer again to the widening access programme of the University of Glasgow. That scheme works with people in individual schools where the pupils are less likely to go to university. Over a number of years, that scheme provides those young people with intensive coaching and lays on summer schools for them. There is a guarantee that if, for example, someone misses one grade by one point, they may still be able to get in. That helps young people who might not otherwise have thought of going to university.

Let me give you a specific example of someone whom I talked to when I visited that scheme last year—the example is still in my mind. The young person whom I spoke to had wanted to go into medicine but came from a background in which there was no expectation of going to university or of studying medicine. The biggest challenge for that young person, who was in the scheme from fourth year onwards, was preparing the personal statement and preparing for the aptitude test. On both those things, the young person was helped by the University of Glasgow and by others who had been through the same experience—among other things, the scheme is peer taught. That scheme has been very successful indeed.

Last year, I shared a platform with two students from the University of St Andrews—which I know is not always associated with this activity—one of whom was a student from Kirkcaldy high who was the first member of her family ever to go to university. She had been encouraged by the University of St Andrews, which goes out to the Fife schools to encourage pupils to take part in a programme that provides them with the expectation that they will go to that university.

I think that there is good practice in every university and we need to encourage more of it. Those individual programmes are the things that will make the difference.

**Neil Findlay:** Given the desire to increase the numbers of students coming from low-income backgrounds—no member of this committee would move away from that principle, and many of us have campaigned for it for some years—is there a thought as to what those numbers would be? What is the aim or goal? Is there a percentage figure?

**Michael Russell:** The aim is at least to meet the percentage population share—perhaps 20 per cent—that would come from the lower socioeconomic communities. Actually, I would go further than that because, like you, I have campaigned for this for a long time and I believe that such a change is long overdue. Therefore, I do not think that there should be any limit to that. I think that we should be inspiring young people and older people to aim as high as they can.

The universities need to focus on the issue, but I accept the point, which is sometimes made in defence of those universities that have done less well, that there is also a wider responsibility. By debating and discussing the issue and setting it out in a legislative provision, I think that we are saying more widely that the whole of society needs to help us to achieve this. Schools have a role to play in working with young people so that they aim as high as they can. Closing the attainment gap in Scotland will also contribute. To use a phrase from Avis Glaze that I have quoted to this committee before, “Poverty is not destiny”, so we need to ensure that more work is done on this. All those things will contribute to making a difference.

**Liz Smith:** Could I ask for clarification on that? Earlier today, we discussed targets and Mr Batho rightly said that the targets would be set, as we have discussed, within an individual university. You have just related the target to the relevant size of population, so do you mean that the aspiration for universities will relate to the intake from their region?

**Michael Russell:** No. Universities are only partially regional. We must have the idea of what

we will achieve across the piece, but there are individual targets—Mr Batho is right—and the bill indicates that. We are talking about individual agreements with universities.

**Liz Smith:** Just to be absolutely clear, are you saying that the expectation is that the numbers—from whichever measure is used—for those from low-income backgrounds will reflect the national Scottish deprivation level?

**Michael Russell:** I hope so, yes.

**Liz Smith:** So there is a national target.

**Michael Russell:** I cannot imagine that this is a point of difference. I am indicating that that is what people want to happen in higher education across Scotland. The bill makes it clear that the agreements will be with individual institutions, which will have different targets and methods. That is how it should be. Something would be wrong if we tried to do this in a one-size-fits-all way.

**Liz Smith:** Earlier, you said on the record that the Government would be able to enforce the changes through the outcome agreements that will come through legislation. Are you saying that you expect an overall target to be set?

**Michael Russell:** No. I am saying that there is a target that we should all have in our minds but, as the bill and Mark Batho say, there will be individual agreements with each university. That is the correct position. However, I do not believe that anyone in this room will rest easy until we have righted the wrong.

**Liz Smith:** I am sorry to be pedantic but, if you are going to ask universities to have a specific target, what will happen if they do not meet it? Will you take national action?

**Michael Russell:** I am absolutely certain that you have read section 3 of the bill. Proposed new section 9B(2) of the Further and Higher Education (Scotland) Act 2005 says:

“The Scottish Ministers may, in particular, impose a condition that the Council, when making a payment to a higher education institution under section 12(1), must require the institution to comply with a widening access agreement of such description as the Scottish Ministers may specify.”

That is about individual institutions. I am saying that, in our minds, we should not rest easy until we have righted the existing wrong. I do not see anything inconsistent in that position.

**Liz Smith:** Except that what you just read out is very clear about being at the behest of Scottish ministers.

**Michael Russell:** Yes. That is our policy and the bill follows our policy intention. That is not a surprise.

**Neil Bibby:** I will ask a bit more about targets. You say that there will not be a national target and that it will be for individual universities to negotiate targets with the funding council. Do you have a minimum expectation for universities on widening access?

**Michael Russell:** Proposed new section 9B(3) of the 2005 act, as set out in section 3 of the bill, pulls the point out. It says:

“A ‘widening access agreement’ is an agreement under which a higher education institution is to take actions specified by the Council for the purposes of enabling, encouraging or increasing participation in fundable higher education provided by the institution by persons belonging to socio-economic groups which are under-represented in fundable higher education (either generally or in such education provided by the institution).”

That reflects the individual nature of the agreement and the national concern. That is the right way to put it and it is why it is put in that way in the bill.

**Neil Bibby:** Retention is a big issue in ensuring the participation of people from more deprived backgrounds. Do you intend to support measures to improve retention? For example, the centre for excellence for looked-after children in Scotland told the committee that success requires well-planned practical, emotional and financial support and the commitment of skilled staff, and that universities might need to train staff in the difficulties facing some students.

**Michael Russell:** Yes, and we already do.

**Neil Bibby:** The bill team provided information on the cost to universities of widening access that highlighted the additional support to students through loans et cetera, and it said that lengthy discussions have taken place with the sector. However, Universities Scotland said that it had not been consulted on the assumption that costs would be minimal. Do you know whether further discussions have taken place between the bill team and Universities Scotland?

11:45

**Michael Russell:** Yes. Discussions are taking place all the time. Considerable sums of money are going into widening access already. I have indicated to you that the funding council spends considerable sums on widening access.

**Tracey Slaven (Scottish Government):** Of the £28 million to £29 million that the SFC spends annually on widening access, £20 million goes directly to retention activities.

**Michael Russell:** The 1,700 extra places, which are really important as a response to continue to move the process forward, should be taken into account. The intention is there, the policy is there

and the resource is there, and we want to put the legislation in place. That is an earnest of very good faith indeed on the matter.

**Neil Bibby:** Given that the bill is a major piece of legislation, do you not feel that the discussions with universities should have happened earlier?

**Michael Russell:** There are discussions about a range of things, which will continue. It would be right to say that that is not a surprise; the surprise might be that we discuss so much, as we try to have a partnership with all parts of the sector.

**Neil Bibby:** On giving young people from deprived backgrounds the opportunity to go to university, will you consider or are you considering giving more funding to areas with high levels of deprivation to help with the school education that is provided in such areas?

**Michael Russell:** We are trying to ensure that the education system leads to equity, but we know that there is more to do. I am happy to discuss with you what we are doing on that, to respond to questions on that and to look at what more we can do. Everybody knows, for example, that the highest-performing education systems in the world, such as the Finnish one, have the lowest level of division in that equity. In other words, the expectation of outcomes for pupils is in a much narrower band. In Scotland, like many countries—the rest of the UK has this problem, too—that band is narrowing, but it is still too wide. I therefore do not dispute for a moment that more needs to be done, but I think that you and I would agree that that should be an educational priority across the board.

**The Convener:** If you do not mind, cabinet secretary, we will move on to section 4 of the bill, which is on the fee cap.

**Colin Beattie:** The NUS and one or two others have raised a specific problem in connection with the tuition fee cap, which rotates around the fact that a Scottish degree course is usually a year longer than an English one. If fees were, say, £9,000 a year, the fee in England would be £27,000 and the fee in Scotland would be £36,000. The NUS has argued that there should be a price for a degree as opposed to one for the length of time that a degree takes. What is your view on that?

**Michael Russell:** I do not want a price for a degree. We are in this difficult position because of decisions that have been made elsewhere. What is taking place is an unfortunate but necessary evil because of decisions that have been made elsewhere. If the UK Government would like to pay for its students, I would be very happy that it did that. However, it does not want to do that.

In those circumstances, I am simply trying to ensure that the system in Scotland is as fair as it can be. However, the decision is for the universities and it is right that that is so. There are a number of ways in which the situation can be ameliorated. For example, quite often students from south of the border can go directly into second year in a Scottish degree, if they have a particular range of qualifications. In addition, some universities discount and charge for only three years. However, I do not think that getting into that area is where we want to be.

We want to have as fair a situation as we can. Regrettably, we are in the current position. I do not believe in the monetarisation of higher education, so I came to a voluntary agreement with the principals. There was a clear understanding that we would put that voluntary agreement into legislation at the first available opportunity, which is what we are doing.

**Colin Beattie:** It is probably worth noting that there is no indication of a drop-off in students from south of the border because of the differential.

**Michael Russell:** I think that the position is highly undesirable. When we consider the situation of students from Northern Ireland, for example, from where there has been a traditional flow, that flow is continuing. It is immensely regrettable that the particular decision was made, but it is not one that I made.

**Colin Beattie:** In its evidence to us, Universities Scotland expressed concern about what it thinks is an anomaly in the bill that could lead to Wales-domiciled students being charged a maximum fee of £3,465, which apparently relates to a level that the Welsh Assembly has set.

**Michael Russell:** Universities Scotland raised that with us. We do not believe that that anomaly exists. We will have further discussions, but that is my advice. I have to say that I do not believe that that anomaly exists.

**Neil Bibby:** Have you considered creating a Scottish office for fair access, which would be similar to the one in England, to regulate the information that is available to students on bursaries and the arrangements that universities put in place? That issue was raised by a number of witnesses.

**Michael Russell:** I have heard the suggestion from the NUS. We should remember that the Office for Fair Access south of the border really exists as a redistributive financial mechanism for a system that I think is wrong. It essentially exists to try to undo some of the unjustness of the policy that is being operated south of the border.

In Scotland, universities have been and are being sensitive to the issue. Their bursary

provision for students from the rest of the UK has increased substantially and I see no reason to interfere in that, because the universities are very conscious of the issue. They have also publicly criticised the situation south of the border.

**The Convener:** The chair of Universities Scotland told the committee in evidence that a fee cap is unnecessary as no institution would wish to set higher fees than the maximum level that applies in England. I presume that you read that evidence. What is your view on the chair's take on the issue, which is that a cap is not necessary?

**Michael Russell:** That runs contrary to the agreement that I had with the university principals, which I think that Tim O'Shea was clear about when he gave evidence. There was an agreement that something needed to be in statute, that we needed to declare clearly what we thought should happen and that, until we could do so, a voluntary agreement would be put in place. I have no criticism of the principals at all, as they have done what was discussed. However, there was always an agreement that this should be set in statute, and it needs to be, just in case anybody thinks that there is another way of doing it. I think that I speak for not all of Scotland, but certainly most of Scotland, in saying that the other approach is not the right way to do higher education and we do not want it to spread.

**The Convener:** We move on to questions on college regionalisation.

**Neil Findlay:** In going through the bill, we have had a number of people before the committee, and I will give you a wee selection of quotes and a flavour of what they have said. On the regional strategic bodies, Susan Walsh of Cardonald College said that

"clarity is still required on how the assigned college boards will work with the regional strategic boards"

and that

"If the question about who is responsible was answered, it would help us to understand what people want".—[*Official Report, Education and Culture Committee*, 5 February 2013; c 1914, 1921.]

Colleges Scotland stated:

"There does not appear to be any precedent for this model".

Edinburgh College stated:

"We have concerns over the proposed structure of a Regional college board of management and in particular the intention to remove the legal requirement for a Principal to be a board member."

John Henderson said:

"On the lines of accountability and the psychology, there is a risk of divided loyalties if a principal of an assigned college is appointed and their pay and conditions are determined by a body that is not their employer ... there will

clearly be tensions in relationships in a two-tier system".—[*Official Report, Education and Culture Committee*, 19 February 2013; c 1972, 1973.]

Susan Walsh said:

"The Post-16 Education (Scotland) Bill could be improved to provide greater clarity."

Mandy Exley said:

"We are concerned about accountability and autonomy".—[*Official Report, Education and Culture Committee*, 5 February 2013; c 1936, 1915.]

It simply goes on and on. Are you concerned that so many of the witnesses have raised issues about the complexity that we now have in college governance and financing?

**Michael Russell:** I would want to—but I am not going to—go through the same evidence and point out all the positive things that were said. I think that many positive things were said. If there is a need to amend the bill and Mr Findlay lodges amendments that clarify any provision, of course we will look at them seriously, but I am clear in my mind about what the structure is and how it should operate. It is quite a simple structure, to tell you the truth. It is a structure that has a regional component wherever you are in Scotland.

There is a special set of circumstances in the University of the Highlands and Islands. I would be happy to talk about how that came about, because I do not think that the committee has had full evidence on that and there is some interesting information about what the colleges have sought. Then there is a regional model that operates as a single regional college. The two—not three—exceptions are multiple college areas. The direction of travel is towards single colleges, but moving in that direction will take as long as it takes. In those circumstances, the structure seems clear to me.

There are issues within that—Mr Beattie asked about principals on boards—that we can and should debate. We should debate the appointment of the principal by the regional structure, because there are arguments on both sides. That is the purpose of stage 2 of a bill—we take the general principles and make any changes that need to be made to how they are expressed.

I read the evidence. I spent a lot of time in colleges speaking to staff, students, college principals and boards. I was struck by something that Paul Sherrington, the principal of Banff and Buchan College, said. His biggest concern—I think that he was asked specifically what his biggest concern was—was about funding cuts, when those would end and whether there would be a straightforward level playing field. He said that before the budget, and we have addressed that concern.

I am glad that Colleges Scotland is also very pleased that the concern has been addressed. You have quoted it and I will, too. In those circumstances, we have a workable situation, which we can of course improve. I welcome thoughts for improvement.

**Neil Findlay:** Problems remain, including those relating to the complexity of governance, to finances—the Finance Committee has raised seven main points—to ministerial power versus autonomy, to human resources, to the appointment of principals, to the data-sharing concerns that we heard about last week, to complexity of funding, to charitable status and to local access. In addition, no mention has been made of collective bargaining on conditions. All those issues are unclear.

**Michael Russell:** No, they are not. You can ask questions about all those areas.

**Neil Findlay:** Excuse me, but I am not finished. The EIS—which, incidentally, supports the principle of regionalisation—sums up the situation well:

“If it's the Government's wish to create a nationally incoherent FE structure with a myriad of different ... separate regulations for each, then this bill is ... it.”

If one of the main supporters of the principle of regionalisation is saying that, the bill is in trouble.

**Michael Russell:** No, it is not. I entirely disagree. The EIS has claimed to support the bill, but I do not think that it has yet said anything that would help us to improve the bill. If it wants to do that, I would welcome that debate.

If the committee asks questions about each of the issues that you referred to, I will address them. For example, I am sure that our legal adviser would be prepared to say precisely what the situation is on charitable status. There is no threat to charitable status. Each of the issues is a legitimate point for discussion—I welcome that discussion. The fact that issues are raised does not necessarily make them totally true. If there are real concerns, we can address them. We can propose amendments. Members have the right to do that, too, if they think that things need to be changed. That is the process that we are in.

**Neil Findlay:** Why would you not wait until the coming bill is introduced and take longer in an attempt to get it right?

**Michael Russell:** What coming bill?

**Neil Findlay:** The higher education bill. Why can we not bring together the two bills in a single bill that gets it all correct?

**Michael Russell:** We have never considered pausing on regionalisation, because it requires to be completed in order to provide a better service

to learners. That is what we are doing; we are focusing—

**Neil Findlay:** Regionalisation is taking place without legislation.

**Michael Russell:** Structures are being put in place that require legislation to be completed; otherwise, we could not complete the process. We would be going off at half-cock if we stopped now. We must finish the job and that job is clear.

All the points that you have raised are legitimate, and we are happy to address them all. We have mentioned how we can address and resolve the appointment of principals, the question of charitable status is clear and we will address all the other points. When there are genuine concerns—I read the evidence that you referred to—we will address them, too. I spent a lot of time talking to staff, students, principals and college chairs and boards, and we are working our way through the issues constructively.

**The Convener:** Given that Ailsa Heine, who is a senior principal legal officer, is present, I ask her to give her views on charitable status.

12:00

**Ailsa Heine (Scottish Government):** Our view is that the bill does not affect or jeopardise colleges' charitable status. The colleges that are already charities should continue to be able to meet the charity test in the Charities and Trustee Investment (Scotland) Act 2005.

**The Convener:** If things are so clear, why has concern been expressed about the issue?

**Ailsa Heine:** We are not entirely clear why such concerns have been raised. The bill contains provisions requiring certain property to be transferred and says that transfers can be made only to a body with the purpose of the advancement of education, which is a charitable purpose. That safeguards the body and allows it to continue to meet the charity test.

**Michael Russell:** Whenever concerns have been expressed, we have tried to answer them clearly and openly, in the way in which Ailsa Heine has just answered your question, and we will go on doing so. The process is complex, but we are trying to make it as clear as possible; indeed, the bill makes it clear how things will work. We are happy to address any of the issues that Mr Findlay has raised.

**Liz Smith:** On the question of charitable status, I accept what has been said about the majority of colleges. However, with regard to Glasgow and Lanarkshire are you absolutely confident that charitable status would be maintained if there were a transfer of assets and the Government



became involved in the process? Indeed, I understand that John Henderson has written to the Office of the Scottish Charity Regulator, seeking that guarantee.

**Michael Russell:** Before I answer that question, I want to be clear about what it means. Given that I am not aware of any Government involvement in the process of transferring assets from anyone to anyone, it is a very hypothetical question. I am not trying to be difficult about this—if there is a specific movement of assets that I have not seen, I am happy to look at it—but as far as I am aware there has been no involvement by Government in any transfer of assets.

**Liz Smith:** John Henderson very clearly said that he had written to OSCR to seek clarification on the issue and, one would hope, to have some confidence that there is no threat to charitable status, given that, as he put on record, the value of such status is

“somewhere in the region of £50 million”—[*Official Report, Education and Culture Committee*, 19 February 2013; c 1976.]

per annum. That said, because of the different nature of the structures that will apply in Glasgow and Lanarkshire, there is more scope for Government involvement. As you know, this is an issue that makes an appearance at the beginning of the charity legislation.

**Michael Russell:** There is no difference in Government involvement. We will need to bottom this out because we are quoting John Henderson at second hand, but I have to say that there is no Government involvement of that nature; there is no question of it happening; and I do not believe the issue will arise. The legal answer is clear, but to be helpful to the member I am happy to address the issue with John Henderson and to come back to her and the committee with a response. However, we need to know his specific point because I have not seen it.

**Liz Smith:** I do not think that it is just John Henderson, cabinet secretary. Others are looking at the situation with assigned colleges. If in such cases the Government is responsible for oversight of the appointment and membership of the board, Government involvement will increase and could—I am not saying that it will—impinge on charitable status.

**Michael Russell:** I am happy to address the issue because I want to be helpful, but there is no such increase in Government involvement. The bill has been designed in that way and there is no threat to charitable status. That is the legal position.

**The Convener:** I do not want to get bogged down in the charitable status issue—you have made clear your view, cabinet secretary—but, for

the sake of clarity, I point out that Mr Henderson said:

“When oversight is changed between a funding body—be it the Government or a funding council—and a charity, there is a risk that the independence of the charitable trustees will be affected and OSCR will take the view that that would move it out of the charitable status camp.”—[*Official Report, Education and Culture Committee*, 19 February 2013; c 1973-4.]

**Ailsa Heine:** I think that part of the problem is that two issues—the duties of the charitable trustees and the organisation’s charitable status—might have been slightly confused.

**The Convener:** If you could provide any further clarification, I would be grateful.

**Michael Russell:** I want to ensure that there has been an understanding of Ailsa Heine’s point. We are confident that there is no threat to charitable status. However, it is good to address the matter and we will look at the detail if Mr Henderson has an issue that we are unaware of.

**Joan McAlpine:** Last week the committee took evidence from Ian McKay, the regional lead in Edinburgh. I was struck by his experience as a senior EIS official during the reorganisation of the further education sector under the Conservative Government in the early 1990s. He described the reorganisation of that regional model as an “atomisation” of the system and concluded by saying:

“Pooling us back into regions and giving us a better opportunity for scale and strategic advance will give what has tended to be the Cinderella sector of further education a better chance at the races.”—[*Official Report, Education and Culture Committee*, 19 February 2013; c 2025-6.]

He seemed to suggest that the bill was based on a “Back To The Future” principle. What are your views on that?

**Michael Russell:** Ian McKay has a lot of experience in the sector—he taught in further education, worked in it, was a trade union official and now chairs the Edinburgh College board—and he speaks a lot of sense. I was struck by the evidence from his principal, Mandy Exley, about the economies and advantages of scale that she is seeing. I think that Ian McKay reflected the strong need for a regional focus, which is clear and has been welcomed by everyone, and the fact that we are creating bodies of scale.

I have also been struck by the way in which university principals are addressing the issue of involvement with the college sector. We are seeing a real joining up of approach because we have colleges of scale. Linda McKay, who is the principal of Forth Valley College, has not given evidence to the committee, but I had an extremely interesting conversation with her on the subject some weeks ago. She has experience of a

previous set of mergers. She talked about the way in which the college now operates as a college of scale and as part of the educational infrastructure in central Scotland, which is highly impressive.

I think that it is right to draw attention to that wider view, which is locally based—it is based in the campuses—about creating bodies of scale that serve the locality. I think that that approach is positive and that we are seeing the benefits of it. Mandy Exley, in particular, indicated how those benefits are already flowing through in Edinburgh College. To be fair, the City of Glasgow College, after its experience of merger, would indicate that it has also seen the effectiveness of that approach.

**Joan McAlpine:** Thank you very much.

Issues have been raised about the costs of the regionalisation process. I understand that colleges have £200 million of reserves. Will you explain why the present structure has resulted in that situation arising, at a time when capital expansion has been so unprecedented in the further education sector?

**Michael Russell:** The reserves situation is complex, and it can be a touchy issue for colleagues. I read the evidence of the principals, and of Mandy Exley in particular, about how the reserves that she had were working capital, which she felt that she needed. I have heard that from other college principals. It is fair to say that some reserves relate to capital expansion plans. From time to time, colleges have been able to fund part of their capital expansion from reserves. For example, the money for Aberdeen College's project to refurbish its building in Aberdeen is coming almost entirely from college reserves, much of which have been built up by the college's trading subsidiary. There are quite legitimate reasons for that.

However, there are concerns that sometimes colleges have established reserves out of public funding. We want to ensure that that money is ploughed back into the system. Russel Griggs made a series of recommendations that have been under consideration. We are seeing a growing willingness by colleges to invest their reserves in the process of change, and I encourage them to do so.

**Joan McAlpine:** I understand from the evidence that we have received that some colleges can build up reserves more easily than others because they can earn quite a bit of money from particular courses, whereas colleges that operate solely with challenged or disadvantaged students might find that more difficult to do. Will the move to regionalisation help to establish a more level playing field in that respect?

**Michael Russell:** I hope so, and I hope that the discussion that we are having about reserves, which we have been having for some time, will encourage colleges to give greater thought to the issue. Not all the reserves in question are cash reserves, but there is no point in sitting on a pile of cash in a sector in which we need to spend money to encourage educational activity. I hope that the colleges will recognise that, within the confines of having to have working capital and of having to prepare for capital investment, which are complex issues.

However, I certainly do not think that any increase in the level of reserves would be justified. I think that there is a strong justification for using reserves for the process of change. When it comes to the transition funding that we have been able to put up for change in the college sector, there has been strong pressure for colleges to participate by putting forward money if they have reserves.

**Joan McAlpine:** Thank you very much.

**Neil Bibby:** Neil Findlay raised a number of my concerns earlier. I will ask about the relationship between assigned colleges and regional strategic bodies. There are concerns about assigned colleges being treated equally, maintaining their autonomy and not being overlooked by the regional strategic bodies. How will you ensure that those concerns are addressed?

**Michael Russell:** The assigned colleges will be working within a structure, which will be funded by the SFC and will be subject to an outcome agreement. It is absolutely clear in my mind that the outcome agreement is the vehicle by which delivery is made. It is likely to work very well indeed within the structure that we have. The regional strategic body will be key, but we know that because regionalism is key. I cannot see a problem.

**Neil Bibby:** There are concerns about regional strategic bodies controlling assigned colleges rather than enabling them. How will you ensure that that is not the case?

**Michael Russell:** The bill is clear about the functions of the regional strategic bodies. I expect them to exercise those functions within the law and to underpin that by working together with good will. I do not anticipate that that problem will arise.

**Neil Bibby:** We touched earlier on the Griggs review recommendation on the Scottish Government's further education strategic forum. Will you reconfirm the status of that?

**Michael Russell:** I have given the regional leads responsibility for bringing forward proposals. We had a very good discussion last week in the regional leads meeting. I meet the regional leads

about every six weeks to discuss how we are taking that forward. I anticipate that the further education forum will meet before the summer recess.

**Neil Bibby:** If the strategic forum is to drive forward the college sector in future, should it not have been established before now and been involved before this process?

**Michael Russell:** No. It is a sensible suggestion from Russel Griggs that we should do this. We are doing it. It will have its effect. It will work with the new structure as it goes into place.

**Neil Bibby:** You do not think that it should be driving the bill or this agenda.

**Michael Russell:** No, I do not. It is quite clear what the forum's function is—Russel Griggs defines it—and it operates after the process of regionalisation is established by law.

**Neil Findlay:** Colleges have to adopt the regional model. Why do universities not have to do the same?

**Michael Russell:** They are very different bodies. They operate in different ways and have different responsibilities. We have 19 higher education institutions in Scotland and 41 colleges. It seems to me that your answer is there.

**Neil Findlay:** If the principle is right, why would you not apply it to both?

**Michael Russell:** They are entirely different organisations, operating in different ways. There are only 19 HE institutions. At the end of this process, we will have 13 regional structures. That seems to be about right. I made a commitment that I would not force any college or university into merger. You would not expect me to break that commitment.

**George Adam:** We have spoken about the regionalisation of colleges, but we have not spoken about the educational attainment that it offers young people. I know that you are perfectly aware that there is a real world outside these doors. You recently visited my local college, Reid Kerr College, which is quite keen on the challenges of regionalisation and everything that it offers. Do you agree that, like everything else on the higher education side of the bill, the positive ambitions for college regionalisation are job focus, local focus and the focus on what our young people can achieve?

**Michael Russell:** Absolutely. Regionalisation offers great opportunities, which are not just regional. Regionalisation enhances the ability of colleges to deliver locally and ensures that there is broader provision in the area. I visit colleges regularly and make a point of meeting staff,

students, management boards and everybody that I can meet. I can see lots of opportunities arising.

I return to the idea of colleges of scale. What colleges are able to do for the widest range of people is extremely important. We want to ensure that that happens. It is not just about 16 to 19-year-olds; colleges have a strong older clientele. It is about ensuring that colleges are working with as wide a community as possible and are focused on employability.

The commission that Ian Wood will chair will look at that in a different way. It will look at the young workforce and how it can take things forward. The combination of the reform that we have gone through and the work that Ian Wood is doing with his colleagues will be very powerful indeed. The work that Angela Constance has done in her first year in office has been tremendous in pushing this issue forward, particularly on youth employment issues and opportunities for all. Those are all significant and joined-up things that are taking place.

12:15

**George Adam:** Part of that is how things have moved on while we have been discussing the bill. As you have already said, £61 million over two years has been made available. You mentioned earlier that you have been in discussion with all the partner organisations. On 6 February, when the money was announced, John Henderson, the chief executive of Colleges Scotland, said:

"Today's budget announcement is warmly welcomed by Colleges Scotland and our members.

This additional funding will help to give colleges stability over the next two years while they work to successfully complete the reform process.

As the sector's representative, we have highlighted its economic importance to the Scottish Government and we are pleased that its value has been recognised by Ministers."

Is that not another example of working with partner organisations?

**Michael Russell:** Absolutely. I was very pleased by John Henderson's reaction and have heard the same across the college sector. I never wanted a perpetual revolution. I want to ensure that we get to the stage at which the reforms are able to bed in and find a secure footing. That was my aim, and it has been hard indeed in the current financial circumstances. I am pleased that we now have clarity that when we get to the £522 million college budget in 2013-14, we will be able to base planning and work on that figure.

I am also pleased that the transitions that are taking place—such as to the new funding model, which is well under way—will be positive for the sector. That will be the case not just for the sector;

that security exists for every single individual student. The process has been difficult, but it needed to take place to enhance the employment prospects of young people in Scotland and to enhance the vital services that colleges deliver across the board; more than 20 per cent of higher education is delivered in colleges.

We have been able to achieve all that, and the bill will put it all finally into place.

**The Convener:** I am very aware of the time and that we still want to cover a number of areas. I would be grateful if members would ask brief questions and, cabinet secretary, brief answers would also be helpful. Joan McAlpine will move us on with questions about the review of fundable further and higher education.

**Joan McAlpine:** Earlier, Mr Batho spoke about the review of fundable further and higher education and the concerns that university principals raised about the possible impact of the review on their institutions' ability to determine course provision. What is your view of those concerns?

**Michael Russell:** I do not believe that there will be any impact on course provision. Indeed, I am somewhat surprised by some of the debate surrounding the issue. We are suggesting a sensible and proportionate approach to ensuring that we have a clear view of what further and higher education contributes to Scotland.

Convener, if I may, I will take a moment to explain that, because I think that it is important. Some of the spats that have taken place around the changes in further and higher education have been highly individualised such as, for example, the arguments that took place about the Abertay and Dundee colleges merger and the difficulties that that caused. There were also arguments about the provision of colleges. We therefore said that it would be better, from time to time, to take a systematic and structured view of a sector on which we spend about £1.6 billion a year, if we take further and higher education together with Skills Development Scotland.

**Michael Cross (Scottish Government):** The figure is beyond that.

**Michael Russell:** Yes, it is beyond that. We need to look at that from time to time, and the mechanism for that should be the funding council, although it would need to draw in additional help from the sector. We need a clear set of criteria for how we should do that, the time to do it and what is being looked at, and then a set of recommendations for public debate and discussion, not just for the minister. There should be public debate and discussion and parliamentary scrutiny. All that strikes me as eminently reasonable. I am happy to debate and

discuss the issue and, if there are ways in which it can be expressed more clearly or it can meet the universities' anxieties, I am happy to look at them. However, it seems to me that we are improving the way in which we take an overview of education in Scotland, and that is surely to be welcomed.

**Joan McAlpine:** Mr Batho raised an interesting example of when the Scottish funding council intervened as a result of concerns about modern languages provision in Scotland. He seemed to be saying that the Scottish funding council already has the ability to review, when necessary. Is the bill a way of tying different forms of ability to review together, rather than doing anything radically new?

**Michael Russell:** The bill adds something to what already exists. The issue around Slavonic languages, which I think is what Mark Batho was mainly referring to, is an interesting one—it is still going on. That is not about an individual university delivering or not delivering; the question is a wider one for the whole of Scottish society—the people who fund higher education—about what provision they would expect to find somewhere in Scotland. There are some things that are not available in Scotland at present that perhaps should be available.

If we carried out reviews within a wider context from time to time—we do not want to do it every 10 minutes—we would probably get a more rational view of what should be provided, and I hope that that might avoid the type of passionate debate that took place around Slavonic languages, for instance, or people marching in the streets, as happened, because something was not being provided in one place and they felt that it should be. The proposed measures are positive, and they have real potential to help us decide how we invest in further and higher education, rather than doing anything else. If there are things in the provisions that need changed, or if there are words in them that need to be made clearer, we can do that, and I am happy to listen to people's points about that, but there seems to have been a reaction against what I think is a logical and helpful proposal.

**Joan McAlpine:** I should have corrected myself and said Slavonic languages—thanks for doing that, cabinet secretary.

**Michael Russell:** That is okay.

**The Convener:** We move on to the subject of data sharing, which has caused us some concern. I am sure that you are aware of some of the discussions on the matter.

**Clare Adamson:** The evidence that we heard last week seemed to indicate a confused understanding of what data sharing would be for

and what would be delivered from it. Can you clarify the objectives of data sharing?

**Michael Russell:** They are simple—although I share your concern, having read the evidence. The proposal is for a modest enabling provision that allows something to happen. In particular, it allows the quality of data to improve. It is not just about giving or accessing the data; it is about ensuring that they are of sufficient quality to be meaningful. There have been problems with that. As the committee has heard me say in the past, the quality of the data was not high enough.

The proposed measure is not some all-singing, all-dancing massive new initiative. My concern, following discussions with a whole range of people, is that the quality of the data that should allow us to understand what is happening in the sector has been patchy, and we need to improve that. That is why the provision is in the bill, and that is what the bill is about. It has been carefully and narrowly drafted in that regard, and I do not want there to be any expansion of that drafting. That is what I would wish to take place.

**Clare Adamson:** I want to ask about the role of Skills Development Scotland in making interventions once data sharing is in place. Do you envisage an increased role for Skills Development Scotland in intervening when it sees a problem?

**Michael Russell:** Somebody needs to be able to flag up an issue when it arises. I followed the exchange between the convener and Skills Development Scotland with interest. There is an issue around how people would know what was taking place. A careful reading of data by somebody who is experienced in reading data would probably lead to some conclusions. We need to establish that role somewhere, and such people exist in Skills Development Scotland. Indeed, that is what many people in Skills Development Scotland do. They have that role—it is a collaborative role, not an overarching one, and I would expect them to fulfil it in the terms that I have outlined.

**Joan McAlpine:** I have a supplementary point about that. The Open University has highlighted its concerns about the quality of the data in higher education statistics. In particular, it is keen to get more data about its own student body, including part-time and mature students. As I understand it, the bill does not really address those concerns. Will they be addressed at some point in the future?

**Michael Russell:** That is an issue for the Open University, but probably not for any other part of higher education. I would not be unsympathetic if a proposal was made to help with that, but our proposals specifically address a particular issue that we know exists and provide a means of

solving it. In relation to any suggestions from the Open University, I would want to know that we could address the matter and solve it in a clear, rational and not too elaborate manner. The other difficulty that would probably arise with the Open University is that, if we were to cover its students in Scotland, I am unsure about what would happen elsewhere in these islands. However, if anyone wants to ask specifically about that, we can consider the issue.

**The Convener:** I am pleased with that response. Last week, I was less than convinced by the responses that we received from SDS witnesses. There was a lack of clarity. As I said last week, I felt that what was being provided seemed to be rather oversold. However, just for confirmation, are you telling us that this is a rather simple data-sharing exercise and that the data hub—if that is the correct title—should gather data that already exists, and do nothing more than that?

**Michael Russell:** This is about identifying and supporting; it is not about creating data empires. It will not do that. It is very clear that we are talking about access and quality. That is what we want to deliver.

With regard to such questions, it is always important to go back to the bill. The bill is entirely clear about the issue. It is not overambitious. Somebody asked about the financial memorandum. It is modest because what is being talked about is modest. We need to keep that at the forefront of our minds. I am quite sure that SDS will read the *Official Report* of this discussion and will understand your view and my view on the matter.

**The Convener:** We now move on to deal with the financial memorandum and, in particular, the Finance Committee's evidence.

**Liz Smith:** You have made available the 1,700 additional places, and that provision is properly funded and so on. If it were to be continued beyond this budgetary period—so you would be providing more places for universities—what would the funding mechanism for that be?

**Michael Russell:** That would obviously be subject to the spending review, but it is within the existing expenditure figures, which carry forward. We anticipate that they will carry forward.

**Liz Smith:** The issue that you referred to—displacement—would apply only if there were no additional places. Within this spending review, those places are available, which means that that problem does not arise. There is a question about the bill, in terms of how much money will be available for widening access given that there is no additional money in the financial memorandum. Is that a genuine concern for the universities?

**Michael Russell:** If it is a concern, it is one that everyone across Scotland shares in every part of life, because we do not know what will happen south of the border. As long as we are still tied into that system, we will not be able to say what will happen south of the border on the spending review.

That said, it is fair to say that you and I have a different view of the affordability of higher education. We are not going to resolve that today. My view is that the provision will continue to be funded in a way that meets our policy objectives, and I accept the point that we should want to continue with at least the same number of places and that we should, presumably, want to increase them.

**Liz Smith:** Our political views aside, there is a genuine concern. You have specifically stated your intention to widen access quite considerably, and the bill is designed to do that, but the financial memorandum does not have any additional money for that. A paper was given to the Finance Committee that contained figures—albeit slightly out-of-date ones—about the additional cost that students from poorer backgrounds impose on universities due to the fact that they need more student support and so on. There is a concern about that, if access is widened further in future.

**Michael Russell:** I have to say that the figures were not slightly out of date: they were 2002 figures, and were for England only.

**Liz Smith:** I acknowledge that the figures were out of date, but there is a concern that those students cost more.

**Michael Russell:** We have shown our intentions in what we are spending presently through the funding council with regard to the additional places, and we will continue to go on funding that in a way that will achieve our policy objectives. We may disagree on the fine-tuning of the figures, but I think that we can agree that that is our intention.

**Liz Smith:** Can you confirm that that additional spending will come from the public purse?

**Michael Russell:** You are asking me to say what will be in the spending review, which I cannot do. I can say that the policy intention is clear and that it will be followed through by the Government. I cannot go any further than that, but that should be enough.

**Liz Smith:** Okay, thank you.

12:30

**Neil Bibby:** Can you confirm what the set-up costs will be for the University of the Highlands and Islands to become the regional strategic body

in that area and why those costs were not included in the financial memorandum?

**Michael Russell:** Michael Cross will answer that.

**Michael Cross:** We are still discussing with the University of the Highlands and Islands, through the funding council, what the right level of set-up or establishment costs should be. We do not know the outcome to those discussions yet.

**Neil Bibby:** When do you expect to know?

**Michael Cross:** It is not necessarily imminent, but we will know within a matter of weeks.

**Neil Bibby:** The financial memorandum also states that the costs for the three regional boards—I understand that there are now going to be two—for 2015-16 are estimated to be up to £560,000 each, giving an annual total of £1.68 million. Now that Aberdeenshire is not involved, there will be two regional strategic bodies rather than three. I take it that the aggregate total has changed, or will change, for that financial year?

**Michael Cross:** The cost falls by one third.

**Neil Bibby:** That is fine—I just wanted to confirm that.

The Scottish Government has said that the process of regionalisation will bring savings of around £50 million. Given that we are hearing that there will be staffing costs, accommodation costs, licence fees and audit fees, plus payments to chairs and possibly members of regional strategic boards, have you revisited the estimate of the £560,000 cost in the financial memorandum for each regional strategic board?

**Michael Cross:** No. We worked out that estimate in liaison with Scotland's Colleges—now Colleges Scotland. We took the advice—as I have explained to the committee previously—of a senior HR professional from the sector who works within my division, and that led us to those figures.

**Neil Bibby:** Has anything been spent to date on the setting up of the regional strategic boards? If so, how much has been spent?

**Michael Cross:** Some modest support is in place at the moment from the Scottish funding council to the regional leads, but as yet we have not constructed regional strategic bodies of any sort.

**Neil Bibby:** What is that modest support?

**Michael Cross:** I do not know the answer to that.

**Neil Bibby:** As regards on-going costs for the regional strategic bodies, the sum of £110,000 has been mentioned. Do you feel that that is

somewhat light, and can you tell us what it comprises?

**Michael Cross:** Sorry, I cannot find the right piece of paper—Gavin Gray will look for it.

I have a feeling that we wrote to the committee disaggregating the costs that we set out in the financial memorandum on college regionalisation.

**The Convener:** I do not think that you wrote to us. Perhaps you wrote to the Finance Committee.

**Michael Cross:** Oh, I beg your pardon.

**Michael Russell:** We can provide you with the information that we provided to the Finance Committee—that would be the best thing to do.

**The Convener:** That would be helpful, but if Mr Cross is able to answer the question, that would also be helpful.

**Michael Cross:** I can answer—I am grateful to Gavin Gray for finding me the right piece of paper.

We are confident that the £110,000 figure remains a reasonable one. We do not think that it is light. It comprises computing equipment, consumables, travel expenses for board members and for officials, accommodation costs, rent, staff-related costs, non-salary costs, the costs of recruiting board members, and other professional and audit services.

**Neil Bibby:** A point has been raised about what the process would be if a regional board was wound up—about what would happen and whether its liabilities and assets would transfer to merged or associated colleges. Is there a view on that?

**Ailsa Heine:** There would be a transfer. If a regional board was wound up because there was a regional college, there would probably be a transfer to the regional college that was formed.

**Michael Russell:** I think that winding up is most likely to occur if there is a move to a single regional college, which would obviously involve a transfer. I cannot imagine that there would be a disaggregation—the bill would not permit it.

**Neil Findlay:** I have two final points. Last year, we saw a slight disagreement, shall we say, between you and the chair of a college. At the time you expressed the view that if you had the powers to remove that person, you would have done so. Within the bill, you will gain further powers. What do you say to the charge that people are levelling that this is a centralising bill whose purpose is to give ministers more powers?

**Michael Russell:** I say that that is not true. That is not what is taking place. There is a range of circumstances in which powers over mismanagement would apply, which are where

“(a) it appears to the Scottish Ministers that the board of management of any college of further education—

(i) have committed or are committing a serious breach of any term or condition of a grant made to them under section 12 or 12B of the Further and Higher Education (Scotland) Act 2005 ...

(ii) have committed or are committing repeated breaches of such terms or conditions;

(iii) have failed, or are failing, to provide or secure the provision of education of such standard as the Scottish Ministers consider appropriate;

(iv) have failed, or are failing, to exercise any of their other functions properly; or

(v) have mismanaged, or are mismanaging, their financial or other affairs; or

(b) a relevant funding body has informed the Scottish Ministers that a college of further education whose board of management is established in pursuance of this Part is not, or is no longer, a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2) of the 2005 Act.”

Each of those seems to me to be an utterly reasonable circumstance under which the provisions could apply. What is more, such action would require an order that would have to be subject to parliamentary scrutiny and could be subject to judicial review. These are circumstances of the sort that Opposition spokespeople frequently urge ministers to intervene on. I therefore think that the provisions are utterly reasonable and are the right things to be in the bill, which will lead to better management and governance.

**Neil Findlay:** Prondzynski's report mentions increasing the number of women in college courts. Will there be steps in the bill or the code of governance to move that process forward significantly?

**Michael Russell:** I read the piece on the issue in *The Herald* this morning, and I also read your question, in which you listed the chairs of court. I think that there is now considerable room for improvement on the matter. I will consider whether an amendment should be lodged at stage 2 to take that a step further. I know that the suggestion is that there should be a proportion or percentage of women, and I will actively consider that.

**Neil Findlay:** Would you care to elaborate? Are you minded to move in that direction and to legislate on it?

**Michael Russell:** I am minded to consider the issue seriously. I think that the situation is stark and that it is alarming that we are still in it. I am treating the issue very seriously indeed. I do not want to give a commitment on it today, because I am only thinking about it at the moment. However, I take it very seriously indeed and I think that you are right to raise it. We will see where our consideration leads us.

**Neil Findlay:** I have a final point, which is about collective bargaining in FE. What is the situation?

**Michael Russell:** The regional leads are taking that forward with my support and there remains an absolute commitment to make it happen. The question of how it is made to happen during the merger process is actively being discussed. I have urged the regional leads to enter into the earliest possible discussions with the trade unions to ensure that they make progress on the issue, and I hope that they will do so—in fact, they will do so.

**Neil Findlay:** Just to pursue that slightly, why are the regional leads taking the lead on the issue? I thought there was going to be national collective bargaining.

**Michael Russell:** There is. Together, the regional leads represent all the regions involved. Their successors in office will be the people who will take responsibility for each area. In those circumstances, the regional leads are the right people to be involved. However, they have my backing in the process, about which there should be negotiation. The question is not whether to do it—in my view, that is settled—but how it is done: how we go from where we are to national terms and conditions. We need to make that move, and I hope that we can find the best way to do it over the quickest time.

**Neil Findlay:** Is there a timescale?

**Michael Russell:** I want it to be done, but I do not know what the timescale is. I would like it to be done and it needs to be done. It is part of the commitment that I have entered into, and I want it to happen.

**Neil Findlay:** Thank you.

**The Convener:** If I may, cabinet secretary, I will ask one final question. The Subordinate Legislation Committee has quite rightly reported to this committee its view on the bill's delegated powers. You will be pleased to hear that I am not going to go through them all.

**Michael Russell:** I have read them.

**The Convener:** Can you give us a broad overview of your reaction to the Subordinate Legislation Committee's view? It believes that the bill as drafted provides insufficient scrutiny of many of the powers and it recommends moving from negative to affirmative—or sometimes even super-affirmative—procedure for them.

**Michael Russell:** There is one issue on which we agree with the Subordinate Legislation Committee, and the rest are under active consideration. I am happy to come back to the Education and Culture Committee when we get to the stage of saying what we propose to do on the issues. However, we take the issues seriously and

are looking at them carefully. I do not agree with some of the Subordinate Legislation Committee's views on the powers, but we have already indicated those with which we agree.

**The Convener:** I am sure that the good work of both the Finance Committee and the Subordinate Legislation Committee will form part of our stage 1 report, along with all the other evidence that we have received.

I thank the cabinet secretary—

**Michael Russell:** Can I say something first? Obviously, if points on which you would like answers have not been dealt with the day before the committee reports, we are of course willing to provide that information.

**The Convener:** The committee will discuss that under the next agenda item. I am sure that if there are such points, we will write to you about them. I thank you and your officials for coming here this morning.

We now move into private session.

12:41

*Meeting continued in private until 13:28.*



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