



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 3 December 2013

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EDUCATION AND CULTURE COMMITTEE

31st Meeting 2013, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Bibby (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Clare Adamson (Central Scotland) (SNP)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Joan McAlpine (South Scotland) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Malcolm Burr (Comhairle nan Eilean Siar)

Sandy Longmuir (Scottish Rural Schools Network)

Leslie Manson (Association of Directors of Education in Scotland)

Eileen Prior (Scottish Parent Teacher Council)

Michael Russell (Cabinet Secretary for Education and Lifelong Learning)

Cleland Sneddon (Argyll and Bute Council)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 6

Scottish Parliament

Education and Culture Committee

Tuesday 3 December 2013

[The Convener *opened the meeting at 10:01*]

Children and Young People (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning. I welcome everybody to the 31st meeting in 2013 of the Education and Culture Committee, and I remind all those present that electronic devices should be switched off at all times while the committee is in session.

Our first item of business is to take evidence on the Scottish Government's proposals to amend the Children and Young People (Scotland) Bill in relation to school closures. The Cabinet Secretary for Education and Lifelong Learning wrote to us in September to tell us that he intended to lodge amendments on a number of issues to do with school closures.

In order to inform our scrutiny of the amendments when they are lodged, we will hear first from stakeholders and then from the cabinet secretary.

I welcome to the committee Cleland Sneddon from Argyll and Bute Council; Leslie Manson from the Association of Directors of Education in Scotland; Malcolm Burr from Western Isles Council; Eileen Prior from the Scottish Parent Teacher Council; and Sandy Longmuir from the Scottish rural schools network.

We will move immediately to questions from members.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. I think that all of us who were involved would hold up our hands and say that we did not get the legislation correct with the Schools (Consultation) (Scotland) Act 2010, particularly when it comes to presumption. Given the evidence that you have presented to us, I still think that there is a considerable difference of opinion on the matter. Do you believe that it will clarify matters if we include the phrase "presumption against closure" in the bill, or do you still think that that will be open to considerable question?

The Convener: Who wants to start? I will just pick someone if no one volunteers.

Sandy Longmuir (Scottish Rural Schools Network): Whether the presumption helps will depend a lot on what policy backs it. The recent

decisions in the Court of Session have found that the matters of regard have been left hanging in respect of who decides whether the matters of regard have been properly addressed, whether the community factors have been properly addressed, and whether attempts have been made to remedy any foreseen problems before the schools come to a consultation.

We have seen representations that say that the presumption will go too far and that it will make communities somehow mistakenly believe that no school will ever close, but that is not what a legal presumption means at all. The simplest legal presumption is the presumption of innocence. The general public do not believe that nobody will ever be found guilty because there is a presumption of innocence, but there must be a considerable body of proof that outweighs the presumption of innocence.

That is exactly what we are looking for in this context. A body of proof should have to be put forward to show that the matters of regard have been assessed and dealt with, and any attempt at remedial action has failed or would never succeed. As long as that can be demonstrated, the presumption will fall, as the presumption does in any other legal aspect.

I think that the Scottish Government is currently consulting on a sustainable development presumption to catch up with the presumption that exists and operates in England and Wales. I cannot see any problem with introducing the words "presumption against closure" into legislation.

Eileen Prior (Scottish Parent Teacher Council): We have somewhat sidestepped the question in our response because our key issue is how to define what a rural school is. We need to know what makes a rural school a rural school. For example, in South Lanarkshire you may be only 2 miles away from another village and yet be in a rural school. That does not make any sense. However, if you are in Knoydart and are 50 or 100 miles away from your nearest school, that is pretty rural.

The starting point must be to define what we are calling rural. I do not know how that should be done and I am not going to set up myself as an expert to do that. However, we must have clarity on what we define as a rural school and then perhaps look at—to use the Knoydart example again—whether there is a presumption against closing schools that are absolutely isolated and so different from my South Lanarkshire example.

As I say, we have somewhat sidestepped the question on presumption because another question behind it must be answered first.

Malcolm Burr (Comhairle nan Eilean Siar):

The word “presumption” is somewhat unhelpful because it creates an expectation in the minds of many that a very high bar is set, which is simply not the case. As Mr Longmuir said, any presumption can be rebutted. The presumption of innocence argument is there but we are not talking about liberty; we are talking about policy choices.

The Schools (Consultation) (Scotland) Act 2010 provides some very good tests. If those are applied correctly, the necessary safeguards are given, and I am not clear what the sense of presumption adds to what is an objective process. It should be an objectively arguable process in procedural terms and in the sense of merits, by which I mean whether a council or the Scottish ministers have gone about their jobs correctly. I am not clear what introducing a term such as presumption adds to the process for anyone.

Liz Smith: If we set a very high bar, it raises all parties’ attempts to ensure that we are doing things absolutely correctly. Two previous panels have made a strong point about the fact that, because presumption has not been clarified in the existing legislation, it is open to misinterpretation. You referred to an objective process, but facts have not been correctly assimilated and, indeed, in some cases they have been plain wrong.

That has been very much to the detriment of the 2010 act and we are trying to move forward on that. What I am driving at is whether there needs to be a clear definition in legislation—a legal definition, if you like—or whether we must do a bit more than that. That is the nub of the question.

Malcolm Burr: The fact that the act provides for special regard for rural schools and factors says it all. That is how the Parliament should leave it because, by doing so, it would be saying that the intention is that rural schools have a separate set of criteria that councils must address properly. That is sufficient because the issue is about evidence, going about the process correctly and giving consideration to what the 2010 act requires. The presumption is there, if you like, in the rural factors.

Liz Smith: There is a difference between the intention to have special regard and including something in the act. The point that some people are trying to make is that, in order to raise the bar and ensure that we do things absolutely accurately, we need to have extra confidence in the terminology. As I say, we are all guilty of not getting the act right the first time round, and we have all found that the matter is open to misinterpretation, which is why we have seen lengthy legal disputes and difficulties for local councils and the Scottish Government.

Malcolm Burr: As the committee will know, my own council is involved in that legal action. The court found that there was no statutory presumption. I do not think that that affected the council’s consideration of our school closure programme—we looked at the special factors. I cannot go beyond that: there is an objective process of assessment, and it seems a little illogical to put statements of intent into that when the argument should be made on process and merit.

Liz Smith: What do you mean by illogical?

Malcolm Burr: Presumption is more of a political statement than is strictly consistent with a process such as this.

Liz Smith: I might be being very stupid here but I did not quite follow that. Could you just explain what you mean?

Malcolm Burr: I am saying that the act rightly defines the process that councils have to follow. The court clarified that there is a consideration of merit in any subsequent review of the process. Those are objective factors. A council either properly considers the rural factors or it does not.

The way in which a statement such as “presumption against closure” is fed into that objective process could be unhelpful. For example, at what stage is that considered? Is it considered at all stages? How then does the minister consider it? If the minister thinks that the council has gone about the process procedurally correctly and the case has merit, does the presumption against closure come in then? I do not think that it adds to the process.

I appreciate that there is a political intention behind the presumption against closure, but I am not sure that it helps anyone much.

Liz Smith: Convener, may I have one more question?

The Convener: I will first bring in Leslie Manson and Cleland Sneddon because we have not had a chance to hear from them yet.

Leslie Manson (Association of Directors of Education in Scotland): I am not sure that the word “presumption” helps.

The semantics are important here and the term is frequently misunderstood. For many parents and members of the community, it means that there is no possibility that there will ever be a consideration of their school closing or that, if the local council has the temerity to consider closure, it is likely that a higher authority will veto it. It gives people an inappropriate sense of protection.

If the fact of a presumption can be enshrined in law, it would be useful. As has already been said, it would suggest that the consideration is such that

the closure of a rural school would be a rare event and the special rural factors would be taken into consideration.

It is also important that the status quo is always considered as an option and I am not sure that that has always been the case. More than that, the amended status quo—including the ideas, suggestions and contributions that parents and members of the community might bring to the table—could move a school from being regarded as not feasible to being feasible. If we could capture the presumption in the terms of the act, that would be useful, but I am not sure that the word itself is helpful.

The Convener: Is your position that, as long as the word “presumption” is clearly defined, you do not have a particular problem with it? Is the definition the issue?

Leslie Manson: No. As we say in our submission, it is for the Government to presume as it chooses; that is the role of Government. More than that, living and working in a rural community I also presume that rural schools are not to be closed. If your starting point is that rural school closures are going to be rare, that is acceptable.

Cleland Sneddon (Argyll and Bute Council): As the last to speak, I will try not to repeat comments that have already been made, but a couple of interesting points have come up.

Our written submission started from the premise that a proposal will be brought forward to clarify the presumption, and we welcome the clarification of that presumption. That might take the argument on from some of the earlier contributions.

The key aspect is how presumption is articulated. There was a misinterpretation of the presumption as it was presented in the 2010 act. It implied to some people that it was an immovable barrier to the closure of a school.

I was encouraged by the Scottish Government’s statement that it would ensure that it would not articulate the presumption in such a way as to stifle

“legitimate changes to schools which become necessary over time.”

If a presumption is to be retained within the 2010 act, it is incumbent on us to ensure that it is articulated clearly enough so that there is an understanding among all parties of what it means. I hope that that is a helpful contribution; it echoes some of the previous comments.

10:15

Liz Smith: I will pick up on that very issue, Mr Sneddon. Broadly speaking, do the recommendations of the commission on the

delivery of rural education strike the right balance between safeguarding our schools and allowing councils to reform and ensure that the right schools are in the right areas?

Cleland Sneddon: In the wider sense, the commission’s recommendations are welcomed. Eileen Prior made the interesting point that the presumption takes up an awful lot of our attention, but there are a series of underpinning questions and arguments about amendments to the legislation that are arguably more important. Without jumping forward in the agenda, we have set out in our submission some of the key considerations for our authority—I am sure that they are in common with those of other authorities—about how the legislation is implemented.

Leslie Manson is correct that none of us entered into local government service to be the person closing rural schools, but we have a responsibility for how we use finite resources. Given that the fortunes of communities wax and wane, we must ensure that we have the right provision for our communities and that we adjust resources accordingly. That sometimes means that difficult decisions have to be made.

The Convener: Mr Burr, the cabinet secretary’s letter to the committee states that

“The presumption against closure should not mean that no rural school can ever close, but that very careful consideration should be given before making such a proposal, given the significant impact it could have on the community involved.”

Does that give you any comfort?

Malcolm Burr: Yes, it does. That point is picked up in the Government’s response, which states that

“the education authority must give very careful consideration to the matters ‘of special regard’ before bringing forward a closure proposal.”

I think that any competent council would do that before any closure proposal was even thought about. That is as it is. If all that adding the words “presumption against closure” means is to have “special regard” before a proposal is brought forward, it does not add very much to the 2010 act.

The Convener: Does it do any harm?

Malcolm Burr: Arguably not. If that is how the presumption against closure is defined and if it is clearly stated in those terms, it adds very little and hence does not do any harm. I think that the issue is more about parents and communities who might feel that the presumption against closure is an almost irreversible ban. I appreciate that that is not what the Government is saying—

The Convener: That is not what it says.

Malcolm Burr: I appreciate that. I question what the presumption adds, but if it is clearly defined in those terms, that would be helpful.

Sandy Longmuir: I think, and we hope, that the presumption adds something.

Currently, the matters to regard can be a procedural matter. In terms of the law, it is currently up to the council to say "We have had regard to these three matters." It is for the council to decide the weight that is given to those matters.

If the presumption is put in place and operates in the way that we think and hope that it will, the matters to regard will have greater prominence as it will have to be demonstrated that they have been met. The presumption will add weight to that. All that we are asking for is that there is a weight of evidence. We are asking not that, as is being said, no school should ever close but that the weight of evidence has to be substantial.

Liam McArthur (Orkney Islands) (LD): I will pick up on whether the presumption adds anything or is potentially counter-productive.

Is one of the issues with the 2010 act that it is interpreted differently by different people? There is a risk that the expectations—not necessarily of those who live and breathe the act but of those who have the misfortune to engage with it at the point at which they have to—are raised unduly. For example, it has been suggested that, with regard to the 2010 act in particular, financial considerations should not come into play in any decision on a school closure. However, as anyone who has been involved in such matters will know, that is simply nonsensical. Why would a council go into a process of even considering such a move if it were not weighing up financial considerations to some extent?

You might say that, although you would really rather not put the term "presumption" into the bill, doing so will not do any harm. However, is it fair to say that the potential of harm in such a move might be significant as it will lead to our simply continuing to raise expectations about what the legislation will actually do at the end of the day?

Malcolm Burr: That is a risk. However, as I said to the convener, if the bill makes it clear that careful consideration should be given to matters of special regard before the proposals are brought, that is what any competent authority will do. If such a provision is to be in the bill, it must be very carefully defined; if not, the risks that you have referred to will arise.

Eileen Prior: What does the term "presumption" mean to the layman? It means that we presume that this or that school will not close. It is the same with the presumption with regard to mainstreaming, in that we presume that children

with additional needs will be taught in mainstream schools. People have a certain understanding of the word.

I, too, share Mr McArthur's concern that this might lead to an unrealistic raising of expectations. Indeed, as Mr McArthur has also pointed out, unlike the local authority officers and others who deal with the issue day in, day out, the families and communities involved will engage with this process only when their school is being considered for closure. It is a very tough notion to explain to people. The whole process is emotionally charged for communities and we have to guard against giving people false expectations.

Sandy Longmuir: I can assure you that any policy memorandum will be read avidly by any parent who comes up against the act. In general, rural parents are not simple by nature; they are very quick at picking up and understanding even the most complex documents. We sell the public short in saying that if we set out in clear wording in a policy memorandum something that backs up the presumption they will not be able to understand it. Actually, I think that that is insulting.

The Convener: My understanding is that, if I presume that something will not happen, that does not mean that I believe that it will not happen. I believe that it is unlikely to happen but, at the same time, I realise that there are reasons why it might happen. I do not take the view that, just because I presume something, that something is an absolute.

Sandy Longmuir: If you presume something—

The Convener: Hang on a second—I wanted to ask Eileen Prior about this.

You seem to be suggesting that because the bill contains the term "presume" or "presumption" people will take that as an absolute position.

Eileen Prior: People are optimistic by nature and, when they see that something is a presumption, they become optimistic that it will be sustained.

I absolutely agree with Sandy Longmuir; I would never suggest that the layperson is ignorant or stupid. There are folk out there who will crawl all over the legislation; indeed, I have done it myself as a parent. You do it when you need to, but the problem is that you do it only when you absolutely have to and when you are perhaps not as familiar with the background and the legal position as you might otherwise have been.

It is great that Sandy Longmuir's group is there to support parents who want to do that work, but I am simply saying that because all of us—or, at least, most of us—are by nature optimistic we take a presumption as being a very positive thing and will travel optimistically.

Jayne Baxter (Mid Scotland and Fife) (Lab):

The Court of Session found that the 2010 act requires the Scottish ministers to consider the merits of a school closure proposal as well as the process that has been undertaken. Although all those who responded to the consultation on amendments to the 2010 act supported consideration of merits by the Scottish ministers, SPTC suggested that

“the primacy of the local authority as the locally elected body must be respected”,

and Western Isles Council said that

“It should not be for Scottish Ministers to substitute their decision for that of a Council, solely on the basis of policy preference.”

With that in mind, I would be interested to hear witnesses’ views on what level of merit consideration it would be appropriate for ministers to pursue.

Malcolm Burr: The Court of Session said that it is impossible to assess process without having some regard to the merits, which I think is absolutely correct. However, as Jayne Baxter has noted, the court was clear that matters of education provision are primarily for councils and that

“The circumstances in which central government may step in and deprive the local authority of its power to decide to close a school are, accordingly, very limited.”

However, in terms of the merits, what was clearly meant was that, given that there is a call-in procedure, it is logical that ministers should look at how reasonable a council has been. By that, I mean it should be considered whether the council has taken into account relevant or irrelevant considerations, whether it has been fair, and whether it has addressed properly the matters that parents and others in communities have put to the council, including those who oppose the proposals.

The Court of Session assessed those issues. In the case that involved the Western Isles Council, vast amounts of documents were assessed, which is what is expected of ministers. No one should be able to say that a council did not look at or answer people’s arguments—provided that they were legally relevant, of course—or to suggest that it took into account factors that were not relevant or, to get back to the financial point, that it gave undue weight to factors that were not education related. That is an important point, and I welcome the clarity that the proposed amendments seek to give on that matter. Councils look at such things primarily in terms of terms of educational benefit and for educational purposes; that is what is meant by “merits”. It is not an absolute rehearing of the case; that is clear. However, it is a check that the merits have been properly addressed.

Jayne Baxter: What we want from local authorities is that they use the process properly. We hear from parents—not frequently, but fairly regularly—that the process has not been operated properly, so we think that the process must be robust and that local authorities must stick to the rules and do what the legislation says. That is the first thing.

The second point is that people in our communities elect their local authorities to make such decisions. Sometimes they agree with them and sometimes they do not, but it is their job and I do not think that we should deprive folk of their jobs. It is a fairly simple argument; do it properly, well and thoroughly, and take into account the views of all those who have a stake in the matter. Parents who have exercised their choice to take their children out of a school and move them to another school are not currently having their voices heard in the process, and we think that that is wrong, because they have voted with their feet and their opinion is important. Asking why they have done that can offer a qualitative perspective that we are missing at the moment.

Those are decisions for local government, not national Government. They should be made at local level, and local politicians are accountable for those decisions. That is how we operate and that is how it should be.

The Convener: I agree. That is why we have local democracy and that is what it is for, but surely Eileen Prior will accept that there has been a groundswell of views among lots of communities—I dealt with a school closure proposal in my area—that local authorities were not dealing with matters correctly, reasonably or, in some cases, even legally. Clearly there was a problem, which we all recognised at the time. Therefore, much as it would be fantastic always to leave the situation in the hands of local councils, which are absolutely responsible for it, there was a view among the public, which came through Parliament, that a set of rules had to be put in place to manage the process.

Eileen Prior: Absolutely.

The Convener: So, it is not entirely the case that local councils should make the decision and the Scottish Parliament should not be involved.

10:30

Eileen Prior: Our utopian perspective is that it should be done properly at local authority level. If it is, there should be no role for Government other than as a last resort.

The Convener: If we ever manage to achieve Utopia, we can discuss it then.

Eileen Prior: You can come back to me.

Sandy Longmuir: As the Scottish Parliament information centre briefing says, in the development of the 2010 act we were one of the organisations that were confused into believing that the “material consideration” element of the act meant the merits of a case. The SPICe briefing says that some people thought that call-in would apply only to procedure, but others believed that it would also refer to any material consideration. We were pleased that the law lords also came to the conclusion that the two could not be separated and that, if there is a matter of substantial concern, the minister should have to take cognisance of it.

We have seen many cases and can give example after example, especially in the financial sphere, of information that was simply wrong having been presented to elected members. In some cases, the information in proposal papers is simply wrong; it is not elected members’ fault that they vote on wrong information. In such cases, there must be an appeals mechanism whereby people can say that the process was followed—the meetings were held on the right date and the proposal papers were issued on the right date to the right people—but the information was completely wrong, therefore the merits of the case do not stack up. We are content that the merits of a case must be considered.

Cleland Sneddon: I will reflect on our experience of the process. I am encouraged by the indications that, back in 2010, everyone thought that call-in would be exceptional and seldom used. I am also encouraged by the advice that we are now receiving that the focus will be on ensuring that there is support for the local authority throughout the process in order to minimise further the use of call-in. However, some of the submissions or commentary around the proposed amendments to the 2010 act make it clear that there are some people who will look at the retained call-in as a means to try to have every proposal called in.

The emphasis is very much on ensuring that, as we go through the process, all the matters to which due regard should be given are considered, that the proposal documents are as comprehensive, accurate and robust as possible, and that engagement with communities is as proactive as possible—notwithstanding the emotiveness of issues. Within the proposals there is discussion around the role of Education Scotland and the role of an independent referral mechanism. We will wait to see what that looks like. It will be extremely important for us to put the emphasis at the front end of the process rather than look at the retained call-in as something that communities will continue to use in every case because they view it as an opportunity to get a local authority decision overturned.

That is a fairly blunt way of presenting the proposal, but that type of opinion of the call-in is still present. Potentially, it goes back to the discussion that we have had about presumption. A clear articulation in the revised legislation could clarify the position for communities.

Jayne Baxter: I presume that our witnesses agree with the proposal to remit closure decisions back to local authorities.

Cleland Sneddon *indicated agreement.*

Malcolm Burr *indicated agreement.*

Sandy Longmuir *indicated agreement.*

Eileen Prior *indicated agreement.*

Leslie Manson *indicated agreement.*

The Convener: That is a welcome clarification of everybody’s agreement. Let us move on.

Neil Bibby (West Scotland) (Lab): I want to get your thoughts on the independent referral mechanism. Given what has been said, why do you believe that people would wish decisions about their schools and communities to be taken by people whom they have no role in appointing and by a body that is not answerable to local communities?

Cleland Sneddon: I will start, because that follows on from what I said previously.

Decisions on school closures should and will be made by local government. This is about ensuring that where there is concern about a decision that has been made, there will be an opportunity to review it.

There was a view that the existing process was open to being political; since 2010 there has been a consistent call for such proceedings to be independent.

We talk about Education Scotland’s role at an earlier stage in the process—we are quite clear about that in our submission. Some of the assessments around merit are inevitably subjective in nature, so we look for people with the appropriate credibility and professional background to make them.

Similarly, whatever the independent referral mechanism is, we look for it to be seen to be independent and transparent, and we look for a fairly quick turnaround on decisions. We do not want to create a new bureaucracy or to have a very expensive process. If all those aspects are delivered through amendments, I would view the mechanism as being a positive development.

Leslie Manson: There is a well tried and tested system. In the General Teaching Council and Education Scotland, those who make the rules, so to speak, are not those who adjudicate on whether

those rules have been adhered to; there is a separation between policy making and adjudication as to adherence to policy. I think that that is well understood. I believe that you are less liable to legal challenge if you separate the roles in that way.

The idea that people can exercise considerable influence without being directly appointed is accepted right across the land; for example, our health boards are not locally appointed. There is a system for public appointments to influential and responsible bodies and individual positions that have nothing to do with local democracy through MSPs or councillors.

The ADES view is that just as councils can be deemed to have got things wrong, Parliament might, for political reasons, get it wrong in specific areas. It is probably best to remit that to an independent body, whose job is not to determine the merits of the case but to determine whether the politicians and policy makers have done their jobs properly—in other words, whether they have considered fairly the merits of the case and followed the process rigorously. That is what is being adjudicated on. The separation between the call-in process and the final adjudication should be clear for all to see.

Malcolm Burr: I think there is an issue of principle about why this particular aspect of service provision—schools—is subject to further procedure. One could talk about whether that reflects the parity of esteem between central and local government that the Scotland Act 1998 spoke of, but I appreciate that that is not a view that is shared; it was not shared by the commission of which I was a member. There is a clear consensus that there should be a further review of councils' decisions on school closures. The independent referral mechanism is one way of doing that.

From my perspective, it does not really matter, as long as there is clarity about what either ministers or the referral body are doing—which is reviewing the procedural competence of councils' decisions in the sense of whether there was adequate evidence and whether that evidence was properly weighed. Whether that is done by an independent body is not so important, provided that there is clarity and that, because of that clarity, everybody who is involved in the process is confident that decisions have been taken properly.

Eileen Prior: I simply echo what Mr Burr has said. There is in various aspects of our civil society a well-established system of independent bodies reviewing processes and reviewing whether everything has been done as it should have been done. I do not see any problem with that.

I return to the point that the decision should be a local authority decision and, if the process needs to be reviewed, it should be reviewed independently. It should not be a political decision.

Sandy Longmuir: I think that we are all pretty much in agreement.

The Convener: You do not have to add anything, Sandy; it is not absolutely necessary.

Sandy Longmuir: I would just like to say the same thing. There are so many aspects in public life. Even when a simple freedom of information request is refused by a council, the person who submitted it has the right to go to appeal. With a planning application, people have the right to access to a reporter. The approach is accepted in public life, and it is all about transparency. It is not about who is appointed, but about how they act when they are appointed. It is all about their taking the information that is presented to them.

We accept that some parents who are trying to hang on until the last minute will ask for call-ins on quite spurious matters, but they can quite easily be disregarded. There is a sifting mechanism to find out the cases that should be brought to an appeals process.

Neil Bibby: You said that a right of appeal is quite normal. Do the panel, in particular the local authorities, believe that the decision of an independent review mechanism should be final, or should local authorities be able to appeal what the independent review body has decided?

Sandy Longmuir: I am not a lawyer, but I think that it would be difficult to create a mechanism whereby there could not be an appeal to the Court of Session. It would be full and final in that the local authority could not go to ministers or wherever, but I think that there would always be access under the Wednesbury rules. If somebody had acted unreasonably, a local authority could appeal even an appeal panel decision.

Malcolm Burr: In the interests of all, there is that right of appeal to the Court of Session, but such appeals should be only on points of law, in order that the process can be concluded in a reasonable time.

Sandy Longmuir: Yes—absolutely.

Neil Bibby: If an independent review is introduced and it reviews decisions, why will the Scottish ministers need to be involved in the process at all?

The Convener: I think that the answer is quite clear, but would anyone like to respond to that? Cleland Sneddon?

Neil Bibby: You mentioned earlier the difficulty that decisions could be seen as political.

Cleland Sneddon: I do not want to repeat myself ad nauseum, but I am clear that the issue is how this is articulated. Mr Longmuir mentioned that certain spurious grounds for appeal can be disregarded. It is important to set a reasonably high bar, and that comes from the earlier part of the process, where there will be a closer relationship between Education Scotland and the local authority to ensure that what goes into the public domain as part of the proposal is as robust as possible, that the consultation is carried out as robustly as possible and that, ultimately, the decision that the council makes is as well informed as possible.

If that is achieved, there will need to be a significant step up to occasion a referral to ministers. Very few cases should reach the far stage at which ministers accept that a call-in is due—rather than reverting the case back to the local authority to address matters that ministers believe to be outstanding— and the case goes to an independent referral mechanism. I might have the figures wrong, but I think that, so far, only nine out of 85 call-ins have been refused. The greater emphasis on the diligence around the earlier part of the process should reduce that figure further. I would expect only a handful to go on to an independent referral mechanism; not all potential requests for appeal will go straight to the independent referral mechanism.

10:45

The Convener: With all due respect, Mr Bibby's question was: if there is an independent review panel, why do ministers have to be involved at all? You have explained the process and how it would be used rarely, but what is the point of ministerial involvement if there is an independent review panel?

Cleland Sneddon: Again, to go back to what I understand is being proposed, the ability to return a proposal to the local authority so that it can try to address the situation before a formal appeal is referred to an independent review mechanism means that very few proposals would get to that point in the process. I therefore think that there is a role for Scottish Government officials to work with local authorities to ensure that outstanding matters that can be cleared up relatively straightforwardly are not referred further on to use up time in an independent review mechanism.

Leslie Manson: The public always view a sequence of sifts or considerations as a more rigorous and thorough way of considering cases. Parents and communities will inevitably go to their national politician anyway. After all, you are the lawmakers, so cases are going to come your way one way or another. It therefore makes sense to introduce the additional sift.

I cannot remember the actual numbers but I think that, of the 85 closure proposals, 20 or 30 or so were called in—that is one sift—and a further nine were turned down. A series of sifts is a good thing, and cases will come to the national politicians anyway, so they should be part of the sift.

The Convener: To contradict the question that I just asked, if there was no Government involvement and decisions were all left to the independent review panel, someone would have to decide what got called in, and the people who called in a proposal would also have to review it. Is that not the problem? Is that not why ministers have to be involved? If ministers call in a proposal and then a separate independent review body makes the decision, I presume that that separates out the decision-making process.

Cleland Sneddon *indicated agreement.*

Malcolm Burr *indicated agreement.*

Sandy Longmuir *indicated agreement.*

Eileen Prior *indicated agreement.*

Leslie Manson *indicated agreement.*

The Convener: Let us move on. I am concerned about time and we have a few more areas to cover.

Liam McArthur: I will tee up Malcolm Burr to answer this question. The ADES evidence says specifically about call-ins that

"It is important that ministers' thinking is as transparent and well documented as that of councils as this avoids perceptions of political prejudice."

Notwithstanding what has been said about providing up-front support to ensure that the process operates as transparently and smoothly as possible, is there not a risk that there is no downside to a minister calling in a case because the minister does not have to adjudicate it? If we have an independent panel that has the expertise to adjudicate, would it not be in a position to determine whether there was a *prima facie* case and to call in that case once all the sifts, which we all agree are a sensible way of progressing, had been completed?

Malcolm Burr: That is an interesting point. Paragraph 38 of the Government's response to the consultation says:

"However, the cases which have been called-in, which would be expected to be the most difficult cases, will continue to require to be called-in",

and paragraph 44 says that the review body would look at cases once they had been called in by ministers. Liam McArthur's point is important. Just as there must be clarity about what the review body is to do, there must also be clarity around the

decision-making process that ministers follow when calling in proposals in the first place. If that process is not sufficiently clear, there will be a risk of dispute and even legal action.

I suppose that there is an argument that the review body could consider the whole call-in process, but that would probably take us down an unhelpful route. There are two stages to the process, and I think that all that councils would ask is that the criteria for decisions to call in and what the review body would do are absolutely clear.

Clare Adamson (Central Scotland) (SNP): I will ask about the proposal to expand Education Scotland's role in the process. Given that Education Scotland already has a statutory duty to advise ministers, why is a specific duty to advise on school closures required?

Cleland Sneddon: I have mentioned that a couple of times. By its nature, the process of evaluating a case's merits, and particularly its educational benefits, is largely subjective. Someone said to me recently that it is not like measuring the length of a piece of wood. We are looking to people with the appropriate credentials and the right professional knowledge and background to make an assessment and judgment.

Unfortunately, in the emotion that comes out when a proposal is being consulted on, our communities quite often spend literally thousands of hours trying to gather evidence to present on why a proposal does not demonstrate education benefit, while, on the authority side, education professionals present the case that it does. Ultimately, neither side will batter the other down by weight of opinion or rational logic. Communities look for someone independent to make an assessment on their behalf and give them confidence that what is said or proposed will deliver the benefits that are expected to be realised, or to say that, unfortunately, the proposal does not stack up.

Education Scotland appears to be uniquely placed to provide that role, but the proposal still comes with a series of caveats. Staff in Education Scotland who would be involved in the process would still apply their subjective and professional opinion, which would still be subject to challenge. The opinions of Education Scotland cannot in themselves be the subject of further appeal, otherwise there would be appeal on appeal on appeal.

I am quite encouraged by what I heard last Monday from an Education Scotland colleague, who was talking about their early thoughts on how they would deliver that role. Education Scotland has capacity issues and there may be a cost implication, but it is uniquely placed to provide an

independent and individual assessment that would reassure communities, feed back to local authorities and provide guidance to ministers in considering the merits of a case.

Leslie Manson: There should be the sharp focus on educational benefit that there currently is. I am not sure whether I am pre-empting a subsequent question—by the silence, apparently I am not.

The Convener: It is not for me to say what members might or might not ask about, but if you want to answer a question in a specific way, you should go ahead.

Leslie Manson: When there is the sharp focus on educational benefit, which most professional educators would agree carries a level of subjectivity, it will be vital that Education Scotland plays a role in the process. The professionals in what was formerly known as Her Majesty's Inspectorate of Education are held in high regard by people across the educational community of Scotland and, I believe, by parents as well. Their role will be critical in evaluating educational benefit. We are talking about one school being better or poorer than another school.

However, the role of those professionals does not come without problems. Members of the committee may be aware that, in these post-Crerar review times of reduced scrutiny, the evaluations by inspectors and the reports that are issued for schools are less detailed than they were, and it has become quite difficult to compare one school against another just from the inspection reports, as we are talking about quite broad bands of quality that are described.

A potential problem with deploying Education Scotland expertise is that you still do not have an instrument that can objectively compare the quality of one school with that of another as accurately as the legislation seems to demand. One could also argue that, if Education Scotland's role is also to support the production of a council's educational benefits statement, this is another instance of a body being asked to help to produce a policy statement, or at least an evaluation statement, and then subsequently advising ministers on its merit.

Although Education Scotland's involvement is inevitable and would be welcomed, it has to be treated carefully. Indeed, I think that there will have to be some Chinese walls in the organisation to ensure that the individuals who are engaged in support roles are not those who subsequently advise ministers on the merits of a case.

Malcolm Burr: I echo those comments. Procedural safeguards will have to be put in place to protect Education Scotland's independence in its multiple roles.

Clare Adamson's quite subtle question was about whether Education Scotland's assistance is actually required. I do not think that it is required, but it is probably helpful. Of course, ministers need to be confident in their decision making and will therefore need advice. I am not qualified to say whether that advice is best taken from their civil servants or Education Scotland, but if a community or an objector says that a council has gone wrong educationally ministers will certainly need help and advice to evaluate the arguments. As Mr Manson has said, Education Scotland's presence is inevitable and probably to be welcomed but there must be procedural safeguards around its involvement.

Eileen Prior: Parents' view of Education Scotland's role is very positive, with the health warning that we are a bit concerned about the slightly cut-and-paste nature of reports. However, as we have said in our submission, it is not independent. We might like to talk about it as being independent, but we have to be absolutely clear that it is not and there must be some clear dividing lines with regard to roles and functions. How that might be organised, I do not know, although I acknowledge Mr Manson's point about Chinese walls.

Given that the network of current and former folk in what was the inspectorate and what is now Education Scotland is wide and to be found almost everywhere you go in Scottish education, I have a wee bit of a reservation and hope that folk do not assume an independence that is not there.

Sandy Longmuir: Although parents with whom we communicate generally have great respect for Education Scotland and indeed will recognise their school in most of its inspection reports, we would say that it has not lived up to what was expected of it in the 2010 act. I am not sure what the exact reasons for that might be; in addition to a certain cut-and-paste element to the individual school reports produced under the act, Education Scotland seems reluctant to engage after the fact and after it has done its report. The fact is that proposals tend to develop throughout a consultation process and the ones that end up being voted on will not necessarily be exactly the same as those in relation to which Education Scotland inspected the schools. As I have said, it seems reluctant to come back into the process and it would be helpful if the bill could give it a role at that end of things.

Clare Adamson: In his submission, Mr Sneddon says that it is "critical" that the commission's recommendation 20 is accepted. However, the Scottish Government has rejected that proposal, saying that

"if implemented, this recommendation would weaken the central principle of the 2010 Act, that a local authority must

be able to demonstrate educational benefits to children affected by a school closure."

Why is it critical for recommendation 20 to be accepted?

11:00

Cleland Sneddon: That is probably the question to which Mr Manson alluded. Setting aside the argument that the Convention of Scottish Local Authorities will put forward about a perceived joint agreement to enter into the commission process and abide by its findings, that issue is core. It goes back to the reasons for considering educational benefit. I saw in the papers the suggestion that considering how an authority uses its resources and the impact on all the children would be an argument that would be used to justify removing resources from rural communities generally. I do not hold with that at all.

I will give an example. I recently met a secondary school parent council that was concerned about the level of teaching resources available to the school and the impact on its subject choices. I was asked why the authority was unable to provide the expected level of staffing resources in the school, given that other authorities were able to do so. My straightforward answer was that, for an equivalent population, an urban authority reasonably close to me runs 20 primary schools while I run 78, some of which have only three, four, six or eight pupils.

As others have mentioned, it is extremely difficult to compare schools directly, particularly when we are looking at Education Scotland reports that might be five or six years old. The quality of the relationship and quality of the teaching staff are the biggest determinants of the quality of a child's education. However, in schools with only one or two teachers, if one staff member leaves—if they move to another area, for example—the quality of education can change significantly.

To magnify small-scale educational benefits falsely, as the existing legislation has often prompted authorities to do, is not helpful; it is divisive and means that communities and authorities are more often in confrontation. A much more holistic view of how we use our resources to benefit all children is needed. Authorities such as mine have very few schools that are not rural, so it is not a case of robbing Peter to pay Paul.

Clare Adamson: Given the proposals to expand Education Scotland's role, what interaction, if any, do you foresee that body having with the school closure review body?

Eileen Prior: I do not see it having any role other than simply providing documentation. Any

review body must operate independently, so it would have no advisory role. Its role would be simply to provide required documents and evidence.

Malcolm Burr: Procedurally, the review body will first look at whether the process has been correctly followed and whether there is sufficient evidence to show that the merits of the case have been made, in the sense that questions have been answered, that the considerations are relevant and so on. I cannot imagine the review body needing further specialist advice on educational matters.

Neil Bibby: If Education Scotland is preparing a statement but is also advising the review body, surely that would be a conflict of interest.

Malcolm Burr: Potentially, yes. We covered that issue in an earlier answer. Some thought must be given to the procedures, in order to protect Education Scotland and everyone else involved.

Liam McArthur: I was interested in Sandy Longmuir's comment about Education Scotland's unwillingness to come back in later on in the process. Leslie Manson mentioned that a council always needs to have the status quo as an option in its considerations and also referred to a status quo-plus option. In order to deliver a status quo-plus option, will Education Scotland's support and advice on that not be critical?

Leslie Manson: In my view, the likelihood of the status quo being retained is more to do with the place of a school in the wider community and its role as a community asset that brings people together by virtue of the activities that take place there and the accommodation that is to be found there. It is those community arguments that are most likely to prevail in retaining the status quo, rather than the notion that every other potential receiving school is a poor school.

It is not my experience that a single authority has a huge variation across its schools. As Graham Donaldson loves to say, the variation in educational provision is greater within schools than across schools. I would issue one caveat to that, to reiterate the point that Cleland Sneddon made. In very small schools—rural schools are predominantly small schools—the teaching workforce is the single key determinant of quality. With only two or three teachers, each teacher sees young children for two or three years, and if you have a poor teacher for two or three years—believe me, there are some poor teachers—you will get poor-quality education and any of the neighbouring receiving schools would probably be an improvement.

I cannot stress enough how significant the consideration of recommendation 20 is for educational professionals. If you take five parents

from the same school catchment area and ask them what they value about their school, you will get five different answers. One will say that it is attainment in English and maths, the next will say that it is the expertise of the school sports teams and the Christmas concert, and others will talk about class sizes, or about how their child with additional support needs is wonderfully integrated. There will be so many different descriptions of quality that it will be virtually impossible to form an objective comparison of the quality of that school with the quality of neighbouring schools.

Liam McArthur: I should have declared an interest as the parent of a child at a school under threat of closure—it was two children, but now it is just one child. For the avoidance of doubt, I put that on the record, and I echo Leslie Manson's comments about the importance of the quality of teaching and the wider community function of schools.

In relation to recommendation 20, is there any way, in your view, that financial considerations can be separated from the process of arriving at a decision on educational benefit?

Malcolm Burr: The commission of which I was a member debated that long and hard. It was one of our more difficult decisions. On the financial point, we took into account the fact that councils have to strike a balance and that they are elected politically to make difficult decisions about the allocation of resources, and schools legitimately form part of that consideration. However, the commission was clear that the primary reason for considering school closures must be about educational quality—not benefit, but quality.

That that should be the primary factor is more than just a subtlety. As has been eloquently said, demonstrating educational benefit can be hard. In an area such as mine in Orkney, pupils are usually transferring from a good or very good school to another good or very good school, and in inspection terms one is looking at such things as peer group interaction and supported learning among pupils, simply because numbers are so small. Is that a better educational environment? I am certainly not qualified to say, but it is a better educational social environment, and an authority should have to show that it has primarily considered those factors.

To return to your question, finance has to be a factor in today's climate, but it should not be the primary factor.

Sandy Longmuir: No matter what anybody says, finance has always been considered. Of all the proposals that I have been involved in, and there have been well over 100, I cannot think of one in which finance was not critical to the proposal paper. To say that it is not involved,

never has been or would not be in the future is simply wrong.

On educational benefit, the figures that are out today show that Scotland and the United Kingdom are generally falling further and further behind, or at least not keeping up with, other countries in Europe and Asia in how we develop education. The Standards in Scotland's Schools etc Act 2000 introduced the requirement that any action that the Scottish ministers and local authorities take should improve education. I take on board the point that, for some schools and some proposals, the benefit may be marginal, whether it is the development of education or the provision of a very similar standard of education. In a lot of instances that may be the case. However, we have seen proposals in which financial savings have been made predominantly by paying off teachers.

Seventy per cent of a primary school's staff are teaching staff. Even considering additional transport costs, the loss of revenue grant and so on, the financial savings generally come from the removal of staff, predominantly teachers. Are we saying that the removal of teachers produces an educational benefit? If so, surely, losing even more teachers would produce a greater educational benefit. Educational benefit has always been part of the consideration, and the Standards in Scotland's Schools etc Act 2000 would have to be repealed to change that.

Joan McAlpine (South Scotland) (SNP): My question follows on from Sandy Longmuir's point and concerns financial information on school closures. A lot of stakeholders supported the proposal to amend the 2010 act to make it clear that relevant financial information should be included in a school closure consultation, but some submissions from local authorities have suggested that they should not have to submit all the financial details because some of those could be, for example, commercially confidential. What is your view about the perceived difficulties in ensuring consistent treatment of financial information across different local authorities? How might those difficulties be resolved?

Cleland Sneddon: For the committee's purposes, I will give a quick illustration. There is a short answer to your question. A piece of work is being undertaken by the Scottish Government, COSLA and ADES to produce a standard financial template and guidance. I cannot think of a circumstance in which a local authority would not want to present full and accurate information. If there is commercial confidentiality, the information can still be included but it needs to be grouped in such a way that no confidence is breached. That work is well advanced and, once it is concluded, it will remove any arguments because there will be consistency and every local authority will present

its financial information in the same way. There is also an argument that, to avoid further disputes in other areas, a standard template for proposal documents in the wider sense could assist.

Malcolm Burr: I think that the way forward is a template that local authorities and everyone can agree presents the financial information as well and as consistently as possible. I cannot envisage circumstances in which commercial contracts would override the provision to parents and communities of information on the true cost of a school.

The area is complicated—I will not take up the committee's time with the detail—and it is different for each local authority. My local authority is a beneficiary of the floor mechanism. If we were to lose grant-aided expenditure for a rural school, that would affect my council differently from how it would affect a council that is not a beneficiary of the floor mechanism, and that has to be factored in. There will always be comments on the template, but the way forward is an agreed and consistent mechanism and there is a means for producing that.

Sandy Longmuir: We have not seen the template, but the comments that we have read about it suggest that it seems to be a good attempt at getting something that we would agree to. Among the comments from people who have seen the template, one of the comments in response to the consultation was that things such as redundancy costs should not be included because they come from a central pool. That typifies the mindset that we come up against all the time. That comment came from the same authority that said that the receiving school would require two extra teachers but they would not cost anything because they came from a central pool. Because the authority had free teachers, it did not include them in the cost of the closure. That is the kind of thing that we come up against all the time. We need a standard template that removes that kind of nonsense from the process.

11:15

Joan McAlpine: I take it from what you are saying that a lot of the financial information that was provided in the past was inadequate.

Sandy Longmuir: Absolutely. The single biggest failing that we have come across is in the financial arguments that have been made.

It is interesting that local authorities have been saying in the past few weeks that they have had to embellish the education argument—I am not sure if that phrase was used—because the onus is on them to show an educational benefit that they cannot really show. Therefore, they have had to go further, which has brought in contention.

There is also an element of that in the financial arguments. Councils have to show a saving. Sometimes there has been a lack of care and basic mistakes have been made. In one case in Roy Bridge in Highland, a column of figures had not been added up correctly. It took us six months to get the council to agree that the figures did not add up. Any nine-year-old kid with a pocket calculator could have added up the numbers and seen that the figure was wrong, but the council simply would not admit it. We see more errors in that area than in anything else.

Liam McArthur: Cleland Sneddon talked about COSLA, ADES and the Scottish Government agreeing the template. I assume that the network will be invited to comment before the template is concluded and agreed. Is that a fair assumption?

Cleland Sneddon: I am not part of that piece of work. I would assume that appropriate stakeholders, which might include the network, would be consulted—it would be subject to wider consultation. I know that a piece of work was done, which had limited circulation, and some comments came in from various authorities. It is in all our interests to have the most robust template. As I said earlier, it might be a good blueprint to have a wider template that includes the full presentation of information, not just financial information.

The Convener: Can you confirm that, Leslie, given that you represent ADES?

Leslie Manson: Yes—although like Cleland Sneddon, I do not know what COSLA's intentions are. I have seen the famous template; it is starting to assume some spy connotations. It is just a series of headings that would require each council to separate out the known cost of any proposal and set them out in a matrix. That way, people would be familiar with the context and would see that there was comparability from one school to another and from one authority to another. It is just to regularise things.

I have a background in maths, so I can count, but when it comes to some of the byzantine calculations on grant-aided expenditure in particular and how they relate to the provision of rural schools, I think that there are only two people on the planet who understand them and one of them is sitting on my right.

From discussions that I have had across ADES, I do not believe that education authorities have acted in anything other than good faith. The whole process has led to a wider and deeper understanding. It is not complete by any means; we still have some way to go to understand GAE.

No one would want to try to fox or mislead the public about something as objective as numbers. However, all councils present their accounts in

different ways, so they are not always clear to the educationists who are leading on these proposals. We do not always understand or get the information from our finance departments. They do not always know that there is a problem that we need the solution to.

Only good will come out of standardisation. I believe that there will be more transparency and better understanding in future.

Colin Beattie (Midlothian North and Musselburgh) (SNP): One area in which there does not seem to be unanimity is the question of the five-year moratorium, whereby a council would not be able to revisit for five years any decision on a closure. I would be interested to hear the panel's comments on that.

Leslie Manson: I have the pleasure of living and working in the community where I was born. I have direct experience of closing and amalgamating schools. I know what it feels like, because I have done it over a number of years. Even before the moratorium I was engaged in some similar proposals, one of which relates to Liam McArthur's personal circumstances.

I assure you that the angst, fear and upset caused to communities by a proposal are well known to me and—I dare say—most of my professional colleagues. It is not something that we would wish to visit lightly on any community, any parent group or, for that matter, any school; it is very much a matter of last resort. It destabilises a community; ironically, it also brings a community together. If you want to bring together a disparate community, all you have to do is threaten their school and they will gel very quickly. All the same, you cannot impose on your neighbours and members of the community a constant merry-go-round of closure proposals, because that would be inhumane.

I understand that the intention behind the moratorium was to ensure that no single council made the same proposal about the same school during its lifetime and that only a fresh council could reconsider any proposal on a specific school. Nevertheless, five years is a long time for a small school. We could be talking about a school with three children from two families. What happens if the family with two children leave? The situation might be completely unsustainable and in no one's best interests. The family that is left in the area might insist that the school be kept open for the one child, even though they might get a much better educational experience 3 miles or 5 miles down the road. To saddle a child, a family or indeed an education authority with that as an untouchable scenario—

The Convener: I am sorry but I must interrupt, because I am slightly puzzled by the latter parts of

your response. The Scottish Government proposal makes it quite clear that, in exceptional circumstances, the position can be reviewed earlier than the five years. If the exceptional circumstances that you have suggested can be dealt with, I do not see the problem that you are painting.

Leslie Manson: In that case, I will refer the question to one of my colleagues.

Sandy Longmuir: I absolutely agree. The provision allows for such exceptional circumstances. However, schools have been threatened repeatedly—indeed, some have been threatened three or four times in 10 years—and Leslie Manson is right to say that the situation is inhumane and destabilising. Eventually, people who are passionate about their community and school get battle-weary and simply give up.

Again, we do not want to be overly prescriptive and say that a school that everyone has left must be kept open. Cabrach, for example, was repeatedly threatened with closure; because of a radon gas issue, the roll had dropped to a remarkably low level. As we would have considered such circumstances to be exceptional, we would not have stood in the way of the council's closing the school. Nevertheless, from our experience of schools that have been repeatedly threatened with closure, schools need to be left with some kind of stability and assurance. For example, the five-year moratorium on Inveravon in Moray has just ended, and the whole community continually feels that it will always be first in line and next on the list. Despite the fact that the school is fantastic and that HMIE report after HMIE report has been exceptional, a number of parents in the catchment area simply refuse to send their children to it, regardless of how exceptional it is, because of the perception that it will be closed at the next possible opportunity.

Eileen Prior: For exactly that reason, such threats become a self-fulfilling prophecy. Parents say, "Well, I'm not going to send my kids there because it's going to close in three, four or five years and their education will be disrupted. I'll just make the decision now"; as a result, the school loses not only one child but the whole family and ends up with no kids at all. A five-year moratorium is a sound plan.

Malcolm Burr: I feel that five years is simply too long. My council's submission recommends three years, because there can be substantial changes to a school in that length of time. A competent council would look at that point in time and at the number of zero to five-year-olds in the population. In my area one school was left with four pupils, all of whom were placing requests, and there was no one from the catchment area and no one coming

up. The question could be asked whether that is truly a local school. A five-year moratorium is a little bit too long, given the current financial circumstances and the radical changes that can happen with rolls in very small schools. However, I appreciate that there should be some provision for exceptional circumstances.

The Convener: Colin Beattie has a supplementary question; it will be the final one, Colin, if you do not mind.

Colin Beattie: We have talked about significant changes. Would changes in financial circumstances be valid? Some say yes and some say no. If they would be valid, would a reduction in public sector funding be considered to be a significant reason to revisit?

Cleland Sneddon: Yes. If local authorities in Scotland experience the reductions in grant that our colleagues down south have experienced, and there is very little run-in time, the entire local government budget will inevitably come under scrutiny. To tie a bow around approximately half of a local authority's expenditure and say that it cannot be touched impacts disproportionately on care for our elderly people, our children and family services, our roads infrastructure, and so on. It is simply an unacceptable level of disproportionate pressure on part of the council's budget.

We need to be clear about what we mean by exceptional circumstances. If the wording is left as broad and woolly as "in exceptional circumstances", that will give rise to the potential manipulation of, or challenge to, those words. We should be quite clear about what the exceptional circumstances are, so that we do not get into a broad argument about whether they apply.

I have one quick point to add to the comments about the exceptional circumstances that would have to be in place. Our communities cannot be exposed to being battered down by repetitive consultations to such an extent that they are always ready and ripe for a school closure. Equally, we must recognise that most of the schools that are being considered for a school merger or closure, whatever term we want to use, are being considered because of their current roll and roll projections. The presence of a school is not necessarily enough to prevent a community's decline or changes in its make-up, but many communities that do not have a school are expanding and thriving. We need to come to a much broader understanding of what makes a community and where a school sits within it as one of a number of community assets. We also need clarity around what exceptional circumstances are.

The Convener: I should really move on, unless Sandy Longmuir can be extremely brief.

Sandy Longmuir: What are we talking about here? The question about the financial aspect sounded like it is make or break for Scotland's financial future. We have already agreed that only a small number of schools will go to call-in; we are talking about one, two or three schools a year, or perhaps even fewer, that could be reprieved from closure. We are not talking about a make-or-break situation for council finances.

The Convener: Thank you. A number of questions are left; I will try to squeeze them in in two minutes.

Liam McArthur: In Orkney, as Leslie Manson will know, a secondary department has been mothballed, as has another school on another island. Is the panel satisfied that the rules around mothballing and where we would mothball as opposed to closing a school are satisfactorily understood, not least in terms of what it would take to trigger a de-mothballing? Is mothballing considered as a soft option compared to closure?

Leslie Manson: As Liam McArthur said, we have two schools that are mothballed. Parents would much rather have a school open, but they prefer mothballing to the school definitively being closed. It is relatively easy for the authority to reopen a mothballed school if pupil numbers demand it, and it also offers the community hope in that, if pupils move in, the school is there for the future.

11:30

The Convener: Is that a genuine view? It seems odd. I take Liam McArthur's point. Is that an option that councils could use to get round the purpose of the 2010 act?

Leslie Manson: I dare say that the option could be taken cynically, but our council has articulated the conditions under which the school would reopen, and it has done so in numerical terms. It is a logistical combination of a number of pupils coming from a number of families who think that it would be viable and preferable to reopen the school, so there is an objective benchmark that the community is aware of and professes itself to be happy with.

Sandy Longmuir: It has happened. The school at Altnaharra in Highland reopened after a period of mothballing. That was due to economic development; I think that a logging plant was opened in the area. The nearest school was about 27 miles away. One of the island schools in Shetland was also mothballed and it reopened when people moved to the island.

The option should be there. It might depend on who uses it. There is a perception that, in some cases, it might be used to get round the 2010 act,

but we are reassured by people such as Leslie Manson, who are using it in an open and honest way.

Cleland Sneddon: I will be very brief—

The Convener: Please be even quicker than that, if you can manage it.

Cleland Sneddon: Okay. I had a school that was mothballed for two years because it had no pupils. Two sets of parents approached me as they wanted to enrol four children, and the request met the criteria. I had some serious discussions about the benefits for their children of our reopening the school, but they were adamant that we were going to do that. We eventually reopened it, so I now have another school with four pupils in it. I do not think that the option is a way round the 2010 act. It is a reality. That was part way through the moratorium, which shows the impact.

The Convener: Thank you. The final question comes from Neil Bibby.

Neil Bibby: Are there likely to be any cost implications for your organisations associated with the Scottish Government's proposed amendments to the 2010 act?

The Convener: I ask each of the panellists to respond.

Cleland Sneddon: There are no obvious implications.

Leslie Manson: Not at the moment.

Malcolm Burr: There are none that are immediately obvious.

Eileen Prior: No.

Sandy Longmuir: No.

The Convener: That was painless.

Thank you all very much for coming along today. The area that we have discussed is an important aspect of the Children and Young People (Scotland) Bill, which will eventually become an act, and we were keen to hear your views. Thank you for both the written submissions that we received and your time today.

11:32

Meeting suspended.

11:35

On resuming—

The Convener: I welcome to the meeting the Cabinet Secretary for Education and Lifelong Learning, Michael Russell, and the Scottish Government officials Clare Morley and Lorraine Stirling. I invite the cabinet secretary to make some opening remarks before we move to questions.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Thank you very much, convener.

I will start with an obvious statement: closing any school is a difficult decision and communities deserve—and, indeed, demand—clarity on how the process will operate and to have a voice in decision making. The whole purpose of the original legislation—and of our proposed amendments to it—was to create a level playing field so that, even if they did not agree, both sides felt that they had been fairly treated.

This is the second time in recent years that we have looked at the legislation on the issue in detail. The Schools (Consultation) (Scotland) Act 2010, which was passed unanimously by the Parliament, updated and strengthened consultation procedures for school closures and other significant proposals that affect schools. It was preceded by Murdo Fraser's proposed member's bill.

However, there were early concerns about how the act operated in rural areas and the commission on the delivery of rural education was set up jointly by the Scottish Government and the Convention of Scottish Local Authorities in 2011 to address those issues. The commission reported in April 2013 and the Government has accepted 37 of the commission's 38 recommendations. We intend to bring forward amendments at stage 2 to implement recommendations of the commission. In my view, those amendments will improve the consultation and determination process for school closures.

Although the commission concentrated on rural education, the majority of amendments will apply to the process for all school closure proposals. I am committed to continuous improvement in education in Scotland, and I am sure that that is the committee's position, too. I believe that a school estate that fits the needs of communities in the 21st century has a key part to play in that, but a school closure has a significant disruptive effect on pupils and communities, so I could not support a proposal going ahead without an expectation that that difficult process would lead to educational benefit. It is important to recognise that other factors, such as the impact that a school closure would have on a rural community, are also in play.

As the committee knows, over the summer the Government consulted on making amendments to the act in six policy areas: the presumption against closure of a rural school; the provision of financial information on closure proposals; the clarification and expansion of Education Scotland's role; the basis for determining school closure proposals; the establishment of an independent referral mechanism; and a five-year moratorium between closure proposals for the same school. The consultation received 226 responses. Respondents supported most aspects of the Government's proposals. Our response to the consultation, which was published on 18 November—and supplied to the convener and, I think, to committee members—confirmed that we planned to take all the proposals forward. I will be happy to talk about how we intend to do so.

I should stress that the amendments will be lodged in plenty of time for the committee's stage 2 consideration and that I am open to discussion about suggested improvements to amendments, as I always believe that that is a useful part of the parliamentary process.

The Convener: Thank you very much, cabinet secretary. We will move straight to questions, if you do not mind. We begin with Liz Smith.

Liz Smith: There has been a difference of opinion in the written submissions that we have received and in the evidence that we took earlier this morning about the use of the term "presumption". I think that we all agreed in 2010 that it was not necessary to put it into the legislation, but we have come across a situation that suggests that we might have got that wrong. Can you put on record exactly why you believe that clarity on that would improve the whole set-up?

Michael Russell: Yes. I think that there are two parts to that. The first is the opinion of the courts. We are here today for a variety of reasons, one of which is the court action that Comhairle nan Eilean Siar brought regarding closures in its area. The testing of legislation in court is a normal enough process—it is not frequent, but it happens. One thing that has arisen as a result of that court action is the belief of the courts that the presumption is not present in the legislation. All of us who voted on the Schools (Consultation) (Scotland) Bill believed that the presumption against closure was in it. It was not an issue that received significant attention during the debate on the bill, because it was believed that that presumption was in there. It is not in there, so we must make the position clearer, if that was the legislative intention of Parliament. First, we need to do that because it is the view of the courts that the presumption is not present in the legislation.

Secondly, the way in which closures happen and the idea behind them should be quite clear. What should happen is that local authorities should tell themselves, when considering rural school closures, that there are special, defined issues to be considered and they must ask themselves whether those issues have been properly considered before the closure process kicks in. We need to be clear about what those special issues are. I am entirely open to improving that process and we will bring forward our ideas about how that should happen. If the committee or other people have other ideas about how to improve the process, let us debate them.

Liz Smith: It has been put to us that there is a difference of opinion. On the one hand, it is argued that raising the bar will ensure that there is greater confidence in the system and will make people provide much more accurate information. The other opinion, which was put to us this morning, is that it is only possibly useful to have the presumption against closure in the legislation; in other words, it will not give any added value, or it would be difficult to distinguish what that added value is. So the committee has two very different opinions to consider. Is it correct that the Scottish Government believes that by putting a presumption against closure in the act with such clarity we will be able to be certain of more information that is directly relevant to any situation of potential closure?

Michael Russell: That may be an outcome, but I am not sure that it is the intention. I am long enough in the tooth to have marched for the right to have a presumption against rural school closures. That wording came not from the Scottish debate but from the debates about school closures in England in the 1990s. When there was an early round of school closures in Argyll—some of which I was involved in as a member of the education committee in 1999 to 2000, although I was not a member for Argyll then—one of the issues was about finding a way in which a presumption against closure could be made available in Scotland to prevent the closure of schools in those special circumstances.

Stating that we wanted to achieve that in the bill is one thing. How you achieve it is the second thing. What we thought we were doing was ensuring that local authorities must consider—I use the words “must consider” deliberately—a viable alternative to closure, the likely community impact, and the likely impact of changes in travelling arrangements. Those were seen as particularly important in rural school closures. That is the bit of the change that applies only to rural schools.

From the opinion of the courts, it does not look as if that is yet firmly enough within the bill, so we

are putting it in place and that is what will be there. The effect of that amendment may also be what Liz Smith has mentioned in relation to improved information, although that is dealt with in further amendments, particularly on financial information and on the issue of templates for financial information, where there has been a need to standardise that information.

I am probably teasing out two different things. One concerns the special circumstances that need to be considered before the process kicks in: the alternatives, the likely community impact, and the likely impact on travelling. Perhaps, further down the road, if a closure is to go ahead—presumably, it will be decided in some cases, having considered those circumstances, that a closure will not go ahead—improvements can be made to that information, particularly on those issues.

Liz Smith: Have you have changed your mind, as we have, since 2010—when we did not want that word in the act, although now we do—because there has been too much misinterpretation of the existing legislation?

Michael Russell: I am not sure. I was not the minister who took the bill through, so I am not entirely sure what happened at that stage. I do not think that minds have been changed. What was intended has not been achieved, so we want to make that change, assuming that the Parliament agrees. I am open to the issue of the words themselves. There were legal reasons why it seemed undesirable to have specific wording last time, and I have asked that the issue continue to be considered. It is quite difficult, because the interpretation of the words “presumption against closure” might be even more difficult, but I am open to that. Indeed, if those words are not in our amendment when we lodge it, I will be quite willing to say at that stage why they are not in there.

The Convener: Can I clarify an issue that was raised this morning? It was suggested that including a presumption against closure would raise an unrealistic expectation among members of the public. What is your view on that?

11:45

Michael Russell: I do not think that that is true. The presumption against closure says that the existence of rural schools is important and special because of what they provide educationally and to the community. Before a decision is taken to close a rural school, there should be a moment at which people say, “Stop. This is important and special. Are we to proceed?” That helps local authorities to make a decision, but nothing in the legislation says that schools do not close. As somebody who has been deeply involved in this issue for a long time, I have never said that every school is

sacrosanct. I believe that schools close themselves and that we get to a stage at which a community is too small. There have been occasions when communities have said, "The closure of the school that serves us is a necessary step for us to get better educational services." I can think of a couple of occasions on which that has happened.

What should not happen is that we subscribe to the fallacy that closing schools automatically leads to educational progress. To me, that seems axiomatic, though some people seem to believe it. In addition, we should be enormously sceptical about some of the figures that have been bandied around during school closure processes because they almost invariably turn out not to be true.

Liam McArthur: You have been fairly candid on the thinking that has been going on in Government around putting the presumption word into legislation. What we heard this morning is that, although the Parliament holds that presumption—it was clearly stated during a previous debate—it is expressed by the achievement of particular criteria in the process. Some on the earlier panel said that looking again at those criteria and ensuring that they give effect to that presumption may be a better way of achieving it than sticking the word in the legislation.

Michael Russell: That is distinctly possible. I do not want to rule out either of those approaches or even a hybrid approach. The drafting is not finished.

Equally, were we to come with a draft that the committee wished to see improved, I would be open—as I always am between stages 2 and 3—to discussing that further.

The Government's intention would be to be true to the Parliament's unanimous intention, were it to say that there should be expressed in legislation in some way a presumption against closure. That would in effect mean that rural schools have a special and important nature that requires them to be considered in a special way.

The Convener: Just for absolute clarity, what is the fundamental difference between having special regard to certain factors and having a presumption against closure?

Michael Russell: I would call a presumption a stronger measure, which underlies policy. Although I am happy to have that conversation with you, convener, my immediate reaction would be to say that presumption is a stronger thing, which expresses a policy intent. We would regard—and I would hope that Scotland regards—the provision of rural education as important, not just for educational reasons, though that is good enough, but in terms of the way in which we

sustain and support often fragile rural communities.

Jayne Baxter: The Court of Session found that the 2010 act requires the Scottish ministers to consider the merits of a school closure proposal as well as the process undertaken. All those responding to the consultation on amendments supported the consideration of merits by the Scottish ministers. What level of merit consideration would it be appropriate for ministers to pursue?

Michael Russell: Thank you for the question. This is an interesting and important part of the change. As the original 2010 act was negotiated and discussed with the various stakeholders, there was a strong view that it should not second-guess local authorities and their decision-making process. I hesitate to suggest that local authorities would have been anything but happy and would not have agreed to that. The idea was that they should not be second-guessed.

What the courts have said goes somewhat further than anybody had anticipated. I understand the concept of merit to be one that expresses what one would expect a reasonable decision to be—reasonable decision-making. A reasonable decision based upon the evidence in front of you would seem to be the limit of the merit argument. In other words, in addition to observing the process that has taken place, there should be some judgment as to whether reasonable people within a local authority would make that decision based upon the evidence that they have. I think that that is where the merit argument extends to. I do not see it extending any further than that. It is absolutely not the role of Government to retake that decision. In those circumstances, it would be the wrong thing to happen.

Jayne Baxter: Are you happy with the proposal to remit closure decisions back to the local authorities?

Michael Russell: Remitting a closure decision back to the local authority could be an effective tool that adds to the number of tools that are available, which are closure, no closure, and closure or no closure with conditions. It might therefore be a reasonable and useful thing to do, and I think that the commission is right in that regard.

You have given me an opportunity to stress that I am grateful to David Sutherland and the entire commission, which has done a very good job. We have accepted 37 out of 38 of their recommendations—virtually everything that was said—which is a high average. Some years ago, I served as a member of the Arbutnott commission, from which probably only one or two of our recommendations were accepted.

Neil Bibby: I am looking for some information on the independent referral mechanism proposals, cabinet secretary. Who will appoint members of the independent review body? To whom will they be accountable? How will you ensure political independence?

Michael Russell: I think that that issue will be much clearer for everybody when the amendments are published. We are still working on that idea.

There are a number of possibilities. We want the process to be simple, not expensive, transparent and open. Those are the principles that we are applying.

Broadly speaking, there are three choices. I will not commit myself to any of those choices now, because we still want to be absolutely confident that we have made the right choice. It will then be up to Mr Bibby or anybody else to propose amendments to suggest other choices. We can have a useful discussion about that.

In essence, we could put in place our own tribunal system, go for arbitration with the Scottish arbitration service, or perhaps find a cheaper and more effective hybrid of the two.

On accountability, I would expect the minister to appoint the key individual chair or whatever and to have a process for appointing anybody else who is involved. The process should be able to operate entirely independently and very simply; I do not see it involving vast numbers of lawyers or vast expense. Things should be reviewable, but only on points of law. That would require a review by the sheriff on a point of law, which is much simpler. I would like to avoid a rerun of the recent court case that left some schools sitting with insecurity for a very long time.

It would be helpful if two things happened at the final stage of the process: it was seen to be impartial, independent and non-political; and it was approachable on at least one occasion by schools or communities that are involved. To wrap all that up, I want a simple, transparent and clear process that does not take too long, is at arm's length from the Government, and gives the public confidence. That will be encapsulated in the final amendment that is lodged.

Neil Bibby: You mentioned cost. Will the body be paid? If so, by whom?

Michael Russell: I do not know that yet, but that is an option. If the labourer is worthy of his hire, you would not want me not to pay him for his work. If the body is paid, it will be paid in exactly the same way that people who sit on any independent body or tribunal are paid, but the people involved will not be accountable to ministers because of that payment.

Neil Bibby: If local authorities wished to appeal against the independent referral mechanism's decision would there be any opportunity for them to do that?

Michael Russell: As I have indicated, we should have a simple and clear process that does not run on for ever, so the intention at present is to have appeals on points of law only to the sheriff court.

Liam McArthur: Cabinet secretary, we heard quite a bit of support from across the first panel for a phased filtering process in the front-end support and advice to councils on issues that they may have in any closure programme, and I think that we can all understand that. At the back end of the process, the ability to appeal to an independent referral mechanism also commanded support. However, I am not sure that I entirely understand the rationale for ministers having a call-in power to refer a closure to the independent referral panel.

Why do we need that intervention from the minister, rather than the referral panel looking at the prima facie evidence and suggesting that the closure is one on which it requires to take a view? I say that not least because ADES emphasised in its submission the importance of ministers' thinking about call-in being transparent and well documented to avoid perceptions of political prejudice. Having gone to the trouble of setting up an independent referral panel, why would you still seek to have a call-in process to ministers, who will not ultimately make the decision?

Michael Russell: There are three parts to this. If you will allow me, I will work my way through them. First, one of the failures of the current legislation—I am sure that ADES and local authorities will have reflected on this—is that more proposals have been called in than anybody thought would be the case. Why is that? I do not think that it is a result of political interference, although that accusation has been made; I think that there are a number of reasons for it. The first step is to give Education Scotland a clearer role at that stage to advise both ministers and local authorities and to build communities' confidence in its impartiality. Proposed amendments deal with that part of the process, and I think that it is broadly agreed that we should do that.

Let us assume that that works. If it does, the number of call-ins will fall quite substantially. At the other end of the process, the number of call-ins that result in a closure decision that can be appealed will be commensurately smaller. We hope that those circumstances arise in only a very small number of cases.

Sitting in the middle is democratic accountability for the process of the legislation. The Parliament has passed the legislation and it wants to ensure,

through the duly elected Scottish Government, that priority is given to rural schools and that the school closure process is fair and takes place on a level playing field. Provided that there is clear enough guidance on the reasons for a call-in—we are now back to the process and merit issues—there is a democratic place for the minister, or for the Scottish ministers collectively.

Remember that the idea of the tribunal was not in the commission's report. I felt that to inject even further confidence in the process—and to remove the possibility of the accusation being made that the final decision was a political one—we should have the tribunal in place. If you were to take the minister out of that three-part process entirely, the democratic accountability would be missing and the way in which the balance is struck would be damaged.

It is open to Liam McArthur to lodge amendments to the Children and Young People (Scotland) Bill to amend the 2010 act. I will seriously think about Mr McArthur's suggestions—as I always do—because I can see where you are coming from. I still think that there is a place for such accountability and I want to preserve its place, but I am not saying that I will not think about the point that you have made, which is one that I have heard from one or two individuals.

Liam McArthur: I appreciate that response. The concern would be that, notwithstanding the assistance that is provided earlier in the process, which I hope will result in fewer cases progressing to the point of requiring to be considered for call-in, there is no disincentive on whoever is in the role of cabinet secretary to call in the proposed closure, knowing that the decision will then be taken by an independent referral panel. I cannot see that the process would necessarily satisfy the criterion of democratic legitimacy, because it would become a bit of a postbox exercise, which ultimately will inevitably lead to the independent referral panel having to sit and consider the closure decision.

Michael Russell: If you look at it in another way—it is perhaps important to remember this—the first decision to close is made by elected politicians and the second decision on the call-in will be made by an elected politician. We remove elected politicians from the process only at the end, when the final choice is being made. That is not an illogical way of looking at the process.

There are legal tests for a call-in decision. One of the issues that Comhairle nan Eilean Siar was involved in was the challenge to the decision to call in, as well as other decisions. Legal tests seem appropriate for a minister; we might not have those legal tests for an independent tribunal. I am willing to consider Liam McArthur's point, but I think that there are arguments for our proposal.

12:00

Clare Adamson: I would like to ask about the proposals to expand the role of Education Scotland. Given that Education Scotland already has a statutory duty to advise ministers, why is a specific duty to advise on school closures required?

Michael Russell: A specific duty is required because we are dealing with a range of issues to build confidence in the legislation and the process. COSLA has told me that local authorities wish to see a strengthening and clarification of the Education Scotland process. I want to see more confidence in all parties—there are a number of parties to decisions in the Education Scotland process. We want legislation that is even more transparent and appropriate, and advice is crucial to that, so in a sense I want to shine a spotlight on Education Scotland's role, so that it is able to provide advice to the best of its ability.

The number of cases coming through is not enormous, so this is not a huge additional burden, although obviously we will discuss with Education Scotland what resource is required. Education Scotland will be in a better position to be fair to everybody if we clarify it in the bill. Local authorities believe—and I think that they may be right—that if the time and effort spent by Education Scotland is increased and there is clarity, we will have fewer call-ins.

Clare Adamson: How will Education Scotland's independence and objectivity be maintained, given that it may have been given help to develop a case for a school closure and will then be in the position of writing a report on that to advise you? Witnesses this morning talked about Chinese walls in Education Scotland to keep that advice independent. Is that how you envisage the process?

Michael Russell: Education Scotland will not be involved in writing any individual educational benefit statements. That is not what it does. It will give advice about what a good educational benefit statement is; in other words, how clear it should be and the information that is required to be in it. It is not a player in each individual local authority decision, nor should it be.

If Chinese walls were necessary, they would be there, but there are two different roles, and Education Scotland does not fulfil the role that you asked about.

Clare Adamson: You have mentioned that you do not see the resource implications as being a significant burden at this stage, which is welcome. Do you envisage that there would be any interaction between Education Scotland and the school closures review body?

Michael Russell: I would expect there to be. I would expect the review body or the assessment body to have access to Education Scotland information. A question for the review body is what additional information it would wish, seek or could have. By the time a position is reached, a lot of information has been gone through. There are a lot of things involved that are thought through very carefully. The Scottish ministers will have had advice from Education Scotland and the local authority will know the education advice. If there are circumstances in which it is appropriate for that to continue, I see no bar to that.

I want the review body to be very transparent, so they should say what information they are seeking and what information they have had. Nothing in that process should be secret—not at that stage.

The Convener: You mentioned that you are trying to keep costs to an absolute minimum. Are there any resource implications for Education Scotland in taking on the additional duties?

Michael Russell: There will be small resource implications for Education Scotland, but I do not think that they are significant. I think that we are talking about one person or one and a half people, but we will discuss that with Education Scotland. It is not a significant matter.

Joan McAlpine: Good afternoon, cabinet secretary. I will ask about financial information in school closure proposals. Your amendments insist that local authorities give full information when making such decisions. In the consultation responses, some local authorities were unhappy about that. East Dunbartonshire Council said:

“There are a number of considerations that may not be appropriate to publish in the financial information. These include teachers’ pay information and land valuations, which are commercially sensitive.”

Will you respond to that?

Michael Russell: They would say that, wouldn’t they? The reality is that information about teachers’ pay can be seen on the national pay scales. It is not exactly a secret how much teachers are paid; in fact, it is published.

As for land valuations, I would expect that the local authority would want to be transparent. Obviously, if a public body owns an asset, it must be prepared to say how much it is worth. I therefore do not believe that what has been said is true.

What we need to get—and what the original act was intended to achieve—is absolute clarity and a level playing field. With this amendment, which has been unanimously accepted by COSLA and us, we are trying to ensure that there is a clear understanding of the finances. Knowing that he is

sitting behind me, I am absolutely certain that Sandy Longmuir will have told you something of the intricacies of financing rural schools. It is a complex area—the educational equivalent of the Schleswig-Holstein question, if you remember that—but some people understand it and it is important that it is set out simply so that a community can understand it. There has been what I would term spectacular bad practice in that regard as well as some unfortunate mistakes, and we need to ensure that things are made clear and simple and that local authorities and communities agree on them.

I also believe that the assumption that there is, in a sense, a pot of gold at the end of every school closure rainbow turns out to be untrue far more often than it turns out to be true. It is very important that people are told that, that they understand it and that we publish figures that reflect that reality. Most school closures do not save significant sums of money for local authorities; indeed, when set against the damage, particularly the intangible damage, that they can do in rural communities, they are, to be honest, simply not worth it.

On occasion, closures are necessary. To take a recent example, a building can be so badly damaged that it would be impossible to envisage its remaining open and the costs of keeping it open would be impossibly high to meet. In most cases, however, keeping a rural school open as well as endeavouring to rebuild a rural community—after all, they are two sides of the same coin—is the right strategy, particularly in areas where the population is falling. Indeed, I represent an area that has the worst performance in that regard. It is crucial that we keep people in rural Scotland and the fact is that closing services does not keep people in communities. We need to understand that complexity and the figures and projections that local authorities are working to and make all that information available, including the effect of GAE.

Joan McAlpine: Thank you very much for that answer—and you are quite right. When I asked the previous panel the same question, Mr Longmuir echoed some of the points that you have just made. Someone also mentioned that a template was being introduced to make financial information consistent. How is that work progressing and what are your aspirations in that respect?

Michael Russell: It is progressing well; the negotiations have been good. I am sure that when the template, which is largely for ourselves and local authorities, goes through we will be happy to make it widely available and the committee can judge it. The discussions have been positive. After

all, it is in everyone's interest to sort this matter out.

In a sense, this legislation has taught me, local authorities, those campaigning for schools and lots of other people lots of things, including the need for a clear way of expressing information about which we need no longer have endless disputes. Things are going well and I see no difficulty in letting the committee see the template at the appropriate time.

Colin Beattie: On the proposed moratorium before decisions on school closures can be revisited, the previous panel had diverse opinions on whether the moratorium should be three or five years, as proposed. Will it encourage stability or does it constitute interference with the local council?

Michael Russell: No—and I realise that that constitutes a difference of opinion with others.

A five-year period has been chosen deliberately because it means that, in political terms, a different council will come back to the matter. Of course, that might not be the case—everyone might get re-elected—but the fact is that a council will change over that period. As a result, there is a political dimension to the proposal.

In addition, there is a practical issue. I know of schools that have had more than one closure proposal, and it is a debilitating experience. It must be an educational disbenefit for those schools. Having got through a set of school closure proposals and been reprieved, to discover in only a year or 18 months that the issue is back on the agenda is simply not good educationally. It is entirely fair, therefore, to put a five-year moratorium in place, with the caveat that, in special circumstances—which it would be unwise to define too closely—the decision can be revisited. I give the example of a building that has a problem. If in two years it was discovered that the building had a fault that meant that it required to be replaced, that would be a legitimate special circumstance, and there will be many others.

The guarantee is therefore fair, and the timing is also right.

Colin Beattie: We also heard from the panel of witnesses the allegation that a major driving force behind some of the closures is financial. Would a significant change in financial circumstances, such as a reduction in public sector funding, be a valid reason to revisit a closure decision?

Michael Russell: The closure of a rural school must be decided on by considering the circumstances of that rural school first and foremost. In that reckoning, educational benefit is the key indicator for the pupils at the school. There will be a range of others, and the cost of keeping

the school open in certain special circumstances, and I have indicated one of them, will be part of the equation. At the overwhelming heart of the decision must be the interests of the children who attend the school and the community in which the school is set.

I go back to the issue of financial information. The concept that there is a pot of gold that can be released and applied elsewhere by closing one or 20 rural schools is usually a chimera.

Liam McArthur: I declared an interest in front of the previous panel of witnesses as the parent of a child who is at a school that was subject to a closure proposal. I certainly understand the effect that it has on the wider community and I recognise the purpose behind the five-year moratorium and how it relates to the transition between one council and another.

Any closure proposal will take account of the pipeline of children coming up through nurseries and pre-schools when the authority seeks to make a decision. When the child is five years old, parents might feel that they have a guarantee that there will be a school until their child gets into primary 3, 4 or 5, but there is a risk that at that point—which might be a pretty critical stage in their education—another closure proposal could be made. From experience, I understand the impact of that on staff, the wider community, and the children themselves, who somehow see it as being a failing on their part that their school is subject to a closure proposal.

I understand the difficulties in arriving at any number, but perhaps that five-year moratorium will not necessarily get the community or school out of the woods much more than it would if it were set at three or seven years.

Michael Russell: I would be happy to entertain a suggestion from Mr McArthur that the moratorium should be seven years; it is up to you. I thought that we were being moderately reasonable, but I am not joking about this: there is a logical argument that the extension of a school roll to a full school cohort, for example, might be the right way to go.

The other thing to say is that, if a community found itself with a catastrophic drop in numbers, that would strike me as a special circumstance. However, there is a grey area, and Mr McArthur points it out well. In some communities, the prospect of a closure can lead parents to think that they had better move their kids to another school. Local authorities sometimes factor that into their consideration. There will be attrition; some parents will simply take their children elsewhere.

Patterns change. If we look at commuting patterns—not in Mr McArthur's constituency, although I know that it happens in Shetland—we

can see that commuting from a rural area to a town every day is sometimes easier than having the children in a school in a rural community in which there might not be support structures. That is a material circumstance that a parent would want to consider.

12:15

I hope that a school's being able to provide stability by saying, "We're not going to close and we'll be open for five years" would create confidence among the community to endeavour to save the school. I have seen that happen—quite dramatically—in some circumstances. Parents of children who have been to rural schools have said that it acts as a wake-up call. People say, "Gosh! We think this is a great wee school, but we need to do more as a community to protect and support it, and to ensure that more children go to it", so there is an increase in numbers.

It would be interesting to do a piece of work on a sample of schools that have been threatened with closure in the past 10 years but have stayed open, in order to see whether rolls have risen or fallen. I suspect that, in many cases, rolls will have risen because there has been renewed interest in the school.

Finally—I know that I am imposing on you, convener—there is another issue with rural school closures. Some small accessible rural schools cater for special types of children, so there will be a high level of placing requests for those schools. Some parents find that a smaller school with smaller classes and better wraparound care is better for their children.

If we close accessible rural schools, we diminish choice in communities, and that choice is sometimes very important. For example, if individual children with support needs are finding it difficult to have their needs met in larger schools, having the choice in rural communities is the difference between success and failure for their families.

There is a complexity to the issue that needs to be understood.

Liam McArthur: On that point, I am not—for the avoidance of doubt—suggesting an extension of the moratorium from five to seven years. However, given the proposed five-year period, would you expect that it would need to be demonstrated that circumstances had changed materially from five years previously? If there had simply been a predictable trend and we revisited the proposal on the basis of circumstances that were all well understood five years ago, we would just go through the same process again.

Michael Russell: A local authority would be entitled to make a closure proposal without reference to previous proposals, but I am sure that the community would very quickly look at what it had done previously and say, "The council predicted this then, and that is what has happened."

I know of some rural schools that have survived for which one can look at the predictions that were made and think, "Thank goodness they survived", because the predictions were utterly wrong in terms of the community demography and the number of children. That has happened either because the community has woken up and done something about it, or because the projections simply did not add up even when they were made.

The Convener: I see that Liam McArthur has another question.

Liam McArthur: I am my own warm-up act.

The cabinet secretary mentioned earlier that the one recommendation from the commission that he is not prepared to accept is recommendation 20, and he hinted at the rationale behind that.

We heard from the first panel a concern about distinguishing between educational quality and educational benefit. In a sense, the latitude for trying to take proposals forward on the basis of safeguarding the quality of educational provision for children should be—and is—very much at the forefront of the thinking of officials and elected members at local level. However, without the bar being set that bit higher in terms of securing positive educational benefit, there is a risk that debates on closure proposals will continue to be very polarised, and it will therefore be very difficult to build a consensus around a way forward.

Michael Russell: We are leaving the bar where it is rather than raising or lowering it. Of course, I thought long and hard about the matter; recommendation 20 is the only one that I could not accept. It is the only recommendation on which the commission was split—it was not unanimous on the recommendation, which is interesting in itself.

I have seen a lot of school closure proposals over the years; members will know that I have a particular interest in and concern for this policy area, as do many rural members and those who have lived in rural communities for a long time. I have seen some pretty contentious debates, but most alarmingly I have seen highly questionable assertions about educational outcomes—for example, that curriculum for excellence cannot be delivered below a certain number of pupils. Such assertions have no educational validity at all. Equally, I have seen fears among some people that with a class of six, 10 or 12 there will be a strong educational disbenefit for children in smaller schools.

One of my key objectives is to cut through that type of information and to make it absolutely clear and without doubt that what is taking place will benefit the individual child. If that benefit cannot be proved, the decision will disadvantage that individual child and, by extension, the family and the entire community and so it should not be made.

That approach is absolutely central to how we see delivery of education. We should strive to ensure that benefit is always at the centre of our decision making. The discussion on this was difficult in the commission because, obviously, there were many differing opinions; I have come down clearly on the side of the minority report because I believe that it is right.

Liam McArthur: Someone referred to the chair of the commission's comment that there is often as much divergence of quality within a school as there is between schools and that, in securing the benefit that you mentioned, proposals to merge schools are often not necessarily the threat that they are perceived to be. Indeed, there are examples of mergers that have clearly delivered benefits, but there was a recognition that expressing such benefits ahead of time is not straightforward and, in fact, would be a challenge. You clearly believe that we should stick to our guns in this area.

Michael Russell: We assess a school's quality and educational advantage through inspections, and there is a set of indicators for a whole school. I accept that quality can differ between various parts of a school; indeed, we have seen attainment gaps affecting individual schools, never mind there being gaps between schools, although I am sure that members will be happy to note the programme for international student assessment—or PISA—results, which have been released this morning and show that we have further closed the attainment gap in Scotland.

You need a definition that works somewhere, and ours covers the whole school. If you assess the whole school and its contribution, you will clearly see any disbenefit to individual pupils in closing that school. Education Scotland will play a role in that. The argument that is made by the local authority will address that specific issue and people can then make a judgment on the matter. However, at the end of all this, parents and communities themselves will look at the decision. We need to help them with the right definitions, but they will be the judge of whether the decision brings benefit or disbenefit. After all, they will know what they are looking at.

Liam McArthur: In its evidence, ADES suggests that educational quality is at all times the prime motive in consideration of the school estate.

What role do financial criteria play in decisions to propose closure?

Michael Russell: I think that I made that clear in a previous answer. Educational benefit is the touchstone of the decision. Although financial considerations run below that, they should be specific to the school and should not be overwhelming.

The local authority will have financial views that will be relevant but, again, I counsel local authorities not to think that this is a way of solving a lot of problems. The real outcome of school closure processes is that they hardly ever produce the expected sums or savings.

Liam McArthur: Do you believe that financial criteria have a role to play?

Michael Russell: They are a subordinate standard; they are not the standard. Of course, a local authority is entitled to argue that financial criteria should be considered, but the reason for closing a school has to be educational benefit.

Liz Smith: People are concerned about the emphasis on educational benefit not because they are against it but because it is so hard to define. Apart from an inspection report, which is the main way of giving feedback to parents, what other criteria do you think parents would want in order to make a judgment about educational benefit and, therefore, to be able to define it?

Michael Russell: That is an interesting question. The local authority must say why an educational benefit will arise and must define it—I cannot define it for every school, and it would be wrong of me to do so. The local authority must say what the benefit is and must prove that that is the case because parents will want to look at that critically.

I will give you an example drawn at random from the school closures that I know about. If a small school had been absolutely outstanding in previous inspection reports and was one of the best schools in its local authority area or in Scotland, and if the proposal was that the benefit from that quality education could be increased by merging the school with a larger school whose inspection reports were not as good, that would raise a strong question in the minds of the parents and the committee about whether there would be educational benefit in doing that. If there were holes in the roof or some other enormous problem with the building, there could be an argument that we could improve the overall educational experience and benefit to every child by merging the schools. However, when such arguments do not exist, that will be a tough one for local authorities to sell, and they are the ones who must sell it because it is their proposal.

Liz Smith: The onus is on the local authorities.

Michael Russell: Absolutely.

Neil Bibby: In the previous evidence session, Eileen Prior called for clarity about what is defined as a rural school. Should there be a reclassification of rural schools? For example, I attended Kilbarchan primary school in Renfrewshire, and Kilbarchan is not necessarily seen as a rural area. That is perhaps down to historical reasons rather than post-war demographic changes. What is your response to Eileen Prior's suggestion?

Michael Russell: I have always thought of Kilbarchan as a rural place, and I am sure that you do, too.

There are anomalies, but the commission did not recommend a redefinition. The definition is complex and is applied according to a wider Scottish Government definition. Recommendation 37, which the Government has accepted, states:

"The current definition of a rural school should not be altered."

COSLA has accepted that, too. Recommendation 37 continues:

"The Scottish Government should carry out a narrow and restricted review in conjunction with local authorities to address any anomalies that arise from the current definition."

If you propose adding Kilbarchan primary school to that review, we will consider it. There are a number of anomalies that we could address, but the commission's unanimous view was that the definition should not be revisited.

Neil Bibby: Can you provide information on additional costs that are associated with implementation of the proposed amendments to the 2010 act?

Michael Russell: The financial memorandum will give you that information. We do not regard those costs as significant, but we will, of course, bring forward information on the proposed amendments.

The Convener: I will finish this session with a general question. Do you agree that school closures are just one of those things that are inherently controversial and that no legislation will ever remove that controversy?

Michael Russell: If I say yes to that, convener, the past hour and a half will have been in vain. I do not agree that that is true. As I said in the first sentence of my opening statement, school closures are always going to be difficult and contentious. However, I am an optimist and believe that it is possible for agreement to be reached. We have had some agreements and can get more of them, but if the legislation is not

working it is our job as legislators to make it work. We have advice from the courts on how that should be done, and the discussion that we have had today has been very positive and will lead to improvement. I am sure that Lorraine Stirling will take away the points that have been raised and that they will be considered in drafting the amendments. I make a commitment—as I have throughout the process—to be open to ideas from the committee as we do that. We are not here in vain and will keep working at it.

The Convener: I thank the cabinet secretary for coming along this morning and providing evidence on the proposed amendments to the Children and Young People (Scotland) Bill. I also thank his officials.

Subordinate Legislation

Fundable Bodies (Scotland) Order 2013 (SSI 2013/319)

The Convener: Our next meeting will be on 10 December, when we will take evidence on outdoor learning.

Meeting closed at 12:29.

12:29

The Convener: The last item on the agenda is consideration of the Fundable Bodies (Scotland) Order 2013. The order updates the list of bodies that may receive funding for their role in relation to further and higher education. Do members have any comments on the instrument?

Members: No.

The Convener: Does the committee agree to make no recommendation to Parliament on the instrument?

Members *indicated agreement.*

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