The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 2 June 2015

Session 4

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EDUCATION AND CULTURE COMMITTEE
14th Meeting 2015, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Siobhan McMahon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Chic Brodie (South Scotland) (SNP)
*Mark Griffin (Central Scotland) (Lab)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Alasdair Allan (Minister for Learning, Science and Scotland's Languages)
Tam Baillie (Scotland's Commissioner for Children and Young People)
Nico Juetten (Scotland's Commissioner for Children and Young People)
Pauline McIntyre (Scotland's Commissioner for Children and Young People)
Fiona McLeod (Minister for Children and Young People)
Philip Raines (Scottish Government)
Dennis Robertson (Aberdeenshire West) (SNP)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Education and Culture Committee

Tuesday 2 June 2015

[The Convener opened the meeting at 09:39]

Scotland's Commissioner for Children and Young People

The Convener (Stewart Maxwell): Good morning. I welcome everybody to the 14th meeting in 2015 of the Education and Culture Committee. I remind all those present to ensure that all electronic devices are switched off, as they sometimes interfere with the sound system. I am sure that you are aware of that.

Our first item is to take evidence from Scotland's Commissioner for Children and Young People. The commissioner has completed a mapping exercise that shows the scope of his new powers of investigation and he has submitted a detailed report to the committee for consideration. We will hear first from the Scottish Government about its expectation of the work that is involved for the commissioner's office as a result of the new powers; we will then speak to the commissioner and his staff.

I was going to say that I welcome the first panel but I am not sure that one person is a panel. Philip Raines is the acting head of children's rights and wellbeing in the Scottish Government. Good morning and thank you for attending the meeting. I will kick off the questions. How is the Government interpreting the scope or limits of the new powers that have been assigned to the commissioner under the Children and Young People (Scotland) Act 2014?

Philip Raines (Scottish Government): In a sense, our view has not changed since the bill was passed. The act is only a year old, and the thinking that went into it was set out in the key documents that were well rehearsed in front of you and many of your colleagues; it is there for all to see. The simplest way of putting it is that the result of all the debates about the best way of taking a rights-based approach to service delivery was a widespread recognition that embedding or hard-wiring it into the role of Scotland's Commissioner for Children and Young People through a revision of the Commissioner for Children and Young People (Scotland) Act 2003 would capture that aim, particularly in respect of the United Nations Convention on the Rights of the Child.

It has always been recognised that a rights-based landscape would be complex and that it would be challenging for the commissioner's office—and, indeed, all the complaints bodies—to work out whose role would be most appropriate in this respect, particularly when it came to duplication. However, we have recognised that having the office as a way of ensuring a comprehensive approach to dealing with—if you will—challenges that might be made with regard to children's rights is an approach that we and many stakeholders would value.

A theme that came up in the discussions during the passage of the 2014 act has emerged more strongly over the year and in the commissioner's report—indeed, I think that the subject was highlighted in the Scottish Public Sector Ombudsman's submission to the committee on the bill—is that there appears to be a significant issue around children and young people being part of the complaints landscape. It has been recognised that challenges have arisen in that respect and, in addition to the value that we continue to see in part 2 of the 2014 act, we feel that there is a benefit in having the commissioner's office help children and young people to make the best use of the existing complaints landscape. The other complaints bodies seem to have acknowledged that and, as I have said, I think that the point comes out strongly in the commissioner's report.

In response, therefore, to your question about the scope of the powers and the direction in which we wish the legislative duties to be taken, there is an added benefit in the role that the commissioner's office could play in what I would call enhanced signposting to support the existing complaints bodies.

The Convener: I am interested in your comment about signposting a young person to perhaps more appropriate places to take their case. I was going to use the word "gatekeeper", but I am not sure that it would be appropriate in this context. When we wrote to you at the time—I cannot remember whether it was you personally, Mr Raines; I do not think so—the Government wrote back, saying:

> "We would therefore not foresee there being a role for the Commissioner to have extensive, ongoing involvement in a case prior to local processes being exhausted".

How does what you have said about the role that the commissioner could play in the early stages of a case fit with what was said in the letter that you sent us either earlier in the year or last year?

Philip Raines: The key thing is to get involved in the processes. Once they kick in, it is absolutely right that they be allowed to proceed. Any confusion in that respect would make the landscape even more complicated.

That said, there seems to be an issue about awareness of those processes, how they are worked through and how we enable children and young people and, presumably, their families to get full value from them. Over the course of the year, it has become even more apparent that the commissioner's office can play a role in helping with that.

I do not necessarily think that that means getting involved in the processes themselves, and we would still hold to what was written to the committee at the time. It is a matter of appreciating and being more mindful of the work that goes on before that stage. It is in the nature of legislation and new duties that, as we get further into something, we begin to appreciate that some elements might require more consideration and thinking through. Indeed, additional value and benefits that were perhaps not wholly apparent at the time might come out of the duties. The ability to get into the complaints processes is worth acknowledging.

09:45

Chic Brodie (South Scotland) (SNP): Forgive me—I am new to this. I have read the report, and I think that it is very good, but I am concerned about what you have just said about the legislation and the need to understand the changes. How much effort went into considering not just the processes but the organisation and how the whole thing would flow before the Children and Young People (Scotland) Bill was brought before the legislature? I am concerned when officials come here saying, "Here's the legislation." We accept that there will be fundamental changes, but I have to question what processes you and the various other bodies went through to ensure that the landscape was not complicated and that things were as easy as possible.

Philip Raines: We went through a very thorough process.

Chic Brodie: So why is the landscape complicated?

Philip Raines: The landscape was complicated coming into this process because of the nature of the different bodies and their existing roles. That was the case well before the 2014 act and it is one of the reasons for part 2 of the act. In part, it was a matter of considering whether there were ways of ensuring that, amid all the complexity, children's rights were being addressed systematically across all the areas where you would want them to be picked up.

As part of that, we had to do some very thorough work on the financial memorandum to work out what the commissioner's office might have to do and what resources it might require. That required some extensive liaison with the other complaints bodies, not least the Scottish Public Services Ombudsman, the Care Inspectorate and the Scottish Human Rights Commission. It was also a question of seeing how it was done in the other nations of the United Kingdom, particularly Wales and Northern Ireland.

Chic Brodie: How many other complaints bodies did you consider that made you feel that there might have been a better way of doing things?

Philip Raines: I would have to go back and check with colleagues about the specific discussions because I was not at them. I had overall responsibility for the bill team that worked on the legislation that was going through Parliament and all the reports that I heard at the time gave no sense that there might be other ways of doing things. There was a recognition that every nation in the UK would have its own distinctive legal and complaints landscape and that what works in England, Wales or Northern Ireland should not be replicated wholesale in the other nations. It was recognised that the children's commissioners could have a powerful role in other nations.

We have a different landscape here, and we thought long and hard about how the Scottish commissioner's role would translate in relation to the proposals. Indeed, the drafting was well discussed, not least as we went through stage 2. We recognised that there was a very powerful role to be had, but that it would need some careful thinking, which was done.

Chic Brodie: I agree with that. The question has not been answered, however. We are still maintaining all the other complaints bodies. When the overall process was being examined, were all the other bodies deemed to be necessary? Given the children's commissioner's powerful position—which he should have—why did we not consider embracing some of the other complaints bodies within fewer organisations?

Philip Raines: That would have swept up a much wider revision or reform of the complaints landscape, which would have gone well beyond what the Children and Young People (Scotland) Bill was envisaged to do.

As part of the work that was done in assembling material for the report, I was involved in a conference call with colleagues in the Children's Commissioner for Wales's office and a number of other colleagues elsewhere about how complaints procedures are handled in other parts of the UK. What struck me about what happens in Wales is that although there are formal roles that must be respected and it is necessary to have a clear memorandum of understanding in order to

proceed, there is a spirit of co-operation—a feeling that because everyone shares the same goals, relationship building is key.

I found that fascinating, and I hope that that sort of attitude lies at the heart of our work on how the complaints procedure should apply to children and young people and to children's rights. We should not rely wholly on clear legal definitions and memoranda of understanding because, although they are essential, it is the relationship that is important. The feeling that is embodied in the Children and Young People (Scotland) Act 2014 is that relationship building remains very important.

Chic Brodie: We will come back to that.

Mary Scanlon (Highlands and Islands) (Con): In reading the 90-page report, the 18-page summary and all the other documents that it has taken the children's commissioner seven months to complete, I was surprised to learn that the commissioner had hired the services of senior counsel—which do not come cheap—to interpret words and clauses in the bill. The committee has no access to senior counsel but, as an economist, I know that another economist could totally disagree with my interpretation. Our justice system thrives on senior counsel, lawyers and judges interpreting legislation in quite different ways. With the best will in the world, there is always a degree of ambiguity, despite everyone's best efforts.

Having read the senior counsel's interpretation, are you of the view that that single interpretation—we have nothing to compare it with—is accurate?

Philip Raines: You will not be surprised to hear me say that I will not be commenting on the legal opinion that has been taken by the commissioner's office. The Scottish Government has its own legal opinion, which deeply informed the way in which part 2 of the Children and Young People (Scotland) Bill was cast, the way in which we shepherded it through Parliament and our expectations around it. That is the view that we hold.

To be honest, I am not sure that it would be appropriate for me to comment on another legal view. Like you, I have an economic background and, as an economist, I would be wary of wandering into other professionals' territory.

Mary Scanlon: Indeed. I am glad that you said that. That is my issue. I respect the fact that you cannot comment. As an economist rather than a lawyer, I find it difficult to comment on what the report says in that regard, and I am sure that you understand that.

I am at a disadvantage, because I was not a member of the committee during the consultation stage or stages 1, 2 and 3 of the consideration of the Children and Young People (Scotland) Bill—my colleague Liz Smith followed that process through. I want to ask about the named person, mention of which is buried away on page 46 of the commissioner's 90-page report. It says:

> "It is also worth highlighting that the Children and Young People (Scotland) Act 2014 gives Ministers powers to introduce new complaints procedures by regulations relating to the Named Person (Part 4, s. 30) and the Child's Plan (Part 5, s. 43). This will be consulted upon in summer 2015."

I respect and welcome the fact that that will be consulted on. From what you said in your response to Chic Brodie and from the report—every page of which I have read—it is clear that the complaints procedure landscape is undoubtedly complex and cluttered, and that it involves various organisations.

The named person has hardly been mentioned. You are about to consult on the complaints procedure for the named person. During that consultation, would it not be wise for you to look at the investigatory powers for complaints for the children's commissioner? Given that the Government is carrying out a consultation exercise—which I welcome—I cannot understand why we have to make a decision today about one part of the 2014 act when you are about to consult on the complaints procedure for a different part of the same act. Would it not be wise to carry out one consultation exercise to see where the children's commissioner fits in and where the named person fits in? In all the documents, there is no mention of the named person.

Philip Raines: There was quite a lot there, so let me see whether I can unpack it succinctly.

Mary Scanlon: I am trying to understand it as well; I hope that you appreciate that.

Philip Raines: I do. I just hope that I can explain as succinctly as possible, and I apologise if it is too succinct.

First, there is no consultation—and as the Scottish Government we have no remit to consult—on the part 2 powers.

Mary Scanlon: Do you mean for the commissioner?

Philip Raines: Yes, for the commissioner. That is a duty that falls upon the commissioner. It would be inappropriate for the Government to be able to say that it will consult on how the commissioner should fulfil its duties. Those powers are not in the 2014 act, and it is difficult to imagine how we could do that on a formal basis. That is a straight-up answer.

More deeply, the complaints procedures in parts 4 and 5 of the 2014 act are essential because they deal with the new responsibility that will fall in the main on local authorities for kids from the age of

five upwards and on health boards for kids up to the age of five. That is to do with the specific functions and responsibilities that come out of parts 4 and 5, which are to do with the named person and the child's plan.

That is quite different, I would argue, from what the commissioner is being charged to do under part 2. The commissioner does not have a formal role under part 2 with respect to the way in which parts 4 and 5—on the named person and the child's plan—work.

Mary Scanlon: There is no overlap there. You have not consulted yet.

Philip Raines: I guess that the overlap would be in the theme that runs through the whole of the legislation, which is to say that we would wish for all the different functions—all the different parts of the act—to be carried on in a way that is wholly consistent with children's rights.

We wanted the UNCRC to permeate the legislation. We very much wanted it to take a rights-based approach. When we were thinking about parts 4 and 5, we wanted them to be carried forward in a way that recognises children's rights. I can assure you that, when we consult on the complaints procedure for parts 4 and 5 over the summer, we hope that it is transparent and that the children's rights approach permeates the philosophy.

The complaints procedure that is dealt with in part 2 of the 2014 act has a distinctive role. It sits above, for example, the procedure for complaints that may sit against how a teacher, a health visitor or a social worker may carry out their role. Complaints about the named person are also akin to that way of thinking about the complaints process—how a particular service should be provided to a child, a young person or a family, as opposed to something more overarching, which is what part 2 is trying to capture.

You make a very important point, which is that in coming out with the complaints procedure—indeed, in thinking about all the different parts of the act—it is incumbent upon all the people for whom there are duties to show how those different provisions work together. Although they are distinct, and were designed to be distinct and to serve particular functions, it is important for us to show, not least to children, young people and families, how those different functions fit together.

Your question reinforces how important it is that, when we consult on the complaints procedures, we absolutely make it clear how they fit in and how they are distinctive from other parts of the complaints landscape, as well as other parts of the legislation that they may touch upon.

Mary Scanlon: I am still struggling to understand one example that would justify the investigatory powers. The closest that I got to it would be social work, yet you say that social work complaints would be covered under the named person legislation.

10:00

Philip Raines: No—I apologise if I was not clear.

Mary Scanlon: I probably did not understand, but you mentioned social work.

Philip Raines: I did. I also mentioned teachers and health visitors. I was suggesting that complaints procedures for the named person and the child's plan are similar to those for complaints that someone might wish to make about any professional or service that is provided by a local authority or health board. That could mean social work, health—it could be anything. It is about a distinct service that local authorities and health boards have a responsibility to provide—the 2014 act states that they must provide a named person and, where appropriate, a child's plan. The complaints procedure will be similar to the way in which other sorts of issues are addressed. We need to work out the detail, but it is that kind of thing. The complaints procedure that I set out for the SCCYP is more overarching. It sits above that and deals more specifically with children's rights.

Mary Scanlon: Okay. I do not want to take up too much time, so although I have many questions, I will ask my final one. I have read comments from the SPSO, the Care Inspectorate, the SHRC, Healthcare Improvement Scotland, the Scottish Information Commissioner, and the Mental Welfare Commission for Scotland and, as you said in your response to Chic Brodie, there is no doubt of their willingness to work together. As the Care Inspectorate said, there is "clearly an overlap" and the Information Commissioner stated that in all the reports there is very little mention of working together—the convener also said that.

The Information Commissioner described the nature of the complaints as "unpredictable and undefinable", and was concerned that the proposed methodology is

"too simplistic and in some cases ... unworkable."

The ombudsman stated:

"I would not consider it appropriate to comment on the interpretation of another officer holder of their own legislation."

I read that carefully because I was waiting for someone to say, "We don't deal with this; we really need a complete new body, such as the children's commissioner, to do this because we can't do it." Instead, I read of overlap and willingness to work

together. I also read about the difficulties of working together—I think that the Information Commissioner said that some information cannot be shared. There is the duty to co-operate, while others have restrictions placed on them. All I heard was difficulties, and after 90 pages, seven months, summary documents and information, I am still struggling to understand what complaints we are turning away just now. What is happening out there to children who are making complaints and being turned away? They are not being served by our current system. I have read all that, and I still do not get it. Perhaps you could tell me.

Philip Raines: You may wish to put that question to Mr Baillie. It is his report.

Mary Scanlon: I thought that I would try with you first.

Philip Raines: I guess that it is always good to have two bites of the cherry. My sense from the report is that a complex landscape was inherited under the legislation.

Mary Scanlon: They all say that.

Philip Raines: Having spoken to many of the individuals involved, my sense is that, as you say, there is huge willingness to work together, and recognition of the value that could be played, perhaps in an informal way—you mentioned enhanced signposting—by working together to help kids and young people to get into the system.

Mary Scanlon: But there is a big difference between signposting and investigatory powers. Signposting I understand, but investigatory powers are very different.

Philip Raines: No, I understand, and I was coming to that.

Mary Scanlon: They are two different beasts.

Philip Raines: My sense, from the report, is that there are clearly areas set out in which it appears that the commissioner's office is able to step into a role when it is not readily identifiable that anyone else would. An example is given of informal exclusion from school, I believe.

Mary Scanlon: A named person?

Philip Raines: I do not think that it is that one.

Mary Scanlon: No, but would a named person not be involved in an exclusion from school, along with a social worker?

Philip Raines: They might well be, but if we are talking about the compliance side—

Mary Scanlon: I think that it would be obligatory.

Philip Raines: I am not sure that the named person would be responsible for the complaints. We are talking about a situation in which a complaint may be made against whoever is the responsible authority.

Mary Scanlon: If a child is excluded from school, my understanding is that the named person would get involved right away.

Philip Raines: To resolve it, yes.

Mary Scanlon: It would be their responsibility to go to the family and to social work, to see what is happening and to try to sort it out.

Philip Raines: Absolutely, and that would be the way of resolving the issue. I suggest—

Mary Scanlon: That is not a clear example.

Philip Raines: I guess that the suggestion is that, if it was not resolved, and if the work of anyone involved with the school or the local authority did not resolve the issue to the satisfaction of the child or young person or their family, there is no way to deal with that sense of dissatisfaction. That is an example that you may wish to ask Mr Baillie about in more detail. There appear to be examples in the SCCYP report of sectors and areas in which, at least with regard to children's rights, there does not seem to be a clear locus or responsibility for any of the existing complaints bodies to take such issues forward. I can certainly see that there are things that the office of the commissioner could take forward. The full scope of that is something to be explored further.

Mary Scanlon: Well—

The Convener: I am sorry, but other members want to come in. I am sure that Mary Scanlon will have further opportunities later.

Liam McArthur (Orkney Islands) (LD): I apologise for being slightly late, convener.

In looking at the committee's stage 1 report on the bill that became the Children and Young People (Scotland) Act 2014, I am reminded of two of our recommendations. One was:

> "We expect all parties to be clear about the interpretation of the Commissioner's new powers and suggest that, if necessary, the Bill should be amended to ensure this."

The report also said:

> "We recommend that the Scottish Government gives further consideration to the volume and type of work that any extra enquiries will require."

In response to those recommendations, the Government assured us that, in effect, that part of the bill was clear and the financial estimates were fair. I am paraphrasing, but that was the gist of its response. Given that we have now had a number of months of a fairly comprehensive mapping exercise and there are still questions about those areas, was the Scottish Government justified in

the assurances that it gave us in response to the stage 1 report?

Philip Raines: We gave you the assurance that, in so far as any of that work will be calculated and worked out in advance, we had made every effort to exhaust the assessments of the likely volume and nature of the work. Inevitably with such things, there is always a recognition that further work will be needed from the commissioner's office, working closely with the other complaints bodies.

I see the report as a significant step forward. I presume that the final detail will come forward in the memoranda of understanding that will be needed and which are recognised across the board as necessary. We might then need to see what demand there is; that will depend on the types of complaints that are made and how they are dealt with. At the moment, there is nothing that would change the fundamental assumptions that went into the financial memorandum.

Liam McArthur: You have reiterated points that were made in the Government's response—that there would be an on-going process of keeping things under review and discussions between various participants—which is not unreasonable. However, the committee and the Scottish Parliamentary Corporate Body, of which I am a member, have a specific request from the commissioner about the capacity requirements to deal with the increased workload, and I still do not have a clear understanding—I do not think that anybody is claiming to have a clear understanding—of what that workload is likely to be. We are therefore in the invidious position of trying to determine whether the proposals relating to the capacity requirements of the commissioner's office meet the expected workload requirements that arise from the act.

Philip Raines: It is obviously for the committee and the office to decide how best to resource the office in the circumstances. I imagine that it will not be the first time that resources have to an extent been demand led, and how that demand can be predicted might not be clear. A degree of caution, wariness and close monitoring of how the resources are doled out over a year—or even several years—may therefore be necessary.

That does not sound different from the way in which some such functions are carried out when there cannot be precise estimates of demand. When the SPSO's office was ramping up in its initial days, I am sure that we could not have predicted how complaints would evolve.

Liam McArthur: In a sense, that would argue for a staged approach that says, "We'll see how this works in practice." The capacity requirements of the SCCYP's office might increase over time, but it does not necessarily make a great deal of sense to put in resource in anticipation of potential demand some years down the line. That might risk putting in place resource that seeks to justify its existence by going out and disrupting the ecosystem of MOUs and collaborative working with other stakeholders.

Philip Raines: The decision is clearly for the committee and it would be inappropriate for me to comment on it. It sounds as if this is not an unusual situation—there is a body that cannot make an exact and final estimate of what the demand will be over a period of years. There are well-understood principles for how to resource and monitor that situation in a way that would give the body comfort that it will be able to fulfil its obligations and give funders comfort that they have not given away resources that should not have been given away.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I will return to some of the points that Mary Scanlon raised. If I understood you correctly, you suggested that there might be scope for signposting. According to the 2003 act, a restriction on the power to investigate is that

"the investigation would not duplicate work that is properly the function of another person."

Mary Scanlon went through many of the concerns of other organisations about duplication. The commissioner's submission to the SPCB on the implications of part 2 of the 2014 act describes one proposed position as

"Head of Complaints and Investigations",

one of whose key tasks is

"To lead investigations which arise from complaints received by the office".

Another position is that of caseworker, part of whose job description is

"To assist the Head of Complaints and Investigations in the execution of formal investigations".

The finances part of the submission contains a budget—I hasten to add that it is very small—for "Expert Advice". Does that sound like an organisation that is being created to act as a signposting organisation or an organisation that will go into the minefield of duplication?

Philip Raines: I suggest that it is neither. I do not wish to comment on the resources that the office requests. We set out in the financial memorandum what we thought the costs would be. It refers to three additional full-time equivalent staff and describes what we thought their roles might be. That is for an organisation that will be conducting investigations, doing the preparatory work for the investigations and determining what is appropriate to take forward as an investigation—in other words, non-duplication. It will also be dealing

with the interest and demand that will come into the organisation from people who wish to complain; the commissioner's office will have to work out what sits with it and what sits elsewhere.

I suggest that it is not a signposting organisation or an organisation that is seeking to duplicate. As we envisage it in the financial memorandum, it is a body that does all the necessary functions to fulfil the duties under the legislation.

10:15

Gordon MacDonald: The difficulty is that the Scottish Information Commissioner says:

"For some organisations (including mine) there are restrictions on what we can share with whom. For us these restrictions are such that they create a criminal offence and cannot be overcome by a Memorandum of Understanding."

How can you create a third investigative body that cannot get any information from one organisation because that would be a criminal offence?

Philip Raines: I presume that any memorandum of understanding, or whatever the document was called, would need to take full account of what the Information Commissioner's office can do, at least with respect to issues that might involve criminal offences. That would just become part of the landscape that needed to be mapped out and understood before any work was undertaken.

I assume that some such issues must have arisen in the existing landscape before the 2014 act was passed. The four bodies must have bumped up against each other, if I can put it that way, so some issues that are being raised, such as the need to have clear lines of understanding, cannot be novel to them. They must have addressed those issues and found formal and informal ways of working their way through them.

Although there is a new set of issues and a new body needs to be part of that landscape, I am not sure that the process of adjusting to that landscape is novel. Other bodies will have had to do that in the past.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Practically everybody has been discussing the boundaries and where there might be overlaps and so on. The report does not deal an awful lot with where collaboration and co-operation could come in. The landscape out there is complex—that has been repeated again and again. Is it not a huge task to reconcile all the boundaries, overlays, collaborations and co-operations?

Philip Raines: The task seems to have been done in other parts of the United Kingdom. As I said, I was struck by the spirit of co-operation and the strong relationships that have been developed elsewhere, whereby people work with each other with respect for and recognition of where the expertise lies. They manage to find ways through the process that seem to ease the administrative burden, not add to the complexity. Whether the way in which they manage to do that can be replicated in Scotland is something that we will all have to look to the complaints bodies and the commissioner's office to demonstrate.

From the discussions that I have had with those bodies, I understand that there is very much the same spirit of co-operation. It has permeated many of the responses that the committee has received and it lies behind some of Mr Baillie's comments. If it has not come out in the report as much as it might have done, that is maybe something to pick up with him. You might want to ask him how that co-operation might work in practice.

Colin Beattie: Is the landscape in Scotland any more complex than that elsewhere?

Philip Raines: I do not know. Every area will probably lay claim to its own complexity and the idiosyncrasies of its system or what have you. I am a great believer that, if everyone remains focused on the ultimate goal—to ensure that children and young people are done right by the services that are there for them and that we provide the right supports and safety nets to ensure that, when that is not taking place or is perceived not to be taking place, they can get the redress that they should have—they will find a way. They seem to have found a way in other parts of the United Kingdom, and I see no reason why we should not remain optimistic that that can be done here.

Colin Beattie: A number of overlaps have been identified, and the idea is that the children's commissioner should not duplicate. However, on page 6 of the summary report, the commissioner highlights the opinion of counsel that the other person or entity does not have to exercise the power that is duplicated; their merely having it precludes the commissioner from exercising that power. That could severely constrain what the commissioner can do, given the sheer number of overlaps that exist and the fact that all the boundaries still have to be negotiated.

Where are we going on this? Will we end up with a commissioner who does not have the powers that we think he has because they are at least partially duplicated elsewhere and, if the other party is not exercising those powers, the commissioner will be unable to do anything about it?

Philip Raines: Ultimately, that would be a comment on the legal opinion that was received. I

am not in a position, and it would not be appropriate for me, to—

Colin Beattie: I am more concerned about the results of that legal opinion than about the legal opinion itself.

Philip Raines: I guess that the position will come out in how the commissioner chooses to take forward the duties, how the other bodies act and the relationships that they come to. As I said, if there is the will and the spirit of co-operation, they should be able to operate in a way that enhances the landscape rather than detracts from it.

The Convener: Thank you for appearing before the committee. I will suspend the meeting briefly so that we can change witnesses.

10:20

Meeting suspended.

10:22

On resuming—

The Convener: I welcome to the committee Tam Baillie, Scotland's Commissioner for Children and Young People, and his staff Pauline McIntyre and Nico Juetten. It is good to see all of you this morning. We will go straight to questions, starting with Siobhan McMahon.

Siobhan McMahon (Central Scotland) (Lab): Children and young people do not currently use the complaints systems. How on earth will that change? I did not get a sense of that from your 90-page report. I got a sense of what you hope to do and the procedure, but how will that particular situation change for young people?

Tam Baillie (Scotland's Commissioner for Children and Young People): I will answer that quickly and then hand over to Pauline McIntyre to comment on the operation of the model.

Having taken soundings from children and young people, I can say that you are right—they do not use complaint systems. Part of the reason is that they do not think that they will be listened to or taken seriously. That is why our national scrutiny bodies, which you have been discussing this morning, do not see children and young people—they do not even get past the local processes.

Our job will be to receive complaints from young people and to assist them through the process. We are well used to dealing with children and young people. Our office has a lot of engagement with them, and I am sure that we will be able to set the office up in a child-friendly manner that will attract those children and young people or those who represent them.

Pauline McIntyre (Scotland's Commissioner for Children and Young People): Having listened to the previous evidence-taking session, I would say that this is really about opportunities for children and young people. We have talked a lot about some of the barriers and the difficulties with regard to duplication, but our take on it is that children and young people often have a valid reason to complain but do not know where to go. The complaints bodies that we have talked to and the regulators have been clear that although they would welcome such complaints they do not receive them.

We are looking to provide a centre where children and young people can come and know that we will support them in bringing their complaint to the appropriate body. That is the approach that we are taking. One thing that came out of the discussions with children and young people as well as with practitioners is that children and young people can be quite intimidated by the idea of bringing a complaint, particularly if it is about someone with whom they have regular dealings such as a teacher, a social worker or a case worker, and they often weigh up the impact of making the complaint against the value of bringing it. We would be able to help with that by bringing a child-friendly feel to the complaints process. The flipside is that we would also be able to help the other bodies by working with them to ensure that their approaches are child-friendly and that the response that the child or young person receives when they make their complaint is appropriate to them.

Siobhan McMahon: You have said that children do not know where to go, which is, I think, something that everyone will acknowledge. How will that change? We can put in place all the procedures and policies we like to allow a young person to complain, but how will things change if they do not know where to turn? How are we getting the information out there?

Pauline McIntyre: Our office has work to do on letting children and young people know about our role and how we operate, and we also need to do a lot of work to link with local organisations that work with children and young people, to use general publicity and to target particular groups that are finding it more difficult to complain. For example, practitioners have told us that asylum-seeking children find it difficult to navigate the complaints landscape. Younger children also find it difficult, as do children with learning disabilities and other groups of children and young people.

What I am talking about is a dual approach. We would take a general approach to publicising the office's work and what we can do to help while

targeting particular groups of people who find it more difficult than others to complain.

Siobhan McMahon: In an earlier discussion, my colleague Chic Brodie said that you have to get it right now, because if you do not, when the young people involved become adults, they will already have had the experience of being let down. We have only to look at the Equality and Human Rights Commission's response to the legal opinion that you have received and how, if it decides not to investigate a complaint, the SCCYP does not have the power to take up that investigation. Do you not think that, if a child asks you to investigate a case, they will be let down at that point?

Nico Juetten (Scotland's Commissioner for Children and Young People): You are referring to the part of the legal opinion cited earlier that says that another person's function, rather than the action, would exclude the SCCYP. There will be situations in which another body has the function to investigate a child's complaint but, for its own reasons, it will not take that action. That will pose challenges to that child and, potentially, to the credibility of our complaints system.

It is a communications challenge as much as anything else. Decisions must be explained properly to children and young people, along with what they can expect from each process, and any gaps that there might be in the system in that respect need to be addressed.

Siobhan McMahon: I am not sure that I agree that we are talking about a communications problem. On page 51 of the SCCYP report, the EHRC says:

> "You cannot duplicate the work that is properly the function of another body – even if we decide not to undertake an investigation. I think your remit is narrow."

Moreover, the Scottish Information Commissioner has talked about the law being broken and has said that that matter could not be addressed through a memorandum of understanding. The point is that the SCCYP would simply not be able to do these things. If a child who had not come to you in the past because they did not know where to go were to come to you now with a complaint, how would you respond to them? Would you say, "We cannot deal with that because the Information Commissioner will not give us the information", or would you try to circumvent that somehow? That does not come across in your report, and we are stuck with the situation in which children and young people are not using the complaints procedure.

Tam Baillie: It does not matter whether a complaints process is local or national; they all have limitations. The Scottish Information Commissioner is referring to specific limitations under freedom of information legislation, indicating that, in certain cases, she would be obliged not to share information, because it would be breaking the law. However, she also says that there is still scope for using a memorandum of understanding. She is not talking about all cases and she does not exclude working arrangements being put in place with her office.

For me, the key point is that the landscape is very complicated; indeed, everybody accepts that. Given how complicated we find it, how much more complicated do our children and young people find it when, eventually, they feel confident enough to want to complain about an issue? They will need a lot of assistance.

Part of our response will be to help them through that, particularly at a local level, because children and young people do not even get past local complaints processes. That is why they do not figure in the complaints processes of our national scrutiny organisations—they do not get to that stage. Children are looking for some kind of resolution that does not compromise them with people whom they have regular dealings with.

Siobhan McMahon: So you are saying that they will get to that stage.

10:30

Tam Baillie: They might. The two outcomes of the bulk of the office's activity will be either resolution without the matter going through any complaints process—because people will have the opportunity to take a second look at it—or assisting children to navigate local complaints processes. Inevitably, some of those complaints will reach the national bodies. We are not looking to generate an industry of complaints; we want to get resolution for children and young people who feel that, in some shape or form, their rights, interests or views have not been properly taken into account.

Chic Brodie: You will have heard my question earlier to Mr Raines about the complicated landscape. I am a simple person, and I look at how we can get outcomes simply. We have heard about encouraging children to complain, but who actually owns the outcome of the complaint, given the complicated landscape, which is what I would call bureaucratic bunkum? How do we get through that? Who owns the complaint and who resolves it? I am sure that there could be co-operation but, through the whole dark tunnel of communication—the communication challenge that has been mentioned—who answers the children's questions and resolves them? Who has the authority to do that?

Tam Baillie: That gets to the nub of the issue, which is how complicated matters are. In the

Scottish Information Commissioner's response to the committee, she outlined a complaint about social work and said:

"This complaint would potentially overlap with (and this is illustrative not comprehensive) the Local Authority (a complaint has to go to them before it can go to the SPSO), the SPSO, the Scottish Information Commissioner, the UK Information Commissioner and the Human Rights Commissioner."

Because of the complicated landscape, ownership, as you describe it, is located in a number of places, depending on the details of the complaint. I would say that the person who owns the complaint is the young person who wants some resolution. Any number of people or bodies could have responsibility for that.

The Scottish Information Commissioner goes on to say that we have not paid sufficient attention to the early stages of complaint resolution. That might sound like a criticism, but it is helpful. However, I think that the bulk of the activity that we will be involved in is in the early stages, before matters get anywhere near investigation. It is because of the landscape's complex nature that we need specialist and knowledgeable staff to tackle the issue. Indeed, that comment was made frequently to us by a number of bodies.

Chic Brodie: I understand that, and I appreciate your answer. I have no doubt that there will be co-operation. I am sure that my objective is yours, too, and I applaud the report, which is helpful—I was not a member of the committee when the previous one was produced. Children have to be encouraged to bring complaints. However, I am trying to find out who at the end of the day is responsible in this huge bureaucratic landscape. I know that you have to call on experts, but I am still not clear. We have heard about conference calls, talking to Wales and what have you. What evidence do you have from the wider international landscape on how the objectives that I seek are being addressed?

Tam Baillie: If a complaint comes to us, we will take the responsibility of seeking to give best advice. Enhanced signposting has been mentioned; that is an awful lot more than just pointing a young person or family in the direction of a particular body. We will take responsibility for contacting bodies and ensuring that, if the issue is another body's responsibility, it is taken seriously and is passed on in a way that facilitates the resolution for the child or young person. The experience of those other bodies is that the involvement of the commissioner's office generates or facilitates a resolution in itself, because in most cases, the organisations want a resolution that is in the best interests of the young person, not complaints.

Chic Brodie: And what about bodies in other countries?

Tam Baillie: There are many ombudspersons in Europe who have that sort of case-handling responsibility. Our Nordic colleagues are facing the same criticism from the UN Committee on the Rights of the Child that the UK faces, which is that commissioners do not handle individual cases. In fact, we are in consultation with them, because they are very interested in developing case-handling responsibility.

My direction of travel is towards ensuring that the majority of ombudspersons and children's commissioners have case-handling responsibility. We have lots of models to draw on in that respect, but we used comparisons with Wales and Northern Ireland, because they are closest to our jurisdiction and are under the UK's jurisdiction. Commissioners here and in England do not have case-handling responsibility, which is a particular issue in England because of its huge size.

Chic Brodie: That seems at least a step forward with regard to the question of who has the responsibility for this. Thank you.

The Convener: Before I bring in Colin Beattie, can you clear something up for me, Mr Baillie? This issue has come up previously and, having listened to you carefully, I think that it has come up again this morning.

You said that you would help young people through the process, and I think that you also said that you would help them mediate through the process. I am asking about this because I want to clear something up, which is that those kinds of phrase were used with regard to the commissioner's role back at stage 1 consideration of the Children and Young People (Scotland) Bill and we asked the Government about that at the time. I will read out again the Government letter that I read out earlier, which clarified the Government's position on the matter. It said:

"We would therefore not foresee there being a role for the Commissioner to have extensive, ongoing involvement in a case prior to local processes being exhausted and it is not our view that the Commissioner should take on any mediation-type role."

That statement was backed up the Minister for Children and Young People, Aileen Campbell, when she appeared before the committee.

I am just trying to understand your position, Mr Baillie. You say that you will help young people through the process and help them mediate it, and the Government says that you will not have a "mediation-type role". Is there a problem with that?

Tam Baillie: No, but I think that it might be helpful to talk through some of the examples, because the clarity of our actions has come up

again this morning. I think that it might be helpful to talk through the three examples in the final chapter of the report, for which I think we gave quite a detailed description.

The Convener: I am happy to do that but, before that, I would like a relatively simple answer as to whether you believe that your powers allow you to be involved in a "mediation-type role"—I think that you referred to mediation through the process. I am trying to understand that aspect. I know that you want to use the examples, but is it the case that, in principle, you would be involved in that mediation?

Tam Baillie: Correct me if I am wrong, but I do not think that I used the word "mediation", and I feel that—

The Convener: I thought that you said earlier that you would mediate through the process, and later on you said that you would "help them through" the process.

Tam Baillie: Did I? I stand corrected if I did.

The Convener: We will double-check with the *Official Report* afterwards.

Tam Baillie: I will stand corrected. However, I think that it would be helpful to look at the examples. I do not see any issue with us being involved in a case to assist the young person in getting involved in local complaints processes, but I think that that is what your question is about.

Liam McArthur: My recollection is the same as the convener's on this, although in today's briefing paper there is a quote from Aileen Campbell from the committee meeting of 17 December 2013 in which she confirms the point about exhausting local dispute resolution processes but goes on to say:

"However, once those processes have been exhausted, we would not want to prevent the commissioner from mediating on an issue where such a course of action was likely to result in a matter being resolved more quickly and effectively than could perhaps be achieved with a full investigation."—[*Official Report, Education and Culture Committee*, 17 December 2013; c 3174.]

The Convener: Yes, but that refers to what might happen after the "processes have been exhausted".

Liam McArthur: Indeed. However, I think that the word "mediation" has been used at different stages in relation to different aspects of the process and I am not sure that it gives much more clarity. The Government has probably used the word in different contexts as well, which is not helpful.

Tam Baillie: And used it in different ways.

The Convener: I do not want to get into an argument with Mr McArthur. The question that I am asking is about mediation in the early stages—in other words, mediation in the local processes—as opposed to mediation once the local processes have been exhausted, which is what Aileen Campbell was talking about, at which point she said that there might be a role for the commissioner to play. Those are two separate things. Would you mediate in the local processes?

Tam Baillie: We would assist youngsters through that. If I used the word "mediation"—

The Convener: Let us forget the word "mediation". Would you be involved at that point?

Tam Baillie: Absolutely. We would want to assist youngsters in accessing those local processes, because that is a major gap in our system. Young people and children do not use those processes, because they do not feel listened to or they do not want to escalate the situation. What they want is some resolution to their situation.

The Convener: At the moment, is there anything to prevent you from assisting a young person in taking their complaint through the local processes?

Tam Baillie: Are you talking about our current powers?

The Convener: Yes.

Tam Baillie: We do not have an end point on that, which would be—

The Convener: That is not my question. If a young person came to you and said, "I think I've got a complaint about something to do with my local authority," could you assist them in the way that you have described?

Tam Baillie: In a limited way. We would not have any capacity to ask the local authority about the specifics of the case, because we do not have individual case-handling responsibility. We are specifically debarred from that under the 2003 act.

The Convener: I do not want to get picky, but there is a difference between assisting a young person and having responsibility for handling their case. You are not supposed to get involved in the early stages, according to the quote from the Government that I read out. I am trying to understand whether you are involved in assisting young people by saying, "Here's how you take forward a complaint—this is the way you do it." That would be perfectly understandable, but the Government seems to be quite clear that its interpretation of the legislation is that you do not have a role to play in the early stages of the process.

Tam Baillie: As things stand under the 2003 act, and as they will stand under the 2014 act, we cannot duplicate an activity that is the

responsibility of another body. That is why we would try to get the young person to use those other bodies. Essentially, the first port of call would be local processes.

I hope that that answers your question. I am trying to be as clear as I can be.

The Convener: Let us consider the examples and see whether that helps.

Pauline McIntyre: Before we look at the examples, I would like to make an additional point. The issue is about the level of support that we provide to a child or young person.

The Convener: That is what I am trying to get at.

Pauline McIntyre: If a child or young person brought an issue to the office, of course we would try to direct them to the right process, but currently we do not have the set-up to enable us to do that in the way we would like to do it—in a way we think is child and young person friendly. It is not so much that we would want to mediate on behalf of the child or young person—I think that that is a bit of a misnomer; it is a case of supporting that child or young person to access local processes. In doing that, we might, for example, find a local advocacy support worker who could work with that child or young person. We might find that another support agency could support that child or young person on the ground.

It is a case of ensuring that, as we transfer a child or young person to the complaints process, they are in the right place and have the support that they need, and that the other body is prepared to deal with that child or young person in an appropriate way—in other words, it must know about the particular needs of that child or young person. We are talking about taking a holistic approach to such situations. At the moment, we are quite restricted in that we do not have the staff to enable us to take that in-depth approach, which we think is the most child-friendly way of approaching things.

The Convener: I was going to leave the issue there until you said that you do not have the resources to take an "in-depth approach". That is where my concern lies. You are right that the issue is about the level of involvement. Fundamentally, that is what my question is about. My interpretation is that you are not supposed to carry out "in-depth" work at that point.

Pauline McIntyre: It is not in depth in the sense that we would become actively involved in the case; it is in depth in the sense that we would be able to take the time to identify the most appropriate support for that child or young person. We are not talking about being actively involved in such cases; we simply want to be able to identify the right support and which route to send the child or young person down.

The Convener: Okay—thank you.

Colin MacDonald is next—I am sorry; I meant to say Colin Beattie.

Gordon MacDonald: We have the same hairstyle.

The Convener: You just look the same, guys.

Colin Beattie: I am not sure whether to take that as a compliment.

Liam McArthur: We might need some dispute resolution.

The Convener: I apologise.

10:45

Colin Beattie: Let me return to the boundaries and so on. According to the specifications, your powers are rights based and investigatory. The concern is whether there are overlaps or duplication and so on. As your counsel stated, if some other person has any of that power to any great degree—whether or not they choose to exercise it—that would exclude the commissioner from taking action on the case. If you felt that something needed to be addressed, but another body with the power to address it was, for some reason, not going to do so, how would you deal with that?

Tam Baillie: You are right to point out the narrowing scope of the exercise of our power because of the wide-ranging implication of the non-duplication requirement—that is one reason why the estimated number of investigations comes in so low at one to four. We will develop relationships with those other bodies—we have already been doing that during the mapping exercise—and we would certainly want to seek some reasoning or rationale for why that body was not dealing with a particular complaint or issue.

Colin Beattie: A memorandum of understanding could not possibly envisage the variety of cases that might come forward; there would have to be a resolution.

Tam Baillie: A memorandum of understanding would not necessarily cover the range and variety of cases that are likely to come through. The memorandum of understanding will set a framework, but some of it will be about the custom and practice that we establish with the other bodies that we operate with.

Colin Beattie: Clearly, the memorandum of understanding will be quite important, but what happens if there is a dispute between you and another body, either in the course of producing the memorandum of understanding or subsequent to

it? Who would adjudicate? How would it be resolved?

Tam Baillie: Before I bring Nico Juetten in on that, I say that my sense is that the relationships that we have been establishing with the other bodies have been very co-operative. You have seen that and they have been cited; the other bodies are in agreement on establishing a memorandum of understanding. We are an established office and I think that people will be professional in dealing with that. People are of a mind that they want this to work, rather than have disputes. Inevitably, some people will have differences of opinion, but let me put on the record that I am absolutely confident that we will be able to work through those. I say that on the basis of our experience of putting together this report and looking at the implications of what is a complicated exercise. The level of goodwill has been very high and I have no reason to doubt that that will continue.

Nico Juetten: Just to echo that, assuming that any kind of dispute over where the boundaries lie involves two organisations, then both would be expected to approach the issue in good faith and find a negotiated way through any disagreements. The terms of the non-duplication requirement in new section 7(2A) of the 2003 act are essentially that the commissioner has to consider the evidence and any information received, and be satisfied on reasonable grounds that the investigation would not duplicate work and so on. In individual cases, it is a judgment for the commissioner to be satisfied on reasonable grounds that there is no duplication, and the commissioner can be held accountable for those decisions, ultimately through the courts.

If somebody disagrees with a judgment in an individual case and thinks, "Well, we have power," I am sure that they will not be shy about coming forward to discuss that in good faith. Ultimately, the backstop is judicial review of the commissioner's decision, which requires the commissioner to show that the decision was made on reasonable grounds and on relevant evidence—that it was a rational decision. That is a general principle of public law and it will apply to the commissioner's decision making.

Colin Beattie: However, if there is a turf war—with the best will in the world, such things happen—and there is a child in the middle of it, how will the situation be resolved quickly? Who will adjudicate? You talk about judicial review. Will the child have to wait for that judicial review before a decision is made?

Nico Juetten: It is in the child's interests, and in the interests of all the organisations that are involved, to make sure that we do not get to that point. As you rightly point out, a judicial review would take time and expense, and that would not be in anyone's interest.

Colin Beattie: I would hope that everybody would have the child's interests at the forefront. However, with the best will in the world, two organisations might believe that they had the child's best interests at the forefront. How would you resolve the situation if there were two different points of view?

Tam Baillie: You can be reassured by the fact that there are overlaps all over the place in this landscape, yet the bodies currently manage to resolve their differences. It is not an intractable situation. We should look at the evidence of how the system operates at present. In my estimation, people are very respectful of other organisations, and at the centre of it there is somebody—either an adult or a child—who seeks some resolution. You should be reassured that, however complicated the landscape is, bodies manage to resolve their differences in a way that does not damage the complainer. I think that we would go at it in the same spirit of always keeping in mind what is in the best interests of the child. I accept that there will sometimes be differences of opinion, but those will be resolvable and you can be reassured that they are resolved right now without extending the powers of the commissioner's office because, as we illustrated, there are overlaps in many parts of the system.

Colin Beattie: The memorandum of understanding is going to be a fairly high-level document. In your report summary, you state that it is

"difficult to deduce the 'proper functions' of some regulators or complaints bodies, as their remits may cover areas of significance from a children's rights perspective."

How long are the negotiations with bodies going to take when you are having difficulty in working out their proper function, whatever the definition of "proper function" is?

Tam Baillie: I think that the body to which you are referring is the Care Inspectorate, which was the most enthusiastic about setting up a memorandum of understanding. It has one of the widest scopes, in terms of the use of the powers, and it was enthusiastic in engaging early to say that it was more than happy to look at a memorandum of understanding.

Colin Beattie: I think—

The Convener: This is your final question, Colin.

Colin Beattie: The quote that I read out is from your report summary, in which you say that it is

"difficult to deduce the 'proper functions'".

That must make it quite difficult.

Tam Baillie: I do not have the report summary in front of me, but that was the case regarding the Care Inspectorate. However, I repeat that I am confident that we can work that out. The evidence of that has been the production of the report. Even with the complicated landscape, there has been confirmation from all those bodies that they are satisfied with the interpretation that is given in the report, which was quite an undertaking. Other bodies that are looking at the tribunal landscape in Scotland are taking much longer to produce a report on it because of those complications.

Mary Scanlon: You say that all the bodies are satisfied with your report, but none of them has told us that. Furthermore, a memorandum of understanding is just what we would expect from every organisation. The organisations are all thoroughly professional and I would expect nothing less. A memorandum of understanding is not an endorsement of what is happening; it is an integral part of professional practice.

How many children's complaints have you turned away in the past year because you did not have the individual case-handling powers that are conferred in the 2014 act?

Tam Baillie: I think that the question is getting at the volume of traffic that we expect.

Mary Scanlon: It is a simple question.

Tam Baillie: Yes, and it is to do with the volume of complaints that are likely to be made. I refer you to the supplementary evidence that we provided after my previous appearance at the committee, in which we gave details of the estimates of the number of children who would make complaints. Using the evidence from Wales and Northern Ireland and factoring up the child population, we came up with a figure of 870 complaints that we would have to handle, just on the basis of the similarity of roles. That was provided as a result of a supplementary—

Mary Scanlon: To be fair, I did not ask about Wales and Northern Ireland. I asked how many people have come chapping at your door, metaphorically speaking, in the past year whose complaints you have been unable to pursue because you did not have adequate powers and staff. I really do not want to know about Wales and Northern Ireland, or indeed about England. I am just looking at Scotland. How many have you turned away in the past year?

Tam Baillie: We do not have the complaint-handling power right now, so it would be rather—

Mary Scanlon: Well, I know that you do not.

Tam Baillie: It is a question that we cannot answer. I will be frank; I cannot answer that question because we do not have the power right now. That is what we are debating in terms of the extension—

Mary Scanlon: Okay, I am not going to get an answer so I turn to my second question.

I have read through the submissions from SPSO, the Care Inspectorate, the Scottish Human Rights Commission and Health Improvement Scotland, which is asking for a robust memorandum, and from the Information Commissioner and the Mental Welfare Commission for Scotland, and none of them has said, "Oh, yes, there are real, serious problems here that we cannot investigate—there is a need for the children's commissioner to undertake investigations because we can't do it."

They have all given us thoroughly professional responses. As many of my colleagues have pointed out, there is clearly an overlap between the Information Commissioner and the Care Inspectorate. The SPSO said that he would not consider it appropriate to comment on interpreting another office-holder's advice, and there are clear concerns from the Information Commissioner and others.

You have not identified a specific case and none of those organisations has put its hands up and said that it is having to turn people away because it cannot deal with them. We have been discussing a cluttered and complex landscape, and much of what I have heard this morning is about matters that will come within the remit of the named person. It is already cluttered and complex, and the Government is about to undertake a consultation on the named person. Do not tell me that it would be easier for a child in Bettyhill or Drumnadrochit who could talk to their teacher or their health visitor to get a bus or train to Edinburgh and come chapping on your door.

Do you not think that it is already complicated? Nothing has been identified for you. Is it going to be more complicated, or less, given what is happening with the named person? How can we clearly see the need for your investigatory powers, your signposting and your supporting mediation, or otherwise, without seeing the end result of the named person legislation and regulations?

Tam Baillie: I refer you to page 79 of the report, which outlines case study 3. Remember that the report has gone to all the bodies and they have all scrutinised it. Case 3 is an example of a case that none of the other bodies would deal with. If there is time, convener, it would be helpful to walk through that example.

The Convener: Of course, you must answer the question, but we do not have an awful lot of time. We have a lot to do today.

Tam Baillie: Okay, but it is wrong to say that we have not identified a case that would be dealt with by the powers that we are discussing. All the other bodies are in agreement with the chapter in which we give those examples.

Mary Scanlon: The example given is that of a child who is being disruptive in school. I appreciate that I did not hear stages 1, 2 and 3 of the Children and Young People (Scotland) Bill, but my understanding is that, if a child is disruptive in school, the first—and, we hope, the last—port of call would be the named person, who would use the multidisciplinary getting it right for every child arrangements and would talk to social workers.

There is no mention of the named person in your report. You say that the example that you have given would be your responsibility, but my understanding is that it would be the named person's responsibility.

11:00

The Convener: Let us hear what the commissioner has to say.

Tam Baillie: With respect, the child in the case has already made a complaint to the local authority but it was not upheld. In other words, the named person does not have a locus for the child's complaint. They have already made a complaint to the local authority. Ordinarily, the complaint would then be escalated to the public services ombudsperson, but it cannot deal with the case because of the particularity of the issue. The child is not actually excluded—essentially, it is an internal exclusion within the school—so the school has no locus either.

Mary Scanlon: I do not know whether you do not understand the legislation, but the point is that the regulations relating to the complaints procedure for the named person under section 30 of the Children and Young People (Scotland) Act 2014 and the child's plan under section 43 of that act will be consulted on over the summer. The consultation is to take place, but—I am not trying to tell you how to do your job, convener—it also has to be scrutinised and endorsed by this committee.

You have used an example and said, "This is what's happening just now", but in three months we will be looking at regulations that will clearly define what the named person will do. I cannot understand why we are looking at investigatory powers for you today and the example that you have given me is for a named person.

The Convener: I never want to curtail a member's questioning, but I think that we have covered that point. I want to get a response from the commissioner on the issue that I think we have, which was raised in Mary Scanlon's question about his role in terms of investigation. Mr Raines talked about the role of the named person. We do not have the regulations yet so that is still to be seen, but my understanding is that the role of the named person will be at that level, and the commissioner will come in later on.

Tam Baillie: With respect, it is difficult to comment on a complaints process that is not there yet. The regulations have not been passed.

The Convener: I appreciate that.

Tam Baillie: Nevertheless, it would be rather short-sighted to think that the named person will put an end to all complaints. We will still have instances where a child has a legitimate complaint, it goes to the local authority and it is not upheld. That is the situation in the case that I mentioned.

There might be another interplay with the named person. That remains to be seen, and I will be interested in the committee's deliberations on how that will work, but it would be short-sighted of us to think that having a named person means that a local authority will not process a child's complaint and find against them. That is the situation that we are discussing.

The Convener: Okay. I ask Mary Scanlon to be brief.

Mary Scanlon: I will be very brief. The Scottish Information Commissioner states in paragraph 12 of her response to your 90-page report, which was seven months in the making:

> "There is little mention in the report of working with other regulators, as opposed to dividing work between them."

Why do you make little mention of working together? Why do you not mention the named person?

Tam Baillie: I have no doubt that we will be working with other regulators, and if the Scottish Information Commissioner is picking that up, we will certainly attend to it. As has been stated repeatedly this morning, we cannot operate this process alone. If anything, we will be doing more work with the other regulators as a result of some of the initial assessment.

It is to be decided how the named person will operate. I have no doubt that the named person will appear in many other documents, including ours, once the working model is established. It has not been put into effect yet. You are still debating the regulations on it, and we need to wait and see how that pans out.

Mary Scanlon: We are not debating them. They are being consulted on.

Tam Baillie: Then the debate will come back to you. You will make the decision on it.

Liam McArthur: You will have heard the exchange that I had with Mr Raines on the previous panel. There is concern that, although there is a legitimate process for seeing how things evolve through the memos of understanding and collaborative working with others, there is not as yet certainty about the required volume of work. Would it be unreasonable for the committee to assume that that lends itself to a phased introduction of the capacity of your office to deal with a workload requirement that will reveal itself over time?

Tam Baillie: At the risk of repeating myself, we provided the committee with supplementary evidence to outline the volume of work that we expected. We provided a full report to the SPCB that showed where those same figures came from.

Nobody knows the exact number. The best that we can do is examine similar operations in other jurisdictions and consider them in terms of their child populations. We have taken the lesser estimate. If we factored up the Northern Ireland estimate, the number would be many more than the 870 that we have estimated.

I think that I covered the point about a phased introduction when I responded to the SPCB, but I will repeat it. We are talking about a new function. We need specialist staff—we need people who can understand the landscape. It has already been said numerous times today how complicated the work is. If we do not have sufficient staff to deal with it, that will place the office in an invidious position, frankly, and expectations for children and young people will be high and our ability and capacity to deliver will be low. That is just not the way that we should be going about setting up a new function of the office.

The Convener: I thank all three of you for coming along this morning to explain your position. I also thank you for the report that you published on the matter. It has been very helpful to the committee. I thank everybody who has been along to discuss the matter this morning. The committee will discuss it further this week or the week after—we will do so as soon as possible.

11:07

Meeting suspended.

11:16

On resuming—

British Sign Language (Scotland) Bill: Stage 2

The Convener: Our next item is stage 2 consideration of the British Sign Language (Scotland) Bill. I welcome Mark Griffin, the member in charge of the bill, and his officials; and Dr Alasdair Allan, Minister for Learning, Science and Scotland's Languages, and his officials. I remind everyone that officials are not permitted to participate in the formal proceedings. I also welcome Dennis Robertson, who is not a member of the committee but who has lodged some amendments.

Everyone should have a copy of the marshalled list of amendments, which was published on Friday, and the groupings of amendments, setting out the amendments in the order in which they will be debated. As usual, the proceedings will be interpreted in BSL.

For the benefit of those who are following today's proceedings, I will run through the main procedures. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in a group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way.

If the minister and Mark Griffin, as the member in charge, have not already spoken on the group, I will invite them to contribute to the debate, just before I move to the winding-up speech. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee immediately moves to the vote on that amendment.

If any member does not want to move their amendment when called, they should say, "Not moved." Please note that any other MSP may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by a show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote. Although Mark Griffin is a member of the committee, as he is the member in charge of the bill, he is not able to vote during these proceedings.

The committee is required to indicate formally that it has considered and agreed each section of and schedule to the bill, and so I will put a question on each section at the appropriate point.

It is our intention to get through all of the amendments today.

Section 1—British Sign Language National Plan for Scotland

The Convener: Amendment 1, in the name of Dennis Robertson, is grouped with amendment 38.

Dennis Robertson (Aberdeenshire West) (SNP): I put on record my thanks to Deafblind Scotland for the work that it has done on these amendments. We all owe it a great deal of thanks, as its work in raising awareness of tactile BSL, which many members will not have been aware of previously, has been invaluable.

Tactile BSL is BSL, but it is usually used when someone has a condition such as Usher's syndrome, which is a condition that people are born with, or when a person who is deaf has lost their sight due to illness or injury.

If you are deaf but lose your vision, but your language has always been BSL, you will continue to use BSL when you are speaking to people within your immediate area. However, the way that you receive communication via BSL is different—it must be tactile. Someone needs to take the person's hands and communicate in BSL through touch. Occasionally, a person might have to use deafblind manual communication. That is not a preferred method for BSL users, but it is a fall-back position, especially if something must be made clear.

The amendments in this group are designed to make it explicit that, when we refer to BSL, we are referring to both methods. However, subsection (2) in amendment 38 makes an exception, by stating that we do not have to produce our final reports, plans and so on in a tactile BSL format. That is understandable and I hope that members will consider that later.

Tactile BSL is used by few people. It is tiring and frustrating to use. You can imagine that, when a person has sight loss on top of their deafness, that can be quite devastating. There are, therefore, other factors that we must take on board, but perhaps not in relation to these amendments.

I have great pleasure in bringing the amendments to the committee.

I move amendment 1.

Liam McArthur: I start by thanking Dennis Robertson for lodging the amendments, and I join him in thanking Deafblind Scotland for its contribution not only to the amendments but to our evidence-gathering process, which, as members will recall, made clear that the deafblind community has specific needs that must be reflected in the bill. To be fair to the Scottish Government and the minister, they acknowledged that in their approach to our deliberations.

Other elements of the bill might need to be amended to better reflect the specific needs of the deafblind community, but I welcome and support the amendments.

The Convener: I, too, thank Dennis Robertson for lodging the amendment, which I support. The reason why I support it is that I recently met members of the public who are deafblind at the offices of Deafblind Scotland, including a constituent who wrote directly to me to ask me to meet him to discuss amendment 1. At the meeting, I heard a solid and cogent argument about why it is necessary to support the amendment. I thank everyone who was there for that meeting and for the clarity with which they made the argument for supporting the amendment. I am quite happy to support it. It adds to the bill and adds clarity for those members of the public who are deafblind that not only BSL but tactile BSL are covered by the bill.

The Minister for Learning, Science and Scotland's Languages (Alasdair Allan): I thank Dennis Robertson for lodging these amendments. Although all people who use BSL should benefit from the bill, as I have been saying, there is a justified concern that deafblind people who use a tactile form of BSL, which Mr Robertson described, might not benefit fully from the bill because of the relatively small numbers involved and the complexity of communicating via tactile BSL.

I have met a number of deafblind people in the course of the discussions on the bill and I accept the arguments of Deafblind Scotland and many of the deafblind people it represents that including a specific reference in the bill to tactile BSL will be helpful and ensure that that group of people is not forgotten.

Together with amendments 8 and 18, in the name of Mark Griffin, on consultation on BSL plans and making them accessible to deafblind people, the amendments in the name of Dennis

Robertson will be helpful. For those reasons the Scottish Government is very supportive of them.

Mark Griffin (Central Scotland) (Lab): I, too, thank Dennis Robertson for lodging the amendments. When we drafted the bill, we imagined that the term BSL would cover all BSL users, but we recognise that extra emphasis should be put on the needs of deafblind BSL users. I was happy to meet and work with Deafblind Scotland to support the introduction of amendments 1 and 38. The inclusion of the words

"tactile form of British Sign Language"

means that no deafblind BSL users should be left out of the bill. I support the amendments.

Dennis Robertson: I welcome the support of the convener, the minister and Mark Griffin. I will put the amendment into context. It was a deafblind person who taught me BSL. I sincerely thank Stephen Joyce from Deafblind Scotland for his patience in going over BSL with me. You can imagine the difficulty, convener. I have no sight and Stephen is a deafblind BSL user, so we had a great deal of BSL interaction. That is why I know that sometimes you need to use deafblind manual to explain points. I managed to get it wrong on several occasions, but Stephen was extremely patient, and I wanted to bring that to the committee's attention. It was extremely tiring, but it was extremely beneficial. To teach BSL to someone who is blind is an achievement in itself, and I commend the work that Deafblind Scotland does.

Amendment 1 agreed to.

The Convener: Amendment 2, in the name of the minister, is grouped with amendments 2A, 4 to 7 and 9.

Dr Allan: I am pleased to introduce amendments 2, 4 to 7 and 9, which are important. They seek to reduce the number of plans by bringing public bodies, other than those to be listed separately in a revised schedule 2, within the scope of the national plan. The amendments will give greater clarity about the purpose of the national plan, lengthen the reporting cycle, which will reduce the administrative burden on the public sector, and ensure that the bill will focus on actions rather than administration.

I will go through some of the provisions in amendment 2.

Proposed new section 1(1B) will require the national plan to set out what Scottish ministers will do and what they

"consider that relevant public authorities ... should or could do"

to promote British Sign Language. Under that provision, the national plan will set out the agreed national priorities to be taken forward by national public bodies that are covered by the plan and by public bodies preparing their own plans. I believe that that will strengthen the provisions of the bill as introduced.

The first national plan will be particularly important. As I explained in evidence to the committee at stage 1, we intend to set up a BSL national advisory group to inform the plan's development. The group will involve a significant proportion of deaf BSL users as well as representatives of the public bodies that are subject to the bill. It will take time to agree a suitable structure for the group and a process for recruiting deaf BSL users to it. Allowing two years after the act comes into force to publish the first national plan, as set out in proposed new section 1(1D), will give us time to engage properly with the deaf community and with public bodies. That will enable us to publish a more considered plan that will take account of the views of deaf BSL users who will benefit from the actions set out in it, as well as the views of the public bodies that will deliver those actions.

11:30

Proposed new section 1(1E) provides that national plans will be published every six years, rather than roughly every four years, as would be the case under the bill as introduced. The Scottish Government takes the view that the four-year cycle for the reporting and review process that is set out in the bill is too short. That view is informed by our experience of implementing the Gaelic Language (Scotland) Act 2005 and its five-year reporting cycle, which some authorities have suggested is too short. I originally suggested a seven-year cycle, but many deaf people who submitted evidence felt that that was too long. Amendment 2 therefore proposes a six-year cycle instead.

Extending the cycle will, I believe, give public bodies longer to implement the actions that are set out in their plans and gather meaningful information on progress before they are asked to feed into the national progress report. As members will have seen from the revised costings that I provided in my recent letter to the committee, requiring public bodies to produce plans every six years, rather than every four years, leads to a significant cost saving. We propose to invest the savings in providing support to help public bodies to better understand and meet the needs of the BSL community that they serve and to boost the capacity of translation and interpreting services.

In my view, amendment 2 introduces a more proportionate approach to the reporting process

and creates a less bureaucratic and more action-oriented focus for the bill.

Amendments 4 and 6 ensure that the second and subsequent national plans will "have regard to" any recommendations coming out of the review process.

Amendments 5 and 7 are minor consequential amendments around the consultation provisions. Amendment 9 is a minor consequential provision that relates to the timing of the preparation of national plans.

On amendment 2A, I share Mary Scanlon's concern about the issues faced by parents with a deaf child—we have discussed those issues in committee before. It is very likely that relevant material will feature in the first national plan but, in my view, the amendment does not fit with the approach that the bill takes. The bill creates a framework for action but deliberately does not specify what should be included in the national plan.

As the member in charge of the bill said during stage 1,

"it will be up to the Government to choose what resources to put into its policy priorities."—[*Official Report, Education and Culture Committee*, 16 December 2014; c 4-5.]

All that I am setting out is the overarching strategy that the Government should promote.

The content of the national plan will be determined through extensive engagement with the BSL community. I have committed to including parents of deaf babies on the national advisory group that will support that process. I do not think that it is appropriate to go further than that at this stage, because writing into legislation what should be included in the national plan pre-empts the important process that I have set out.

As Mary Scanlon will be aware, the British Deaf Association has identified eight areas that it believes should be included in the national plan, of which support in the early years is only one.

If amendment 2A is agreed to, it could open the way to further attempts to legislate to include other priorities. That undermines the collaborative approach to developing the national plan that I have set out.

I thank the committee for its forbearance, but there were some important issues to be detailed.

I move amendment 2.

The Convener: Indeed, minister—thank you for that.

I call Mary Scanlon to speak to amendment 2A and all the other amendments in the group.

Mary Scanlon: I will not speak to all the amendments, but I will speak to amendment 2A.

As the minister knows, I am looking for a commitment in the national plan. I appreciate that the national advisory group has still to be set up, and that consultation will take place.

As committee members and MSPs in general, we learn a huge amount when we look at a bill, and that has been no different in our scrutiny of this bill. I found the briefing paper from the National Deaf Children's Society and others interesting. I was particularly struck by their highlighting the fact that 90 per cent of deaf children are born to hearing parents. On one of our committee visits, we heard about the difference that having parents who use BSL makes to a child. We are also considering deaf children's attainment, and I cannot imagine the difficulties that a child would have if they were not able to communicate with their parents. Indeed, as a parent and a granny, I cannot imagine how difficult it would be not to be able to communicate with your child or grandchild.

The committee has considered BSL support for children, the shortage of teachers and issues that relate to teacher training. We have scrutinised the bill fairly effectively so far. However, we have probably not focused much on support for the family, which is hugely beneficial.

I retire next year, so I will not be here when the national plan is produced. I think that I almost got a commitment from the minister, but I look for a more formal commitment from him that he will do whatever is possible to ensure that BSL support is provided not only for newborn babies but for children and families where appropriate, because that would add much to BSL provision in Scotland.

I move amendment 2A.

The Convener: I ask the minister to provide a little more detail on the changes to the length of the cycle for the publication of the national plan. We had some debate about that during the stage 1. It was a point of contention for some members, who felt that extending the cycle might make it too long. Although the Government has moved back from seven years to six, which is welcome, I ask the minister to give more detail, if he does not mind.

I accept the minister's argument about Mary Scanlon's amendment 2A. The bill does not lay out specific support provisions—we had some discussion about that at stage 1—whereas the amendment does exactly that. Therefore, it is not in keeping with the tone of the rest of the bill, and I understand why the minister said what he said.

Mark Griffin: My intention was that the timing of national plans would be linked to each session of

the Parliament—it would be a four or five-year cycle—so that the Government would produce and scrutinise its own plans and we would not have an incoming Administration dealing with the policy intentions of the previous Government. That is the reason why the bill was drafted as it was, but I can see why the fixed-term, straight six-year cycle is much simpler with regard to issues such as the Parliament being dissolved early.

In considering Administrations implementing and scrutinising their own plans, perhaps we had not thought the approach through to the next level. If local government followed the Scottish parliamentary cycle, it would be out of sync and in the same predicament—an incoming administration could end up scrutinising the performance of a previous one. Therefore, I support the provision in amendment 2 on bringing the cycle into a fixed timeframe rather than basing it on the cycle of parliamentary sessions.

I also understand the arguments for allowing more time for the start of the process. That will be crucial in ensuring that the right people are on the national advisory group to inform the first national plan. I therefore also support the provision on that in amendment 2. I support amendments 2, 4 to 7 and 9.

In relation to Mary Scanlon's amendment 2A, I agree with her comments on the need for support for hearing parents of deaf children to learn BSL. However, the amendment would take a step away from the intentions of the bill. There are a number of priorities for the BSL community, one of which is the provision of support for parents of deaf children. I am not persuaded by the argument that that one priority should be included in the bill and should take precedence over other priorities. It is right and proper that we allow the national advisory group to be convened and for it to consult and decide on its priorities rather than setting that in stone at this point in the process.

Dr Allan: In response to the convener's point about the timescales and the length of time between the plans and reporting, I would make many of the same arguments that Mark Griffin has made. I add that my anecdotal experience of the four-year plans under the Gaelic Language (Scotland) Act 2005 is that at times they can possibly lead to an excessive degree of work on planning rather than on implementing plans, although I do not take away from their importance.

On the points that Mrs Scanlon raised about the wider issues for families who have deaf children, as I said, I accept many of the considerations behind amendment 2A. To answer her point about what the Scottish Government is doing in the area, I point out that we recognise the importance of supporting families with a deaf baby, and we recently provided £0.5 million to the National Deaf Children's Society for its family sign language project. We can engage in many ways to ensure that families in that situation have all the resources that they need to communicate with a deaf baby, toddler or older child who is at school, as Mary Scanlon alluded to, so that they can get the best start in life. That would help to address an issue that is of concern to both Mrs Scanlon and me, which is that of closing the attainment gap that continues to exist for deaf children.

I ask Mary Scanlon not to move amendment 2A, but to note the commitment that I have made to include families of deaf babies on the national advisory group. Like Mr Griffin, I am of the view that such issues are better determined by that group rather than through legislation.

Mary Scanlon: The purpose of amendment 2A was not to set any precedent or priority or to say that one group is more deserving than another; it was to ensure that the issue is on the agenda and that families get support at what is a critical time to help them to communicate with their children.

I note the commitment that the minister has made, and I am delighted with it. I acknowledge that the bill is not the place for us to tell the national advisory group what do and that this is not the place or the time to look at regulations. I absolutely understand that. However, I am pleased that I lodged the amendment, as it has moved things forward. The commitment from the Government, financially and otherwise, to the National Deaf Children's Society is welcome.

Given all that, I will not move the amendment in my name.

The Convener: I am afraid that you have already moved it—that was the purpose of your original comments. You will have to seek to withdraw it.

Amendment 2A, by agreement, withdrawn.

Amendment 2 agreed to.

11:45

The Convener: Amendment 3, in the name of Mark Griffin, is grouped with amendment 26.

Mark Griffin: During the development of the bill, we took a decision, on balance, to try to reduce the cost burden on authorities from the translation of documents into BSL. The committee has flagged that up as an important issue, and it was a difficult deliberation at the time as to which way we would go, but I am delighted with the committee's recommendation and with the Scottish Government's support for the idea that national plans and authority plans should be accessible to BSL users.

I move amendment 3.

The Convener: I am sure that I speak on behalf of all members when I say that we are grateful to Mark Griffin for moving amendment 3. The committee felt strongly that the national plan should be published in BSL, so the amendment is welcome.

Dr Allan: The Scottish Government fully supports amendments 3 and 26. As members observed during stage 1, it is probably fair to say that it would be ludicrous for the Parliament to pass a bill requiring public bodies to produce BSL plans without requiring them to translate those plans into BSL.

As I said in the Government memorandum, and as I am sure the committee well understands, if plans are presented in written English, they will not be accessible to many deaf BSL users who are the target audience. In the Government memorandum, I suggested that the cost of translating authority plans into BSL should be subsumed by the relevant authority, as the requirement does not substantially exceed local authorities' current duties under the Equality Act 2010. However, as the amendment requiring the translation of plans represents a new cost arising as a direct result of the bill, I have included it in the revised costings that have been provided to the committee, and it will be considered as part of the new burden. I encourage the committee to support the amendments.

Mark Griffin: I thank the minister, and I thank members for their strong support for the amendment in the stage 1 report. I intend to press amendment 3.

Amendment 3 agreed to.

Amendments 4 to 7 moved—[Dr Alasdair Allan]—and agreed to.

The Convener: Amendment 8, in the name of Mark Griffin, is grouped with amendment 18.

Mark Griffin: I lodged the amendments in this group because I wanted to make it absolutely clear that the needs of deafblind people should, wherever possible, be placed on an equal footing with the needs of other BSL users in the operation of the bill. As Dennis Robertson pointed out, those with dual sensory impairment face distinctive challenges, and a one-size-fits-all approach will not quite work with BSL. Ensuring that consultation is accessible to members of the deafblind community as well as to those who are deaf is essential. Amendments 8 and 18 complement the amendments in the name of Dennis Robertson that we have already discussed and they continue the work that I, the Government and members of the committee have undertaken with Deafblind Scotland. I hope that members will support them.

I move amendment 8.

Liam McArthur: As I said in reference to Dennis Robertson's amendments, I very much welcome the series of stage 2 amendments that recognise the deafblind community's needs. I whole-heartedly support Mark Griffin's amendments in this group.

Dr Allan: As I have said, I fully support the point about the importance of engaging BSL communities so that they can directly influence BSL plans and help to ensure that public bodies deliver on the commitments that are set out in those plans. As witnesses have pointed out in evidence, effective engagement is a crucial part of that.

This year, we have invested £390,000 in the deaf sector partnership, which will support the effective implementation of the bill if it is passed. The partnership's most important function will be to enable public bodies to engage directly with the BSL communities that they serve. That engagement will ensure that the plans focus on the right things. By doing that, they will make a difference to people's lives.

I welcome the reference in Mr Griffin's amendments to deafblind people who use BSL. As Deafblind Scotland has argued, it is crucial that the small numbers of deafblind users can benefit from the bill's provisions. It is important that public bodies take steps to include deafblind people in the consultation on their plans.

Mark Griffin: It is important that my amendments 8 and 18 are supported, to ensure that no BSL user is locked out from a consultation process that will drive forward a lot of policy that could improve their lives. It is right and proper that deafblind BSL users should be included in such consultations and be given special mention in the bill, so that no one misses out. I press amendment 8.

Amendment 8 agreed to.

Amendment 9 moved—[Dr Alasdair Allan]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Special responsibility

The Convener: Amendment 10, in the name of Dennis Robertson, is in a group on its own.

Dennis Robertson: All ministers have a responsibility to ensure that they take cognisance of deaf BSL users in all their portfolios. Therefore, we do not need to have a lead minister with responsibility for that.

Dr Allan has demonstrated that, as he is with the Gaelic language, he is passionate about

ensuring that BSL is given the same recognition as any other language and any other responsibility in his portfolio. Therefore, I suggest that we do not need to have a lead minister, because all ministers should take responsibility.

I move amendment 10.

Liam McArthur: I echo much of what Dennis Robertson has said. I understand the motivation behind the amendment, and it has put down a useful marker on the importance of the Government promoting BSL. The minister in his evidence to the committee gave fairly strong assurances that that would be the case. It will be up to successive Governments to reflect that. I am a little wary of appointing ministers for each and every task. It will be incumbent on each successive Government to demonstrate how it is living up the letter of and the spirit behind the legislation. On that basis, I support amendment 10.

The Convener: I agree with Dennis Robertson and Liam McArthur. I am sure that any future Government will do as Liam McArthur has said and ensure that proper attention is paid to the ministerial responsibility for the area. I note in passing that the minister's title includes "Scotland's Languages"; I am sure that we agree that BSL is one of Scotland's languages and therefore fits neatly under the current minister's portfolio.

Dr Allan: I, too, thank Dennis Robertson for lodging amendment 10, which is useful. I agree that it is important for ministers to have clearly defined responsibilities for particular policy areas. The Scottish Government considers that assigning a lead minister for the bill in legislation is not consistent with the collective responsibility of Scottish ministers. All that said, and as has just been mentioned, as a language, BSL will sit within my portfolio as the minister with responsibility for Scotland's languages. On that basis, I support amendment 10.

Mark Griffin: Section 2 was included for emphasis and resonance. The intention was not to create a new ministerial post, but to allow the Scottish Government to define ministerial responsibility for BSL.

There may have been a misunderstanding previously. When I initially lodged my proposal for a member's bill on British Sign Language, it was allocated to the Health and Sport Committee and some BSL users felt that the health ministerial team were responsible for deafness and British Sign Language. The process has shown clearly—and rightly—that the minister for Scotland's languages is the right point of contact.

Legislating for a particular role might go against the way in which the Government exercises collective responsibility. I fully accept Dr Allan's commitment to BSL as the lead minister and I support amendment 10.

Dennis Robertson: I do not think that there is any need to make a wind-up speech.

Amendment 10 agreed to.

Section 3—Listed authorities' British Sign Language Plans

The Convener: Amendment 11, in the name of the minister, is grouped with amendments 12 to 17, 19, 20 and 45.

Dr Allan: The amendments are technical, so I will not trouble the committee by listing them one by one. They are necessary as a consequence of other amendments, particularly in relation to the decision to decouple the reporting and review cycle from the Parliamentary cycle. They also reflect the changed approach to reporting on progress that is set out in other amendments.

The amendments will ensure that section 3, which relates to listed authorities' British Sign Language plans, is consistent with other sections of the bill, as amended.

I move amendment 11.

Mark Griffin: I appreciate that the amendments are technical. The minister has explained the content and I support the amendments.

Amendment 11 agreed to.

Amendments 12 to 17 moved—[Dr Alasdair Allan]—and agreed to.

Amendment 18 moved—[Mark Griffin]—and agreed to.

Amendments 19 and 20 moved—[Dr Alasdair Allan]—and agreed to.

Section 3, as amended, agreed to.

12:00

Section 4—Publication by listed authority

The Convener: Amendment 21, in the name of the minister, is grouped with amendments 22 to 25 and 27.

Dr Allan: The amendments will ensure that section 3 is consistent with other sections of the bill as amended, and that it applies appropriately to authorities that are added to the list in the second or subsequent cycle. They include further amendments on timing, again to ensure consistency with other sections of the bill as amended. They are all consequential to other amendments.

I move amendment 21.

Mark Griffin: I have no comments, other than to say that I support the amendments.

Amendment 21 agreed to.

Amendments 22 to 25 moved—[Dr Alasdair Allan]—and agreed to.

Amendment 26 moved—[Mark Griffin]—and agreed to.

Amendment 27 moved—[Dr Alasdair Allan]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Performance Review

The Convener: Amendment 28, in the name of the minister, is grouped with amendments 29 to 34.

Dr Allan: My amendments to section 5 seek to create a more appropriate and proportionate approach to assessing and reporting on progress in two specific ways. First, they seek to rename the "performance review" a "progress report". Because of the lack of baseline data and performance indicators for work in the area, a performance review in the traditional sense of the phrase would be difficult to undertake.

Secondly, the amendments seek to remove the requirement to name individual local authorities and to highlight poor performance. On reflection, we do not think that it is appropriate to name and shame individual authorities that have published their own plans, as they are not accountable to Scottish ministers. That point was made strongly by the Convention of Scottish Local Authorities with regard to local authorities.

We expect that the assessment of whether a listed authority's progress is satisfactory will instead be made through a self-assessment process involving feedback from BSL users. Listed authorities will be supported by the deaf sector partnership, which is funded by the Scottish Government, to engage properly with their local BSL community so that the process provides an effective mechanism for holding public authorities to account.

We expect that the progress report will highlight best practice. It will highlight where further development is needed but without identifying individual authorities. Those findings will inform the on-going support that is provided to listed authorities through the deaf sector partnership. We believe that we will make better progress by using a carrot rather than a stick to support continuous improvement across the public sector. The amendments therefore seek to shift the emphasis of the reporting and review process in that way.

The progress report will be laid before Parliament by the Scottish ministers, as required by the bill, and will provide an overview of progress at national and local levels since the publication of the plans. It will describe progress or otherwise against the actions that are set out in the national plan.

In practical terms, amendment 28 gives listed authorities three years between publishing their plans and contributing to the progress report in the second and subsequent cycles, although the period will be two years for the first cycle. The timescale that was set out in the bill as introduced allows just over a year between the publication of authority plans and the performance review, which we do not think is long enough. Extending the cycle for reporting on progress in line with the cycle for publishing reports will give public bodies longer to implement the actions that are set out in their plans and to gather meaningful information on progress before they are asked to feed into the national progress report. Again, that will create a more action-orientated focus for the bill, which, as we know from evidence to the committee at stage 1, is what BSL users would like.

I move amendment 28.

Liam McArthur: I welcome amendment 28, which reflects the concerns that we heard at stage 1 with regard to the Scottish Government finding itself sitting in judgment on individual councils, which are responsible to their communities.

The approach that seeks to garner best practice and share it as widely as possible is sensible. Each local authority—or public body, for that matter—will start from a different position and will face different challenges, with different opportunities to take forward the promotional work on BSL. That is better reflected in the model that is suggested by the amendments in the group.

It may be for the advisory group, in future, to ask whether that approach is having the effect that it needs to have in spreading best practice more widely. For now, however, the amendments in the group outline a commonsense approach to the legislation, and I certainly support them.

Mary Scanlon: I raised issues in this area at stage 1, and I am pleased to put on record the fact that they have been addressed. My concern was that there is very little baseline data. In an area in which there is little provision and support for BSL, an authority might make tremendous progress, but in another area where practice is excellent, an authority might sit back and say, "There's not much more that we need to do."

Requiring a progress report at every level to make support more consistent is wise but, as I said in the stage 1 debate, I prefer the carrot rather than the stick, and I do not think that

naming and shaming anyone is a good way to build partnerships or to encourage and incentivise organisations.

I am pleased that a progress report has replaced the performance review, and I welcome and support the amendments.

Mark Griffin: My priority for the performance review was that it would provide a national overview of progress and allow stakeholders and interested parties to access information on the performance of local and national bodies. The proposed progress report will achieve that.

The amendments will bring the cycle for the production of progress reports into line with the production of the national plans, and I am content with those changes. The move away from the parliamentary session timescale means that the timescale for the publication of progress reports is simplified, and it does away with the need for special provision in the event of early dissolution of the Parliament.

I note that amendment 32 will remove the requirement to identify examples of poor performance among listed authorities. There were concerns about taking an approach that might be viewed as punitive, and the amendments better reflect the relationship between national and local government and to whom exactly the different levels of government are accountable. For example, they are accountable to the electorate rather than a different layer of government.

Amendment 31 will retain the requirement to identify and report on examples of good practice, which is welcome.

Amendment 33 will confirm what is meant by the term "relevant plans", which is now used in the bill. Amendments 29, 30 and 34 are minor technical or consequential amendments.

I support all the amendments in the group.

Dr Allan: For the reasons that Mark Griffin, Liam McArthur and Mary Scanlon have given, I believe that the amendments in the group create a more co-operative, proportionate and practical approach to reporting on progress than the perhaps outdated and burdensome approach that was set out in the bill as introduced. They better reflect the relationship between national and local government in Scotland.

Amendment 28 agreed to.

Amendments 29 to 34 moved—[Dr Alasdair Allan]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Special provision where early dissolution of the Parliament

The Convener: Amendment 35, in the name of the minister, is grouped with amendment 36.

Dr Allan: I have already set out why we think that the reporting and review cycle should be extended from four to six years. In my view, that would have the additional benefit of detaching the reporting and review cycle from the parliamentary cycle.

Although I appreciate Mark Griffin's original reasons for requiring the Scottish ministers to report and then account for progress within the same parliamentary session, that would tie us into a timescale that is not only too short but unnecessarily complex. These amendments are part of an effort to simplify the issues.

I move amendment 35.

Mark Griffin: I accept that section 6 and schedule 1 are no longer required now that the bill is to be amended to decouple the reporting cycle from the parliamentary session, so I support the amendments.

Amendment 35 agreed to.

Schedule 1—Special provision where early dissolution of the Parliament

Amendment 36 moved—[Dr Alasdair Allan]—and agreed to.

Section 7—Alteration of date of publication of plan or review in exceptional circumstances

The Convener: Amendment 37, in the name of the minister, is in a group on its own.

Dr Allan: Section 7 provides for the alteration of the date of publication of a plan or review in exceptional circumstances. That fits with the provisions in the bill as introduced for timings for plans, but it is no longer needed under our revised approach.

I move amendment 37.

Mark Griffin: There is no longer the same need to be flexible now that the timescales have been adjusted to allow more time to prepare the plans and progress reports, so I support the amendment.

Amendment 37 agreed to.

Before section 8

Amendment 38 moved—[Dennis Robertson]—and agreed to.

Section 8—"Listed authority" and other expressions

The Convener: Amendment 39, in the name of the minister, is grouped with amendments 41 to 44, 47 to 57, 63, and 59 to 62.

Dr Allan: This is a large group of amendments, and I will take a little while to explain them clearly.

We are proposing a series of amendments to schedule 2, which lists the authorities that will be required to publish their own BSL plans. Some public bodies, such as Audit Scotland, the Police Investigations and Review Commissioner and the Scottish Information Commissioner, are being added to the list and so will be required to publish their own plans. However, our amendments also seek to remove some public bodies from schedule 2. That does not mean that they will not be subject to the bill; they will be covered by the national plan—and I will say more about that in a moment.

For example, schedule 2 to the bill as it presently stands requires bodies such as the Scottish Children's Reporter Administration, the Scottish Further and Higher Education Funding Council, the Scottish Legal Aid Board and the Scottish Qualifications Authority to publish their own plans. We want to include those bodies in the national plan, and the amendments in this group therefore seek to remove them from schedule 2.

In addition, schedule 2 to the bill as introduced included some executive agencies of the Scottish Government such as Education Scotland and the Student Awards Agency for Scotland. Those bodies are part of the Scottish Government and will therefore be covered by the national plan. Our amendments seek to remove those bodies and other public bodies with a national remit from schedule 2.

A number of other public bodies that are not currently included in schedule 2 to the bill will also be covered by the national plan—for example, the Care Inspectorate, Children's Hearings Scotland, Creative Scotland, sportscotland, VisitScotland, the National Library of Scotland, the National Galleries of Scotland and National Museums Scotland.

12:15

I would like to say a wee bit more about the national plan. The scope of the national plan will be extended to include public authorities with a national remit that are responsible to the Scottish ministers. That means that the national plan will cover the vast majority of national public bodies, including special national health service boards with a national remit. That will reduce the number of plans being produced, which—as well as reducing the administrative burden on the public sector—will facilitate a more strategic and co-ordinated national approach.

All the national public bodies covered by the national plan will be accountable to the Scottish ministers and it is my view that incorporating them into a single national plan strengthens, rather than dilutes, their accountability.

As a result of our amendments, it is our intention that 147 public bodies will be either covered by the national plan or required to produce their own plan, including nine executive agencies or other organisational units that are part of the Scottish Government—some of which were listed separately in schedule 2 to the bill as introduced—as compared with the 117 public bodies in the bill as it currently stands.

Although the public bodies to be covered by the national plan will not be listed in the bill as amended, I have provided details of them in my 21 May letter to the committee convener, which I hope is helpful. That is now on the public record and confirms the bodies that are to be covered by a single national plan, which will enable us to take a more strategic approach to BSL nationally.

I move amendment 39.

Liam McArthur: The rationale behind the amendments is very sensible, as is the approach. However, it probably bears repeating that, in taking that approach, we absolutely need to make sure that each of those public authorities has a sense of ownership and responsibility for the contribution that it makes to delivering that national plan. Certainly the approach makes a lot of sense.

Mark Griffin: I thank the minister for his explanation. I understand that the intention behind the amendments is to bring the national public bodies that are accountable to the Scottish ministers and the others that were originally listed in schedule 2 under a single national plan. I accept that that will enable a more strategic and co-ordinated approach to producing the national plan and will also have the benefit of reducing the workload for many of the bodies. It would cut down on duplication when it comes to consultation and cut down on cost.

However, I reiterate Liam McArthur's point about national bodies taking ownership of, and responsibility for, their own actions within the national plan. It was my intention that schedule 2 should be a starting point for a discussion about which bodies should be included in the bill. I drew up the original schedule by focusing on the key public-facing bodies in the priority areas of education, health, justice, local government and policing. I am content that the proposed amendments to the schedule increase the number

of bodies that are affected by the bill without increasing the costs. I welcome the amendments.

Dr Allan: On Mr McArthur's point, the national plan will certainly be able to pick up on the specific areas of interest to different bodies.

Overall, our amendments to schedule 2 ensure that the bill will have broader reach and greater impact on the lives of deaf BSL users and that the national approach will be more co-ordinated.

Amendment 39 agreed to.

The Convener: Amendment 40, in the name of the minister, is grouped with amendment 46.

Dr Allan: The amendments are minor and have been included as a consequence of other amendments. They ensure that the interpretation section includes terms that have been added to the bill by other amendments. Amendment 46 creates a new section after section 8 that deals with the interpretation of terms used earlier in the bill, namely "authority plan", "national plan", and "relevant public authority".

I move amendment 40.

Mark Griffin: I support the amendments.

Amendment 40 agreed to.

Amendments 41 to 45 moved—[Dr Alasdair Allan]—and agreed to.

Section 8, as amended, agreed to.

After section 8

Amendment 46 moved—[Dr Alasdair Allan]—and agreed to.

Schedule 2—List of public authorities

Amendments 47 to 57, 63, and 59 to 62 moved—[Dr Alasdair Allan]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 9 and 10 agreed to.

Long title agreed to.

The Convener: I am glad to say that that ends stage 2 consideration of the bill. I thank the member in charge, the minister and the officials for attending today. I am grateful for their attendance. I also thank Dennis Robertson for his attendance. The bill will now be reprinted as amended.

The Parliament has not yet determined when stage 3 will take place, but members can lodge stage 3 amendments at any time with the legislation team. Members will be informed of the deadline for amendments once it has been determined, and we will publish further details on our website and on our BSL Facebook page.

That concludes the committee's formal involvement in the bill. I thank everyone who has contributed to our scrutiny of the issues, including the many witnesses who gave evidence to us, Windsor Park school and sensory service in Falkirk and Deaf Action for hosting a visit from us, and the many people who gave their views and comments on the bill via our Facebook group in particular. I thank the BSL interpreters who have supported us throughout the process, and I thank all the people who have been involved in the process.

12:22

Meeting suspended.

12:25

On resuming—

Subordinate Legislation

Education (School Lunches) (Scotland) Regulations 2015 [Draft]

Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2015 [Draft]

The Convener: The next item on the agenda is evidence on two pieces of subordinate legislation. I welcome Fiona McLeod, the acting Minister for Children and Young People, and her supporting officials from the Scottish Government. After we have taken evidence on the instruments, we will debate the motions in the name of the minister. Officials will not be permitted to contribute to the formal debate.

I invite the minister to make some opening remarks on both instruments.

Fiona McLeod (Minister for Children and Young People): I would like to make a brief statement in relation to the two instruments.

I will start with the draft Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2015 and put it in the context of the overall policy objectives. The key priorities of the Scottish Government's early learning and childcare policy are to improve outcomes for all children, especially those who are most vulnerable and disadvantaged, and to support parents—especially those who need routes into sustainable employment and out of poverty in order to support their families—to work, train or study.

Those policy priorities are why the Children and Young People (Scotland) Act 2014 increased free early learning and childcare from 475 hours a year to 600 hours per year, put choice and flexibility on a statutory footing for the first time, and extended eligibility to the most vulnerable two-year-olds—those who are, or have been at any point since their second birthday, looked after by a local authority or the subject of a kinship care or guardianship order.

The committee will remember that, in January 2014, the then First Minister announced further expansion of the entitlement to early learning and childcare for two-year-olds to those with a parent in receipt of certain out-of-work benefits—around 15 per cent of Scotland's two-year-olds—from August 2014 and, from August 2015, to those who come under free school lunch qualifying criteria, which would take us to around 27 per cent of Scotland's two-year-olds.

The Provision of Early Learning and Childcare (Specified Children) Order 2014 was made under the Children and Young People (Scotland) Act 2014, and it defined all three and four-year-old children as eligible, as well as the first cohort of two-year-olds with a parent in receipt of certain out-of-work benefits. The draft Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2015 will extend eligibility for early learning and childcare to the second cohort of two-year-olds, who come under the qualifying criteria for free school lunches.

The amendment order proposes to amend the original order by adding free school lunch criteria not already covered—where a parent or carer receives: child tax credit, but not working tax credit, with an income up to the threshold for child tax credit, which is currently £16,105; both maximum child tax credit and maximum working tax credit, with an income below a certain threshold, which is currently £6,420; universal credit; or support under part VI of the Immigration and Asylum Act 1999. I should also point out that the thresholds for the tax credits can change annually under the Tax Credits Act 2002.

12:30

I turn to the draft Education (School Lunch) (Scotland) Regulations 2015. Young children who are eligible for early learning and childcare are also entitled to a free school lunch where they meet the current free school lunch criteria set out in the Education (Scotland) Act 1980. However, one of the implications of extending early learning and childcare to this full cohort of two-year-olds under the Children and Young People (Scotland) Act 2014 and the two specified children orders is that a small number of those two-year-olds will not meet the free school lunch criteria. That includes those two-year-olds who are, or have been at any time since their second birthday, looked after by a local authority or the subject of a kinship care or guardianship order and those two-year-olds with a parent in receipt of incapacity benefit, severe disablement allowance or state pension credit.

The draft regulations will rectify that discrepancy, by adding the criteria that I have just mentioned to the free school lunch entitlement for young children. It will apply to all eligible young children in early learning and childcare to ensure that all two, three and four-year-olds have equal access to a free school lunch.

We have worked closely with all our key stakeholders and delivery partners to discuss the practical implications of the commitments and to support their implementation from August 2015. I seek the committee's support for both instruments, to enable us to fulfil our commitment to expand early learning and childcare to more two-year-olds

and to ensure that those vulnerable and disadvantaged young children have equal access to a free school lunch throughout early learning and childcare.

Liam McArthur: I welcome both instruments. It is no secret that I hope that this is the latest phase in an effort to extend eligibility beyond the current level of 27 per cent of two-year-olds. However, having pressed the Government to go a stage further, I welcome the confirmation that that is happening in the form of the two statutory instruments.

The need to ensure that those eligible two-year-olds have access to free school meals was the result of an anomaly that was picked up at a local level. I want to put on record the efforts of Councillor Rob Crichton in exposing what seemed to be a needless exclusion of those children who were from more disadvantaged backgrounds but were not necessarily eligible for the free school meals that their peers in the nursery were entitled to.

My only question is: in the discussions that you have had with the delivery partners, which are presumably principally the local authorities, what has been discussed in relation to the resource implications? I know that in the Orkney context the overall numbers do not appear to be huge—that added to the sense of frustration that it was not being done previously—but over the piece the cumulative figure may not be insignificant. It would be helpful to know how the policy is being resourced.

Fiona McLeod: As I have said, we have had extensive consultation and close working with all delivery partners. The Convention of Scottish Local Authorities has agreed the principle, provided that the costs incurred by local authorities are fully met. The Government has estimated that cost to be around £600,000, and we can meet that in our 2015-16 budget.

Mary Scanlon: I would also like to put on record that I commend the Lib Dems, particularly Willie Rennie, who has been very vocal on the issue. I welcome the two instruments.

I have a question, which I ask in a spirit of supportive good will, because I am very much in favour of the policy. I understand that, in England, the percentage of eligible two-year-olds is about 38 to 40 per cent, although I may be wrong. If possible, can the minister tell us what cohort in England is provided with early learning and childcare that is not covered in Scotland?

Fiona McLeod: I am sorry, but I cannot tell you about the criteria for England. However, I can reassure you that the figures to increase the cohort of two-year-olds from 15 to 27 per cent are based on the budget consequentials from December 2014. We want to do that sustainably; we want to do that by working with our partners.

Last year, our first cohort was those two-year-olds in workless households. Extending the criteria today will allow us to include families on the lowest incomes. As I say, the increase is based on figures from the 2014 Barnett consequentials. The increase is being done slowly to ensure that, at each point, we are able to fulfil our commitment.

Mary Scanlon: I welcome that.

The Convener: I have a couple of questions, minister. What is the plan to communicate to parents the eligibility changes on the instruments? How will parents get to know about the changes?

Fiona McLeod: Our work on that, which we started last year, has been fairly successful. We are working with the Department for Work and Pensions so that, when it identifies parents who meet the criteria, it lets them know that they are eligible. We are also working with health visitors, because they visit the households of all the two-year-olds in question.

Over the summer, as we did last year, we will have a large marketing campaign, which includes providing information on the radio and in leaflets, in order to get the message out.

The Convener: I have one other question, which is specific to the school lunches instrument. Paragraph 4 of the policy notes says:

> "The extended entitlement will apply to all pre-school children, where they are in a local authority ELC setting with a session spanning the middle of the day."

What does

"a session spanning the middle of the day"

mean? What is that defined as?

Fiona McLeod: The term "middle of the day" is in the original legislation. That might be 11 until 1, but—

The Convener: I am slightly curious about the matter.

Fiona McLeod: I will check what the specific hours are for you, convener, but I think that it means over lunch time.

The Convener: So if someone had a session just in the morning or in the afternoon, they would not be eligible.

Fiona McLeod: They are eligible if they are in their early learning setting over the lunch-time period. I am told that the school lunch means anything provided in the middle of the day that the education authority considers is appropriate. That is about what the meal is, so I will have to get back to you with the specifics. However, it is fairly clear

that “middle of the day” refers to a child being in the early learning setting over lunch time.

The Convener: It seems obvious that those who are there across the lunch-time period would get the lunch. I am just wondering whether children who are there up to the lunch-time period would get lunch. Could you double-check that?

Fiona McLeod: I will go away and work out what “middle of the day” means.

The Convener: I think that Liam McArthur would like to comment.

Liam McArthur: I am glad that you have raised that point, convener. The issue has been raised with me in the context of two-year-olds in a nursery setting over the course of the morning and up to the lunch time who are then flung out the door—

The Convener: No one said to me that they are “flung out the door”.

Liam McArthur: —just as their peer group is settling down to a lunch. If provision over the lunch period is simply seen as an extension of delivery through the late morning, that will be very welcome. However, if it simply means those who bridge the lunch hour in the learning setting, that will be unfortunate.

Fiona McLeod: I will get back to the committee with the specifics. We and local authorities are working hard on the flexibility of the sessions on offer. That issue will obviously be factored in.

The Convener: Thank you very much.

As there are no other questions, we will move on to item 4. I invite the minister to move motions S4M-13291 and S4M-13292.

Motions moved,

That the Education and Culture Committee recommends that the Education (School Lunches) (Scotland) Regulations 2015 [draft] be approved.

That the Education and Culture Committee recommends that the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2015 [draft] be approved.—[*Fiona McLeod*.]

Motions agreed to.

The Convener: With that, I close the meeting.

Meeting closed at 12:40.

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