



OFFICIAL REPORT
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Education, Children and Young People Committee

Wednesday 25 May 2022

Session 6



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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
15th Meeting 2022, Session 6

CONVENER

*Stephen Kerr (Central Scotland) (Con)

DEPUTY CONVENER

*Kaukab Stewart (Glasgow Kelvin) (SNP)

COMMITTEE MEMBERS

Stephanie Callaghan (Uddingston and Bellshill) (SNP)

*Graeme Dey (Angus South) (SNP)

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

*Ross Greer (West Scotland) (Green)

*Ruth Maguire (Cunninghame South) (SNP)

*Michael Marra (North East Scotland) (Lab)

Oliver Mundell (Dumfriesshire) (Con)

*Willie Rennie (North East Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jonathan Broadbery (National Day Nurseries Association)

Jane Brumpton (Early Years Scotland)

Hannah Graham (Scottish Government)

Adam Hall (Improvement Service)

Clare Haughey (Minister for Children and Young People)

Graeme McAlister (Scottish Childminding Association)

Tom McNamara (Scottish Government)

Claire Montgomery (Scottish Government)

Matthew Sweeney (Convention of Scottish Local Authorities)

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 25 May 2022

[The Convener opened the meeting at 09:30]

Early Learning and Childcare: 1,140 Hours

The Convener (Stephen Kerr): Good morning, and welcome to the 15th meeting in 2022 of the Education, Children and Young People Committee. The first item on our agenda is a one-off evidence session on the implementation of the policy to provide 1,140 hours of early learning and childcare.

I welcome Matthew Sweeney, policy manager for children and young people at the Convention of Scottish Local Authorities; Jane Brumpton, chief executive of Early Years Scotland; Adam Hall, programme manager for the recovery and delivery programme at the Improvement Service; Jonathan Broadbery, head of policy and communications at the National Day Nurseries Association; and Graeme McAlister, chief executive of the Scottish Childminding Association. All our panelists are joining us remotely for various reasons, most of which have to do with transport.

We have five panellists, so please do not feel that you all have to answer every question. When you want to say something, we want to hear from you. If you indicate in the chat box that you want to comment, we will make sure that you get in, but do not feel obliged to answer every question. I hope that that is helpful. My colleagues will direct their questions to one of you in the first instance so that we can keep things moving smoothly. It is not the same as being in the room, but we will try to replicate that as far as possible.

My first question is for Matthew Sweeney. What has worked well in the expansion of childcare hours?

Matthew Sweeney (Convention of Scottish Local Authorities): A number of things have worked quite well. The numbers in our written submission show that we have managed to scale up quite rapidly despite the challenges of the pandemic, which meant that we had to delay for a year from August 2020 to August 2021. The evidence in the submission pack shows that a number of things have worked. More than 80 per cent of parents who reflected their views feel that the childcare hours are working for them, despite some of the on-going impacts of the pandemic.

We have had to make interim changes to the guidance, which has perhaps made things less flexible than we would like. Some building projects that were delayed by the pandemic are still going on, and we are not quite there with making sure that all the options are available to parents and families. Despite that, however, it seems that the provision is being broadly welcomed by parents.

There has been good partnership working between a range of organisations, and not only between the Scottish Government and local government. The majority of the programme has been a real example of good partnership work between the two spheres of government in Scotland, and also between local authorities and their partners.

There have been some areas of tension, which I am sure we will come to, but there is a general feeling across the sector that we need to work together to support Scotland's children as much as we can. I work regularly with the people on the panel and I have a close and strong working relationship with them. We have benefited from that as we have gone through the pandemic and worked on the delivery of the 1,140 hours. As that beds down, we will expand the offer to meet the fullest ambition in the coming months and years.

The Convener: Jonathan Broadbery, can we hear your take on that?

Jonathan Broadbery (National Day Nurseries Association): From our members' point of view, based on parents' experiences, there have been real positives. I agree about that. More children are accessing high-quality early learning and childcare because of the policy. There have definitely been challenges, including those that were caused by the pandemic, but our members have consistently said that they support the policy's aim to make affordable ELC accessible for parents.

The policy has a really good aim, which is to get the best for Scotland's children. Availability has expanded, but there have been practical challenges in the delivery. As Matthew Sweeney said, I am sure that we will come to those. Generally, the experience for children and parents has probably been really positive, but the policy has created a lot of hard work for our members.

One of the positives is that, when the policy started and in the build-up to the full roll-out, private, voluntary and independent providers were expected to provide about a quarter of the places. The latest figures suggest that they now provide more than 30 per cent. Scotland's nurseries and other types of provider have really stepped up and made sure that they have the capacity to offer the funded policy to families and children.

The Convener: Okay. Graeme McAlister, we need to hear from you.

Graeme McAlister (Scottish Childminding Association): We support the ELC policy's intent to close the attainment gap and offer free or funded childcare to families, particularly those on low incomes. Unfortunately—[*Inaudible.*]

The Convener: We do not have a good connection with you, Graeme.

Graeme McAlister: Is it better now?

The Convener: That is much better, yes. Will you pick up from the point that you had reached? You used the word “unfortunately” and then you disappeared.

Graeme McAlister: I am sorry. We support the ELC policy's intent to close the attainment gap and provide free childcare, but for childminding the experience has, unfortunately, been very negative. Over the past five years, the ELC expansion has had what I can only call a devastating effect on our workforce, which has declined by—[*Inaudible.*]—per cent. We have lost 1,457 childminders—or, to put that in real terms, more than 8,700 childminding places—during the ELC expansion, and that trend is accelerating.

The Convener: I did not catch all of that. You quoted some numbers, Graeme. Will you revisit them and then say what your conclusion was?

Graeme McAlister: Yes. Unfortunately, during the past five years of ELC expansion, our workforce has declined by 26 per cent, with 1,457 childminding businesses being lost. In practical terms, more than 8,000 childminding places have gone during the past five years, and that trend is accelerating—the situation is getting worse. We have experienced a series of weaknesses or failings in policy implementation at the national and local levels.

The Convener: It is very useful to hear that. Our next question is from Kaukab Stewart.

Kaukab Stewart (Glasgow Kelvin) (SNP): We have talked a bit about the benefits of ELC and there has been an acknowledgement of the roll-out. The hours that are being offered have tripled since 2002, I think, which is great. However, in reading the written submissions, I noted that there is a gap and that not all parents are taking up places. What suggestions do you have on how we can increase the take-up, given the expansion? I put that question to Matthew Sweeney first, and then I am interested to hear from Jane Brumpton.

Matthew Sweeney: That is an important question and one that we have discussed at length. There is obviously a question about the hours, but it has always been very clear that 1,140 hours is an entitlement and not a requirement. It

was never expected that every family would want the full 1,140 hours. There was always an understanding that that might not work for specific family circumstances, working patterns and so on. That is probably a reason for the gap.

We need to work out how much of what is going on just now is because 1,140 hours is not what families need—they perhaps do not need or want the full entitlement—and what more we can do to drive uptake and fully bed in the flexibility and choice that we are aiming to offer once the pandemic is out of the way. We can then move towards where we finally intend to be and meet the intentions and aims that were set out in the original application of the policy.

There are still disruptions to working patterns because of the pandemic, and it is difficult to know whether what we are seeing now will continue. We may move into a world where everyone goes into their offices more frequently or we may stay in a world of hybrid working. It is not clear what the long-term trends will be because of Covid, and we do not know whether the number of hours that families will want to take up will change. Local authorities are very live to that and they regularly consult parents—they have a duty to do so. They will take those factors into account as they plan their services in the years ahead.

Jane Brumpton (Early Years Scotland): I agree with Matthew Sweeney. The childcare hours are an option, and not all parents will want to take up the opportunity of the full amount of time.

There are other challenges. We know that the PVI sector offers more flexibility, which has been inherent for years. Some parents may not get the pattern or the availability that they are looking for. That can be an issue in some more rural settings. People rely on wide availability, but the PVI sector is experiencing challenges. It is critical to ensure that the sector is fully supported and sustainable so that parents have the full opportunity to access the entitlement where they need it and for the number of hours that they require. The PVI sector has the flexibility to offer extensions. Parents often need more than 1,140 hours across the year, depending on their working arrangements. It is critical to get that right for parents.

Kaukab Stewart: It is useful to hear that. Matthew, how does ELC provision in Scotland compare with provision in the rest of the United Kingdom?

Matthew Sweeney: I am not an expert on that, but my understanding is that there have been changes in the offer. There are no employment requirements for accessing the full 30 hours in Scotland. I believe that, for a time, parents in England had to be in work in order to receive

additional hours. I am not sure about the rest of the country.

This may come up later, but it is important to flag up that the rates that are paid to private and voluntary nurseries and childminders in Scotland are significantly higher than those that are paid to our colleagues in the rest of the UK. The Scottish Government's submission highlights that almost £1 more per child per hour was provided in Scotland in 2021-22. I do not have much more detail about the offer in the rest of the UK.

Kaukab Stewart: That is fair enough. Would any of the other witnesses like to comment?

Jonathan Broadbery: We operate across the UK and have members in Scotland, England, Wales and Northern Ireland. There are real policy differences. Matthew Sweeney mentioned the different levels of funding. The policy in Scotland also has extra requirements that benefit parents but make it more difficult for providers. Places are completely funded by the Government through local authorities, whereas in England and Wales providers have the ability to cover costs, such as for consumables, directly with parents. When costs rise quickly, that can put pressure on Scottish providers because the addressing of funding through local authority or Government budget-setting processes is slower.

In Scotland and Wales, the take-up of other support outside the funded hours—for example, of tax-free childcare and universal credit—is lower than we would expect from the eligible population. There is a piece of work to do there. In the build-up to the original date of August 2020, there were campaigns to encourage parents to take up the ELC and see the value of it.

I echo what Jane Brumpton said about the flexibility that PVI providers have to meet parents' needs and adapt to changing work patterns and flexibilities.

09:45

Willie Rennie (North East Fife) (LD): Why are we so bad at getting entitled two-year-olds into the provision? Perhaps Adam Hall could answer that first.

Adam Hall (Improvement Service): We have reported on the numbers of children who are accessing funded childcare across Scotland since the beginning of the expansion. Those reports reflect that, although there has been a year-on-year increase in the number of two-year-olds who have been accessing the expansion, particularly in recent years, the proportion of those children who access the full entitlement to 1,140 hours is lower than the proportion of the wider, universally eligible population of three-to-five-year-olds.

However, our reports do not ask questions on the reasons behind that. We track the numbers of children who are accessing the provision, but we do not dig into the details of why that is the case or question the parental choices that might be the reason why that uptake is lower.

Willie Rennie: Surely the clue is in the title of your organisation. If we are going to improve things, we should understand the reasons. Is no attempt being made to understand them?

Adam Hall: I think that work is on-going across organisations such as the Improvement Service and the Scottish Government, which has noted the work that it is doing with local authorities and partners to try to understand the trends and make improvements where possible.

Willie Rennie: Does anybody else have any ideas?

Matthew Sweeney: It is an important question. As has been mentioned, one of the key benefits of the ELC expansion is that it tackles the attainment gap, and the two-year-olds who are eligible will benefit most. There are a couple of points around that, one of which is that the offer is targeted and there is always stigma about taking up such an offer. That is hard to quantify and hard to overcome. Local authorities have tried to take approaches that involve linking in with family nurse partnerships and community engagement, such as going into local social-setting and voluntary groups and trying to push up the uptake in that way.

The fundamental challenge for local authorities is that they do not know who is and is not eligible because of the data sharing issues that we have had to date. There has been positive progress on that, however, and we hope that the consultation that the UK Government launched earlier this year will allow us to set up the data gateway that is currently available in England and Wales. We are really hopeful that, once that is available to local authorities in Scotland, it will allow us to put rocket boosters on the uptake. I echo what Adam Hall said: we have seen a 26 per cent increase year on year, with a further increase in January. We will continue to push uptake, because, as I said, local authorities really appreciate how important it is and are trying their best to do it.

Willie Rennie: Is there any effect due to the lack of universality—as in, universal in every community across the country—of the offer? From what I have observed, the provision for two-year-olds is not available in every community; some people have to travel to get it. Does that have an effect?

Matthew Sweeney: I am not familiar with that, so I would not be confident in commenting on it. However, there is an issue around how we ensure that provision is available everywhere. I touched

on that earlier. We are still in the process of bedding in not only the delivery of the core hours but the broader flexibility and choice, and ensuring that that is possible. That has been challenged by the Scottish Government's recent cuts to the funding for local authorities to provide ELC. Nonetheless, there will absolutely continue to be attempts to ensure that it is available as widely as possible, and to push uptake.

I suppose that there is a broader question about the policy design and whether a place for 30 hours a week is always the best thing for families or whether we should look at other ways of providing support. There is some really interesting work going on across the country where ELC settings are not just providers of childcare but are working to link families with other key services such as money advice, social work and so on. That is perhaps something that we need to roll up and expand.

Willie Rennie: I have one final question. Why is it that some councils do not offer a higher rate for provision of the service for two-year-olds when it is clear that the ratios require more staff and the demands on additional support will be greater than those for the mainstream three and four-year-old offer? Why are some councils not providing a higher rate?

Matthew Sweeney: I am not able to comment on the rate that is set by every local authority. Obviously, there is a process that they go through. I think that we will probably come on to how we are trying to strengthen that process through a national cost collection exercise.

We need to be a bit cautious, because the support from a local authority to a provider does not come purely in the form of rates. A range of in-kind benefits is also provided, whether that be staff development and training, support for quality improvement or stuff around renting, lets and so on. I cannot comment on everything, but it is really important that we look at the package of support that goes from local authorities to providers in the round, as opposed to just looking at the numbers on their own.

Willie Rennie: City of Edinburgh Council provides a flat rate across all the different age ranges, but I think that the demands from two-year-olds would be higher. Could I ask you to have a look at that and perhaps follow up with any correspondence that you receive on it?

Matthew Sweeney: I would be happy to do so.

Jane Brumpton: To pick up on Matthew Sweeney's point, Early Years Scotland is a membership organisation as well as an organisation that supports direct service delivery. We work closely with parents, predominantly of the eligible twos. We offer the service that

Matthew was talking about, in that we work with parents and children together, and many of our members offer similar supportive approaches. We believe that it is not necessarily in the best interests of all families to have that greater time of separation.

The key thing for us, which we have been discovering from parents, is definitely the stigma that was mentioned. There are a lot of hoops and challenges to go through in terms of proving eligibility, and some parents who are really struggling and quite disadvantaged in a number of ways have possibly found that they are not eligible. That may well be because they have a small proportion of money over the threshold and they appreciate that local authorities are able to have some flexibility in that, but it would be good if that were utilised more.

The programme for government contains the aspiration to extend the funded entitlement so that it is not such a targeted offer, and a lot of learning is taking place there. We have been having discussions with the Government around how we can make the process more streamlined and easier for parents who need the service for eligible twos, and how to overcome a lot of the barriers to that. We are happy to provide more evidence on that if necessary.

The Convener: Does Graeme McAlister have a comment?

Graeme McAlister: Can you hear me clearly this time?

The Convener: We can indeed.

Graeme McAlister: I agree with Matthew Sweeney's point. In our experience, stigma is still a challenge to increasing eligible twos uptake. We have a little more traction as an organisation because we have integrated services in Glasgow and Aberdeen, which deliver community childminding services, which are supported family interventions for vulnerable families.

We have successfully linked those community childminding services into eligible twos uptake, so that, once a family has received an initial placement from us, that acts as a feeder and takes them in. We are starting to see some good data around that. However, although many childminders around Scotland are involved in providing childcare to two-year-olds, we are still encountering challenges in terms of the actual number of childminders who are involved in delivery.

The ELC audit that we undertook for the Scottish Government last year found that 29 per cent of childminders had been approved for eligible two-year-olds but only 4 per cent are actually involved in delivery. We continue to get

feedback from childminders and parents that too many local authorities are still not presenting childminding as an option for receipt of the ELC entitlement. That barrier is inhibiting increased uptake and provision for eligible two-year-olds.

Jonathan Broadbery: I agree with Graeme McAlister's point. There are providers who are available and have space to deliver places, but it is not always possible for them to work in partnership with local authorities. That could go back to Willie Rennie's question in relation to the rates that are set because some local authorities do not engage partner providers to deliver to the supported places for two-year-olds.

I echo what Jane Brumpton said, which is that, if we are looking for incremental expansion in this area, we need to get to grips with the issues so that parents do not feel the stigma, and we need to recognise the expertise and the current provision within the private, voluntary and childminding sectors that already exists.

Michael Marra (North East Scotland) (Lab): The evidence that we have heard so far has prompted some questions in my mind. It is clear that there is broad support across the Parliament for increasing the options, particularly for people from more economically deprived backgrounds. That is a big positive. However, from the outside, I have found it quite difficult to understand whether the programme and big investment of taxpayers' money is about childcare or education. The Scottish Government has said that the benefits are increasing family resilience, closing the poverty-related attainment gap and supporting parents into work. Some people would say that some of those things might be in conflict, although I do not necessarily agree. Is it childcare or is it education?

Adam Hall: It is classified as early learning and childcare. The information that we collect is across the board: it does not specify whether the provision being sought is in any way specific to an education background, whether it is provided in schools or whether it is provided in stand-alone nurseries. For us, there is no distinction in that definition. The way in which we collect the information on the number of children accessing the provision is holistic and covers early learning and childcare. It is clear that the two go hand in hand. It is not an easy distinction to make, as your question suggests. The numbers that we collect cover early learning and childcare together.

Michael Marra: I understand what you are saying, but that is quite worrying for me. In essence, it has become a numbers game in terms of inputs: we know that X number of families and children are accessing the provision. However, as a Parliament, how are we supposed to evaluate whether the policy is increasing family resilience, closing the poverty-related attainment gap and

supporting parents into work? As the Improvement Service, you might claim that that is not your job and maybe we need to find other people to do that job. Those are the policy intentions, and we need to be able to draw the causal link between the investment and the outcomes, rather than just the inputs.

In answer to Willie Rennie's questions, you said that you do not really collect that information or assess the policy in that way and that you just look at the numbers. Is that correct?

Adam Hall: Yes. Our delivery progress reports are on-going for the academic year, but their scope is specifically related to the delivery of the expansion programme. We are looking to identify the workforce that is in place in local authorities and the number of children who are accessing the service in order to confirm delivery of the programme.

We would look to feed into the wider, longer-term monitoring and evaluation strategy that will come off the back of it to give evidence on the outcomes that the holistic policy is looking to achieve.

The Convener: Are you saying that the Improvement Service would not know whether the policy is achieving its outcomes? Is that what you just said?

Adam Hall: That is outside the scope of the delivery progress reports that we have been asked to put together to date as part of the tracking of the expansion. The scope of those reports and the collection of information on expansion activities over the last few years was designed to understand and flag to the joint delivery board where there might be any risks to delivery and where any action might need to be escalated through the governance process.

10:00

The Convener: When you say delivery, you mean inputs not outcomes—is that correct?

Adam Hall: Yes. In that sense, we do not report on the outcomes in relation to the poverty-related attainment gap or even the subset of outcomes of flexibility, parental accessibility and choice. As you say, it relates to the inputs to show the number of children who are accessing the service and the workforce in place in local authorities to deliver that, in order to ensure that there is the relevant capacity to deliver on the statutory duty of 1,140 hours.

The Convener: It is just that it says on the tin "Improvement Service" and I would have thought that improvement related to outcomes. There we go—I learn something new every day.

Michael Marra: I will put roughly the same question to Matthew Sweeney. In COSLA's view, is the policy about childcare or about education?

Matthew Sweeney: It is about both. You highlight an important issue. There will always be an element of how we do both well, which is part of the reason why the policy is ambitious. It is about how we create a culture across the whole sector and look to support children and families at the same time, which is not to say that that is easy.

That last discussion raises an important point about how we move away from measuring inputs and outputs towards measuring outcomes. That is a challenging thing to do better, because there are questions about how we collect information and how we work out the causality of some of those things. That is difficult and work is on-going in the Scottish Government on how to do that.

You mention the level of investment; we are also seeing disinvestment from this policy in terms of funding from the Scottish Government's ring-fenced grant and the core local government funding. I want to be absolutely clear that meeting this bold ambition is being made harder with the changes to ELC funding over the past year.

Michael Marra: You will not find any disagreement from me on that point about underfunding and the issues around the funding of local government services.

It strikes me that it would not be too difficult to design a research programme that followed the investment, whether that was a longitudinal study or case studies, including an understanding of labour market dynamics. All of that information is available. Do you see that as being COSLA's job, given that we have just been told by the Improvement Service that it is not its job? Is it COSLA's job to evaluate the programme outcomes?

Matthew Sweeney: I would say that that is a job for the Scottish Government. The Government is doing some of that work through the Scottish study of early learning and childcare. I am afraid that I am not totally involved in all the details of that work, which is on-going. However, it is quite a different task from measuring the outputs and the data that is easy to collect. We are broadly aware that in public policy the things that get measured are often the things that are easy. The challenge is how we measure other things and change the understanding.

So often, most of the conversation around ELC is about where the spaces are, whether we have met targets and how we can make sure that it works for parents, but some of the questions about how we deliver for children themselves are crucially important and harder to understand. It is

a challenge to get that data and the understanding right—we all need to live up to that challenge.

The Convener: I am interrupting to bring in Willie Rennie, and then we will come back to you, Michael.

Willie Rennie: We are not really getting to the nub of this. In 2010, there were 1,500 nursery teachers and there are now only 700. Does that not give an indication that we have moved from education to just childcare? That question is for Matthew Sweeney.

Matthew Sweeney: There are a couple things in that.

I will repeat the point that I have just made to Michael Marra about the disinvestment in local government services: there will always be an impact when that happens.

There are different ways in which we might look at a graduate workforce within ELC and some of the newer qualifications, such as the BA in childhood practice. Some staff may not have the official title of nursery teacher, but they provide a graduate level of support and they lead pedagogy in their settings, whether or not that is the right way to approach that. It would be undeniable to say that the reduction in local government funding has not impacted on some of the ways in which—

Willie Rennie: I will push back a wee bit on that. I am not a defender of the Government, but COSLA has accepted that the settlement for the early learning and childcare offer was going to meet the needs. I know that there has been a reduction in funding in the past year and that there has been some rejigging of funds. However, the policy has been funded, so I am puzzled about why there has been such a reduction in nursery teachers over that period when, apparently, there has been enough money.

Matthew Sweeney: First, the figures that you mentioned were over a much longer period than the three years for which the multiyear funding package was agreed. The funding package was phased in over those years; it existed for one year at the level that it was agreed and it has been reduced since that year. Secondly, there are new qualifications and new graduates are coming in at the same time; that funding is not just for teachers.

Michael Marra: I suppose that part of the issue is the need to think about the unintended consequences. If we are not setting clear parameters for what we hope to achieve—there is a broad range of things that we need to achieve—and we are not measuring our achievements, other than the input targets, that is a problem.

I was interested in the evidence, both written and verbal, that we received from the Scottish Childminding Association, which described the

devastation of the childminder service: 1,400 businesses have gone and 8,000 places have gone. That is reflected in the experience of some of my constituents, who have told me that they recognise that that policy is in place but that they still cannot access the wraparound childcare that would allow them to go to work. The flexibility is not available through local authority services or other forms of childcare. Childminders would normally be part of that.

Graeme McAlister, do you see the collapse in the childminder sector as a direct consequence of the implementation of the policy? Is that what you were alluding to earlier?

Graeme McAlister: Yes, I think that there are a number of challenges with the implementation of the policy.

Can you still hear me clearly?

Michael Marra: Yes. Proceed, and we will see how we go.

Graeme McAlister: No, I think that they have been—*[Inaudible.]*

Michael Marra: No, I am afraid we cannot hear him.

The Convener: We could turn off his camera, as was suggested, and see if we can get him on audio only.

Now that we have turned your camera off, let us see whether we can hear you, Graeme.

Graeme McAlister: If problems continue, I can try to connect via another network.

There have been a number of challenges with the implementation of the policy. For childminders, one of the problems is that they have found it difficult to be included in ELC delivery. One of the founding principles of ELC is what is called provider neutrality, which means that parents should be able to choose their preferred childcare and local authorities should be promoting all providers equitably to parents.

Over the past five years, we have been commissioned by the Scottish Government to undertake annual, independent audits of local authorities' progress in relation to including childminders in their delivery of childcare provision. We found that some local authorities that understand childminding and the unique benefits and value that it has for parents have been inclusive and have involved childminders. However, too many have not done that. There have been recurring instances where childminding has simply not been promoted as an option to parents, which has been fed back in our audit returns and surveys with childminders and parents.

Childminders could, potentially, play a significant role in ELC delivery. It is a very flexible form of childcare and it supports parents from early in the day and, quite often, until the later in the evening and it can be combined with other forms of childcare. However, in too many cases, local authorities have been conflicted. They are responsible for overseeing local expansion plans, but they are also direct service providers in their own right. There is recurring evidence that local authority nurseries are prioritising their own provision while childminders are simply getting the remainder of the hours. The level of hours that they are receiving is simply not sustainable for their business viability. Does that make sense?

Michael Marra: It does—and I appreciate that.

It seems to me that there is some level of conflict between the different outcomes, with the sheer push to increase numbers of hours and the question whether we are providing education or childminding.

I also have a question about the impact of the pandemic, but I am not sure whether you want me to proceed with that now, convener.

The Convener: We will come back to that, as there is a queue of people—thankfully—who want to contribute to the current line of questioning.

Jane Brumpton: I want to pick up on the points about the reduction in the number of teachers and so on. It is important to stress that the ELC sector is a graduate-led sector, with people who are highly qualified, highly experienced and highly trained. With regard to the recent reports from the Organisation for Economic Co-operation and Development and some of the recommendations, with the big focus on the support for extending the time that teachers have to access planning, we often forget about the importance of the ELC sector, which we need, too, and that focus further compounds the perceived lack of value for the sector. It is important to recognise the high quality in the sector in general—across the PVI sector and among childminders—and to recognise the evidence that is available on inspections and quality improvement. It is important to recognise the value of the sector because we want to encourage more people to come into the sector to make it sustainable, so that it can obtain and retain high-quality staff.

I felt it important to state that.

Jonathan Broadbery: I would like to come in again on the dichotomy between childcare and education. Many of our members talk to us about the frustration that what they do is seen as either one or the other. In fact, when we are caring for and working with very young children, everything that they are doing is learning, even if it is just learning to cross the midline by scratching the

other side of their face and to do all the things that are foundational to what they will go on to learn. It is not that we provide an hour of care first and then say, "Right, we'll do an hour of education now." Everything that the children do helps to build a positive learning environment for them.

Turning to the qualifications aspect, as Jane Brumpton said, we have a really skilled, committed and qualified workforce, but one of the real challenges for private and voluntary providers—which might read across into childminding—is the level of recruitment for local authority-run nurseries and the rates of pay that have been offered for practitioners and managers, which has hollowed things out and made it challenging for some of the other partner providers to work and to be involved in delivery.

We have heard examples of member nurseries that have closed because they have lost their graduate-qualified staff to public nurseries, and the sector has an issue of people leaving to take higher-paid work in lower-responsibility sectors such as retail and leisure. We see that across the UK. In Scotland, our members face a double whammy of people leaving the sector, with more highly qualified staff often recruited to publicly funded nurseries for much higher pay.

Our submission shows clear growth in the public sector workforce throughout the past two and a half to three years. During the pandemic and in between, there have been dips at different levels among private and voluntary providers. Some nurseries have told us that entire management teams have been recruited away from them. That makes it more difficult for them to recruit and train up the ELC leaders of tomorrow, who are in the pipeline. Nurseries need qualified and experienced staff at the highest level to stay with them so that they can support and mentor others.

10:15

The Convener: How big is that gap? How large is the difference between the pay and conditions offered in local authority settings and those offered in PVI settings?

Jonathan Broadbery: We have had members talk about staff leaving for pay that can be thousands—perhaps between £5,000 and £10,000—a year more. Until about a year ago, private providers were allowed to recruit on the myjobscotland platform alongside publicly funded nurseries. To begin with, that was seen as a real positive, because it was a chance to reach a much wider audience through job adverts, but then it really threw the differences into stark contrast. We have even had people tell us that people who were in the leadership stream—perhaps working towards being a manager or deputy manager of a

setting—were leaving to become practitioners in council-run nurseries because they could get the same or better pay in return for less responsibility and more satisfaction.

The Convener: Thank you for that. We had better hear from Graeme McAlister.

Graeme McAlister: Following on from Jonathan Broadbery's point, there is now a range of evidence to show that, unfortunately, the large-scale recruitment that was required to deliver the expansion of ELC has had a destabilising effect across the wider childcare and social care sector. It had been hoped that we would be bringing into nurseries 12,000 new staff with qualifications from outside the sector. Instead, the recruitment drive took staff from PVI and childminding, which has created a destabilising effect that the Scottish Government has acknowledged has been an unintended consequence of the ELC expansion. That has been one of the main drivers. Certainly, according to the research that we have done with childminders, that inability to keep up with the pace of local authority nursery expansion has been a direct contributor to the decline in our workforce. Duplicative quality assurance and a level of bureaucracy have also arisen during ELC expansion. I will be happy to take questions on that later.

The Convener: If that is an unintended consequence, what are you offering as a solution?

Graeme McAlister: Back in 2019, when we published our ELC audit, the childminding workforce between 2014 and 2019 had declined by 14.5 per cent. We had recommended to the Scottish Government that there was an urgent need for a national recruitment campaign that would be targeted at childminders, so as to bring them into the sector. The Scottish Government did not accept that recommendation. If we fast-forward two years, our last audit, which was done in 2021, showed that, in the five-year period from 2016 to 2021, our workforce declined by 26 per cent. Therefore, the situation is worsening as we go on.

From our point of view, there is a critical need to undertake targeted recruitment around Scotland in places where childminders are needed. We have been leading on that in remote and rural areas, where such challenges are more pronounced. Recently we launched a pilot, in collaboration with Highlands and Islands Enterprise, South of Scotland Enterprise, Skills Development Scotland and the Scottish Government, which is trying to recruit 100 new childminders in those areas. That is just a small start, though; we need to ramp up that approach nationally. As I said, we have lost 1,457 childminders in the past five years. A lot of work needs to be done to offset that unintended consequence of the rapid upscaling of ELC.

The Convener: What about the differential in pay and conditions? That has to be addressed as well, does it not?

Graeme McAlister: Very much so. Childminding is not a high-income profession; it is very much a vocation that people come into to make a difference for children. It is difficult for childminders or PVI providers to keep up with local authority rates of pay. That brings me on to the sustainable rates for ELC. A number of childminders have said to us that those rates are simply not high enough to make ELC attractive to them.

We very much recognise that there is pressing demand from parents for childminding at the moment—they want to access it but there are not enough childminders on the ground, so we need to bring them in. We need a longer-term strategy that looks at how we can change the value of childcare. We need to look at how we can increase rates of pay and whether there is a need for more Government support in those areas, because it will be very difficult for childminders or private providers to compete with local authority rates of pay.

The Convener: I am sure that we will want to come back to that. Matthew Sweeney has indicated a couple of times that he would like to come back in on the issue, and then we will move on.

Matthew Sweeney: There are just a few things that I am really keen to chat through. This is a really important discussion that we are having.

The first thing was about provider neutrality. The complexity of that was getting a little bit lost. Provider neutrality has never been uncaveated. Indeed, for the funding follows the child model—the key principles of which are set out in our submission—it is always clear that provision should be in line with local delivery plans, which are based on consultation with parents.

That principle—our commissioning and delivering services that are in line with what parents ask us for—needs to be key. There is no alternative. We cannot set a national policy that says that every local authority needs to have X per cent delivered by local authorities, X per cent by childminders and X per cent by the PVI sector. That recipe will not match the needs of parents and families across the country, which is why the system has been set up in that way that it has.

The second thing, which Graeme McAlister touched on a bit, is something that I should probably have mentioned before, when we were talking about whether we are providing early learning or childcare. I think that we are doing both, but the inspection regimes are not aligned so that they can be considered all at once. There is a

long-standing commitment from the Scottish Government that a shared inspection framework would be created by the Care Inspectorate and Education Scotland, but it came through quite strongly in Professor Ken Muir's report that we have not seen the progress that is needed on that. I hope that a consultation is forthcoming, as part of the creation of the new education bodies, but that issue needs to be addressed, because we are creating quite a burden on the system by ensuring that providers are assessed as both childcare and education. We need to look at how we can do that all at once.

I also want to touch on some of the points about workforce. There have been attempts by local authorities to ensure that they are not recruiting purely from other providers of childcare. However, that is quite hard. I know that there have been a number of times when a couple of local authorities have come together to form an ELC academy and try to grow their own. They have looked at staff whose posts were perhaps being transformed as a result of cuts to council budgets and have moved them into the childcare sector. Similarly, there were attempts to stagger some of the recruitment across the piece, in the three-year phasing up period.

Fundamentally, there are challenges for local authorities, who continue to be committed to national bargaining and to setting pay rates nationally with our trade union colleagues, but there is a very clear policy intention from the Scottish Government that we are to pay sustainable rates to allow the real living wage. The guidance is about payment of the real living wage for our partners when they provide the service.

Lastly, it is important that we look at that not just within the sector, but outwith it. There are movements across the sectors just now, particularly with the labour market as it is. The other thing that I would point to is that in social care they are now moving beyond the real living wage, with the Scottish Government providing funding to pay £10.50 an hour for adult care workers. However, at this stage, we are still unfunded for the real living wage for early learning and childcare.

Graeme Dey (Angus South) (SNP): In the interests of time, my opening question can be answered by a nod or shake of the head, or a simple yes or no. A few moments ago, Willie Rennie advanced a theory—a criterion, if you like—that two-year-olds should attract an enhanced rate because of the ratios that would be required to supervise them. Do we accept that that is the case—yes or no?

I am seeing nodding heads, so we accept that that is the case. In that case, Matthew Sweeney, why are so many councils not paying an enhanced

rate for two-year-olds, set against what is available for three-year-olds and above?

Matthew Sweeney: I make the same point as I made to Willie Rennie earlier. I do not have information about the individual processes that were used to set rates in every area. It is important not to look at rates alone. The report that this was taken from also set out the range of in-kind support that is provided to councils, such as quality assurance, training and development and support with lets. A range of support is provided, and it is very difficult to look at rates alone without understanding the context of what has gone on between local authorities and their partners.

Graeme Dey: I do not accept that at all. A number of councils are doing that. Angus Council, my own local authority, has the fourth highest rate of provision for two-year-olds in the whole of the country, and it is paying considerably more for them than for children aged three and over. Some councils are clearly walking the walk.

That takes me to the process for rate setting. Forgive me for asking what might be a layman's question. What is the process? What are councils meant to take account of? Should they look at issues such as the cost of rents in an area or economies of scale? What do they take account of in setting rates and how is the private sector involved in that process? Do they have discussions? Is there input? Is there an appeals procedure if the rates being offered are deemed to be completely unsatisfactory?

Matthew Sweeney: All those things happen. Very detailed guidance was created in 2019 for local authorities. It was commissioned by the Scottish Government, developed by Scotland Excel and agreed by us and the Scottish Government. It sets out the ways in which local authorities work with their partners. There is a range of forums across the country in which local authorities and their partners can discuss the setting of sustainable rates.

That is not just about what local authorities do; it is about what partners bring to the table. One challenge that we have found, and that local authorities also report, is that it is difficult to get consistent high-quality information from partner providers to ensure that we are setting those rates in an informed way. It is clear from the Scottish Government's guidance that the rates must be evidence-based. Local authorities repeatedly faced challenges with that, which is why, in the past few months, we have created a national cost collection exercise, which will repeat a 2016 process carried out by the Scottish Government that pulled together core information about provider costs across the country. The outputs were provided to local authorities to inform rate setting. Throughout that process, we have been

absolutely clear that that does not replace the ongoing engagement that local authorities already have with their partners or their understanding of local ELC market conditions.

Lastly, there has been a significant increase in rates from £3.78 in 2017 to an average of £5.44 now. As I said, that is by far the leading rate in the UK; it is almost £1 more than the rate in Wales in 2021-22.

Graeme Dey: That reflects positively on the Scottish Government.

Jonathan Broadbery, what is your view of how the process works in practice?

Jonathan Broadbery: There is a mixed picture. As Matthew Sweeney said, local authorities go about it in a number of ways. Not all authorities are open and consultative with their partner providers. We have supported the national cost collection exercise because there has been such a mix of approaches across Scotland. It has been a large exercise, taking a lot of time from providers and the people on this panel as they have given information.

The review was last done in 2016 and it is clear that it could not be done, or would be very demanding to do, year-on-year. We know what inflation levels and the changes to the real living wage are. When we asked local authorities last year about their plans to change rates, even though everyone had the figures for the real living wage, the national living wage and the minimum wage, nine of the 32 local authorities were holding at least one of their funding rates at the same level. We do not understand how that can be put across as sustainable when everyone knows that the costs are going up for those delivering the funded ELC places.

10:30

There needs to be an annual mechanism, either at a national or a local authority level, that is quite clear and transparent for providers and parents. It needs to set out how they will make sure that the funding follows the child all the way to the setting where ELC takes place and that it will rise in line with the rising costs. Otherwise, childminders will leave, nurseries will close, and parents will not have access to local services in the way that they need to or the choice and flexibility that they might want. They might be left with just one or two options, none of which they want.

There is a real challenge in making sure that those rates reflect actual delivery costs. More than three quarters of our members said that they felt that the current rates do not meet the costs of providing places. Matthew Sweeney referenced the rates from four or five years ago. It is true that

they have been increased and that is important, but they started from historically low levels and, at the time, were undercutting what providers were doing.

At that point, providers, if they were in partnership, were also delivering 600 hours, so there were other streams of income from parental fees that could make up for the shortfall. In this scenario, where we go up to 1,140 hours, that meets the needs of the vast majority of parents, so we do not have other income streams coming into partner providers in the same way that there would have been when those rates were basically chronically underfunded.

Graeme Dey: Can you furnish us with any examples of where the relationship between individual local authorities and your members has been particularly challenging?

Jonathan Broadbery: We have worked in a number of areas. I do not particularly want to name names at this point, because we have done a lot of work, so I will resist the encouragement to name names. We have done a lot of work with a lot of different areas—*[Inaudible.]*—networked with COSLA to address some of the issues, but I think that the committee has been provided with a list of local authorities that have not increased their rates. In the past, we have published releases that named those local authorities, but we want to focus on the position that people are in now. Local authorities are setting their rates now, so we urgently encourage them to look at different sources of data, including the national cost exercise, and talk to providers about the challenges that they are facing.

More than half of our members say that the biggest barrier to fully implementing the real living wage is the sustainable rate that they are being paid, so local authorities could be talking to their partners about a lot of things to really understand what that sustainable rate needs to look like.

I have further suggestions for policy at a national level and I can come on to those later, but I am conscious that other people want to come in.

Graeme Dey: I appreciate that.

The Convener: Matthew Sweeney and Jane Brumpton both want to come in. We will hear from Matthew first.

Matthew Sweeney: Jonathan's contribution was really helpful. In the first instance, I would flag up that, two years ago, some local authorities took a decision to set a multiyear rate, which is why it will not have increased. They wanted to give certainty to providers in advance, which is why the rate will not increase year on year. We could have an interesting debate about the value of certainty

versus getting a more than annual increase, but that is something to note.

Local authorities are having to fill a gap because of a reduction in Scottish Government funding. I mentioned earlier that, before the £25 million was removed from the ring-fenced settlement, it was increased according to an inflation rate of somewhere between 1 and 2 per cent, which is where inflation was last summer. We now face inflation of around 9 per cent. How are local authorities meant to meet those large inflationary increases and, perhaps, quite large increases in the real living wage when the funding that is available to them has decreased and was set before inflation was at its current level?

The issue is not just about how local authorities work with their partners. During the cost collection exercise, we found that some partners encouraged others not to take part in our survey or, indeed, to give incorrect information to artificially inflate some of the results. We need to be clear that colleagues must work together openly, honestly and transparently. That is what we have done through the survey and what we are trying to support as the process goes forward.

Graeme Dey: There seems to be a pressing need for genuine partnership working on the matter, but it is lacking at the moment.

Jane Brumpton: I echo many of Jonathan Broadbery's comments. Good practice and good engagement can be patchy across local authorities. We have heard from our members about really good practice where there is genuine partnership between the local authority and the wider ELC sector that works well. That is heartening to hear. We also hear of other challenging ways of engagement or a lack of engagement.

Routes of appeal were mentioned. Several of our members are actively investigating those and it can be difficult to do that in isolation.

It is hard to separate all the issues that we are raising that are challenging for the sector. The issue stems from the importance of the partnership between the local authority and the wider sector. If we get it right, that can help in the journey.

The main point is that there is a sense of apathy across the sector. It is continually asked to provide information in a range of ways and is keen to do that, but it can be quite burdensome when organisations face post-pandemic challenges, staffing challenges and inspection regimes. They are doing all that as well as opening their books and showing willing, but there is a sense that all local authorities are not being required to do the same thing.

As Jonathan Broadbery said, there is an emphasis on whether there will be an annual review and uplift of the rates. There needs to be a recognition that the real living wage is not aspirational and will never help to narrow the gap between the salaries and terms and conditions in the sector and those in the public sector, nor will it address the attractiveness for staff of leaving the sector for the public sector.

It is hard to separate all of that because of the continuing pressures of inspections, the lack of a shared inspection regime and the fact that inspections continue in ELC when they are not happening in the primary and secondary settings. That can also be difficult for the sector.

Sustainability is at the heart of the matter. We need to get it right. We need to talk together and work in partnership. We need to find a way for the sector not to feel that it will give all the information that is requested but nothing will change because authorities might or might not engage with that information.

The Convener: Do local authorities have a conflict of interest in that regard?

Jane Brumpton: It is hard to say that they do not. They have to be the guarantors of quality for the sector as well, so there will naturally be a tension.

The Convener: That is clear.

Graeme Dey: I thank everybody for their answers. On the basis of some of what we have heard, it seems that the progress that has been made is all the more remarkable.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I am really interested in the exchanges that have taken place. The submission from the National Day Nurseries Association welcomed the “Financial Sustainability Health Check of the Childcare Sector in Scotland”, which was published in August last year, because it acknowledges some of the challenges in setting sustainable rates. There is a call for that to go further and for the rates to be reviewed.

I dug out that document, which says that the Government will

“Strengthen the process for local authorities to set sustainable rates for providers in the private, third and childminding sectors to deliver funded ELC.”

It goes on to say that the Government would

“work with COSLA ... in time ... for setting ... rates for August 2022.”

That recommendation is from August last year, and we have just heard that the rates are about to be set. Has the process been strengthened? Jonathan, what engagement has there been to ensure that that happens?

Jonathan Broadbery: Part of that has happened. There has been a national exercise by COSLA and the Improvement Service—so that they are not necessarily going out and doing it—on supporting local authorities to gather local data. We are aware that, prior to that, some local authorities were working together in regional improvement collaboratives to collect regional data. Generally, though, the feedback from our members is that there is not the level of engagement that they expected at the local level.

Again, there are different practices around the country. As Matthew Sweeney said, some local authorities set a multiyear rate, which is really difficult for providers, because their costs go up year on year, so the rates that they get at the start of the period do not cover all their costs as they need them to but are, by the end of the three-year period, falling well behind.

The guidance on sustainable rates acknowledges that partner providers do not need to cover just their basic costs. As I said earlier, we have a lot of people being trained in the private and voluntary sectors. If providers are going to invest in improving their environment, and in staff development and training, that investment needs to come from a sustainable rate.

Overall, some work is being progressed in that area, but our members are saying that it is very patchy and that levels of engagement are not always great.

Bob Doris: I am concerned about the word “patchy”, because the point of the recommendation in August last year was, kind of, that the situation was patchy and that the Government, COSLA and the Improvement Service should stop it being patchy.

I understand that having a strong process through which local authorities engage with the third and private sectors does not mean that providers will necessarily get the rates that they would like—although we hope that the output will be good news for the sector—but there must still be a strong, robust and engaged set of practices across the 32 local authorities. We understand that everyone is under financial pressure, but that is not an excuse not to have strong processes.

Matthew Sweeney, has the process been strengthened? How can we measure that across 32 local authorities, instead of just asserting that we have engaged? That is not, in the slightest, a dig at COSLA. How can we measure whether a robust process has been put in place for engagement?

Matthew Sweeney: That is an important question, which goes back to some of our previous answers. This was not simply about strengthening processes because of the work of local authorities;

it was also because local authorities felt that they were unable to access good quality information from their partners. It is important that you mentioned the financial sustainability health check, because it asked whether private and voluntary providers have the same ability to share their costs in a detailed and useful way, so that we can use the evidence-based process that is needed.

As you correctly identified, the Scottish Government asked COSLA to undertake a national cost collection exercise, which we worked on with the Improvement Service. The exercise was based on previous good practice and work that had been done nationally in 2016. As, I think, Jonathan Broadbery mentioned, a number of multi-authority exercises took place, first in the West Partnership, then in Aberdeenshire and Moray. We built on best practice from those processes and then commissioned an external organisation to undertake the research. The survey went out to about 1,000 providers in February this year and was open for about six weeks. Adam Hall might have more detail on the bits that I am forgetting.

The outputs of that research were gleaned and were provided to local authorities in the past two weeks or so. They are now looking at the data that they have been given in the context of other information that they have, such as conversations that they have had with local providers to date and their knowledge of the local ELC market. They will go through a process to set sustainable rates in the coming weeks and months.

10:45

Bob Doris: That all sounds great, but is there a disconnect between all of that and what happens locally on the ground? Is there a best-practice template that every local authority should use? There should, absolutely, be flexibility, but surely there are certain key things that every local authority should do in relation to the matter. We heard from witnesses that not every local authority is doing that, but they did not take up Mr Dey's offer to name and shame or to put on the record the local authorities that have not stepped up to the plate. This is not about naming and shaming; it is about improving practice across the 32 local authorities and having an open, transparent and structured approach to engagement.

I ask Matthew Sweeney, then Adam Hall, to respond. I want to know how we can say, "Tick—that local authority is doing what we anticipated," or, "That one has some work to do." Unless we know what is happening on the ground, we will not drive up improvement. It is not about naming and shaming; it is about identifying who has to do a lot better.

Matthew Sweeney: That is exactly the spirit of the work that we have been trying to do over the past year. First, it was about getting the evidence base, then there was a process—which Adam Hall will be better placed than I am to talk about—of workshops and support, sharing of best practice and a forum for local authorities to provide peer support on how they go about processes.

COSLA and the NDNA agreed back in 2018 a series of partnership principles on how we engage with each other on that work. We were pleased to revisit those principles and to get agreement across a number of provider bodies, many of which are represented here today, on how the principles work.

Late last year, we refreshed the principles and got agreement across COSLA and all the representative bodies for private and voluntary nurseries and childminders. We continue to hold them up as the best practice that we all strive for, but—crucially—that is about the actions of all partners on all sides. I will let Adam Hall come in, because he knows more about the workshops.

Adam Hall: I am happy to come in on that. As Matthew said, we have been involved in the cost collection exercise. The Improvement Service was approached by COSLA and the Scottish Government to be the commissioning organisation. At that stage, we were working with national organisations, including the Association of Directors of Education, directors of finance, the Scottish Government and COSLA to design the cost collection survey, which we commissioned Ipsos MORI to undertake.

In advance of that exercise being completed, we tried to work as much as possible with colleagues round the table here from NDNA, Early Years Scotland and the Scottish Childminding Association to get their feedback on the design. They were helpful in encouraging their members to increase uptake. We tried to exhibit best practice in partnership working between local authorities and the national membership organisations in order to encourage uptake. That national exercise has tried to exemplify how to work together to encourage and build a strong evidence base. It felt like a positive process to go through. As has been mentioned—

Bob Doris: Can I ask another question, because we have time constraints? The process has been outlined by you and COSLA, and there was a health check in August last year. That all sounds good, and it is very positive that 1,000 partners have fed in on what the costs pressures are and so on.

Rates are being set just now, so engagement is taking place. If we were to fast forward a few months, would we get a report from the

Improvement Service on where improvements have been made and—just as important—on the local authority areas where more work still needs to be done? If, later in the year, we were to ask, “How did things go?”, would we be told how they actually went instead of getting some reflective general comments about the process of engagement? How will we be able to measure success in a few months, after the rates have been set?

Adam Hall: I understand the question. We have not been asked to evaluate that at this stage; instead, we have been trying to work on the basis of continuous improvement. As Matthew Sweeney said, we are trying to open up the forums between local authorities to allow them to share practice on setting rates and to support transparency. However, we do not have an evaluation methodology in place at this stage, and we have not been asked to evaluate the extent to which the situation has changed.

Bob Doris: It is not, of course, for me to speak for the committee, because it will have its own deliberations, but, if the committee thought that it would be useful for the Improvement Service to do that work, would you be interested in doing it in the months ahead?

Adam Hall: I am sure that we could consider that. I would obviously want to work with COSLA on that, given our partnership working agreement. However, I should point out that everything in our delivery progress report is evidence based and that with, say, the “strength of relationship” aspect, there will always be an element of subjectivity. As a result, I would want to take advice on exactly what form the evaluation would take, to ensure that it was strongly evidence based and objective, rather than subjective. That said, I would be happy to consider that suggestion.

Bob Doris: Thank you. I had another question on diversity in the workforce, but I am looking at the convener. Do I have time to ask it just now, convener?

The Convener: Before you go on to that, I believe that Graeme McAlister wants to respond to the line of questioning that you have been pursuing.

Graeme McAlister: I have just a quick comment. The situation is further complicated for childminders, with some local authorities simply applying nursery model sustainable rates to childminding, and others wanting to understand childminding and its different business model a bit better.

Childminders are all private businesses, and the vast majority are sole workers who, because they practise entirely during the day, face a lot of hidden costs, in that all the business activity,

quality assurance and paperwork have to be done unpaid in the evenings and at weekends. That aspect has been increasing quite significantly during ELC expansion, to the extent that childminders now estimate that it takes them an additional day a week, unpaid, to keep up with the paperwork.

We have been working with Matthew Sweeney and Adam Hall on the issue, and a separate cost collection exercise for childminders will be undertaken shortly, but the clock is ticking—we are getting closer to August and some local authorities are starting to implement their new rates. We have asked COSLA for an assurance that, if the exercise indicates that the rates should be higher, it would advise its member local authorities that they might need to revise rates as we go beyond August.

The Convener: Right. I will come back to Bob Doris later. I have made a note of members who want to come back with secondary lines of questioning if we have time.

Ruth Maguire (Cunninghame South) (SNP): Good morning, panel. We have already covered a fair bit of what I was going to ask about, but I am interested in childminding. In answer to Michael Marra, Graeme McAlister said that the number of childminders has declined because local authorities are not promoting childminding. You also mentioned recruitment into local authority early years settings.

Looking at the flipside, I wonder whether you can say a bit more about the unique contribution of childminders to provision of childcare. I am interested in hearing from childminders what childminding as a business or role offers people who wish to take it up, as well as what it offers parents and children.

Graeme McAlister: In general terms, childminding is a unique form of childcare in that it is offered in a home setting and has very low adult-to-child ratios. As a result, there is more one-to-one support. It also encompasses pre-school and school-age childcare. It is quite common for childminders to provide childcare to children from birth through to the age of 12—or, indeed, the age of 16, if they have additional support needs. What you have is unparalleled continuity of care through a series of transitions from nursery to primary school and then from primary school to high school.

Some research that Ipsos MORI undertook last year on behalf of the Scottish Government found that parents very much view childminding as more than a form of childcare. They see it as family support whereby they get professional objective advice that they do not get from other sources.

From our point of view, childminding is unique. We should not think that all forms of childcare are the same. That is what makes the situation all the more tragic for parents, given that, as I said, we have lost over 8,700 childminding spaces during ELC expansion. That cannot continue—it is not sustainable. We really need to turn that round.

All childcare providers in Scotland follow the same standards, frameworks and curricula, and we are all inspected by the Care Inspectorate. Year on year, in that independent inspection by the Care Inspectorate, childminding consistently achieves higher-quality ratings across all quality criteria than day care or children's services, which encompasses local authority nurseries and private nurseries. It is a very high-quality form of childcare. That is why we are deeply concerned by the losses that we have experienced as a result of ELC expansion.

Picking up on my earlier point, I note that one of the challenges for childminders is that, because they are sole workers, they do not have the support of managers, finance teams or other practitioners such as administrators. They have to do everything themselves. They are practising during the day and everything else is done in the evenings and at weekends. With ELC expansion, we have a series of frameworks and standards that have created a layering effect, whereby the quality assurance requirements are becoming disproportionate in childminding. They are becoming excessive, and that is the main reason why we are losing childminders from our workforce.

Ruth Maguire: Will you say a bit about how the Scottish Government is working with the Scottish Childminding Association to try to ease that administrative burden, and about the business support that is needed, which you mentioned? Do local authorities provide additional support to childminders to become partner providers, given that childminding is a different set-up and, as you say, it often involves sole workers?

Graeme McAlister: The problem that we have had is that there is a tension between the national policy and its being dependent on local implementation. We have variation around the country. Some local authorities have put support in place, simplified tendering processes and made it easier for childminders to get involved, but too many have not. As I said, too many authorities been prioritising their own provision. That has been one of the challenges for us during the ELC expansion.

We work really closely and collaboratively with colleagues in the Scottish Government, but we are also commissioned, as I said, to undertake an independent annual audit of where local authorities are at. For the past five years, we have

consistently reported back findings that, again—*[Inaudible.]*—working. Too many local authorities are not promoting childminding equitably to parents. It is difficult for the Scottish Government, because it has to respect local autonomy and does not want to tell local authorities what to do. COSLA does not want to tell local authorities what to do, either. However, if we have both the Scottish Government and COSLA standing back, that creates a bit of a vacuum. That is a very difficult environment for childminders, as sole-worker businesses, to operate in. We have put in place as much support as we can to help them, but the situation has become unsustainable.

It is partly about the paperwork, but it is also about the fact that what we now have under ELC was never intended. We talked about shared inspections earlier, but what we have now are duplicative systems of quality assurance at national and local levels that are completely disproportionate for childminding.

On one hand, we have the Care Inspectorate, which has a quality framework. It undertakes inspection, and childminders are self-evaluated. On the other hand, we have Education Scotland, which has its framework on learning, "How good is our early learning and childcare?", which childminders who are involved in ELC are expected to self-evaluate against.

We then have local authorities at the local level, some of which do not recognise the role of the Care Inspectorate. Both the Care Inspectorate and local authorities see themselves as guarantors of quality. Some local authorities are now planning to undertake twice-yearly inspection and twice-yearly self-evaluation. It is quite messy, to be frank. We have duplicative quality assurance that was just not intended.

Some years ago, we had an independent advisory group that recommended that there was a need for single shared inspections. The Scottish Government accepted that and charged the Care Inspectorate and Education Scotland with delivering it. Seven years on, it has not been delivered. We have separate frameworks and separate inspections. We made representations to the education reform work because there are really serious implications for childminders in that, if we keep layering on quality assurance requirements, we will make it more and more challenging for those businesses to be sustainable.

Ruth Maguire: Thank you. That is helpful.

11:00

The Convener: Michael Marra has a secondary line of questioning.

Michael Marra: I will keep this reasonably brief. In their observations on the work that has been done under the policy in the past couple of years, most people have touched on the issue that I will raise. I have heard reports—actually, it goes beyond reports—of nursery closures in my constituency. I am being told that that is because of a change in behaviour by parents, who are perhaps accessing childcare in different ways and making different decisions because their working patterns have changed.

I know that work was undertaken more than a year ago on the sector's financial health. Does that work need to be refreshed? Do you have concerns about the sector's health across Scotland? I want to be reasonably specific that I am talking about coming out of the other side of the pandemic, because we have explored in depth the issues that relate to the unexpected consequences and other effects of the policy. What is the sector's general health?

Jane Brumpton: As we mentioned in our submission, the sector is struggling with numerous challenges. The importance of the funded rate being more equitable and of not having a postcode lottery has been touched on.

Another issue that has been mentioned briefly is that those in the PVI sector and childminders run businesses and need to reinvest in their settings to be sustainable. A constant issue is negotiating an equitable rate that suits what a setting needs to thrive and not just survive—survival is what is happening at the moment.

On the sector's health, we are coming out of the pandemic with all the increased costs and other issues that we have raised, such as staffing challenges, which cannot be separated out. We have talked about all the linked issues, such as the ever-increasing gap between local authority salaries and those in the PVI sector in general. We need to address those key issues.

There are a number of factors so, if we talk about the sector's health, what part do we focus on? Critical structured action is needed now, because the sector's health will only continue to decline. We need to invest properly in the sector and look at an equitable rate after listening to and acting on what the sector says about its needs; instead, the feeling is that there is a lack of action.

It is great that we are having all these discussions today, but what action does that mean for the sector? What critical things could happen now to support the sector to thrive? Provision should not depend on the setting that a child participates in and engages with. Parents should have an equitable picture to choose from that is provider neutral, and we should value the quality across the sector. At the moment, that sense of

value is not there. It is important to have concrete action from today that will support our members.

Michael Marra: I thank Jane Brumpton for that good overview of the challenges, which we have covered at length. Will Jonathan Broadbery talk briefly about how the pandemic has exacerbated existing problems?

Jonathan Broadbery: I can be brief. As we built up to August 2020, we were highlighting issues with the roll-out of the expansion that related to the workforce and sustainable rates. When the pandemic hit, that made things a lot worse.

The picture is mixed for our members and depends on where they are. For some, occupancy has been hollowed out and the recovery has not been the same as that for others, where demand for places is almost outstripping what they can provide—they are looking for support to expand what they deliver.

There is a really mixed picture but, fundamentally, those issues—including turnover of staff, which is among the highest in the UK for the sector—underline the whole thing. With regard to addressing those issues, there are phrases in “A Blueprint for 2020: The Expansion of Early Learning and Childcare in Scotland” about provider neutrality and funding following the child. We think that there is a solution that puts choice back in the hands of parents. On numerous occasions, we have proposed a childcare passport, so that funding for the child is in the possession of the parents. As long as they work with a registered provider, whether that is a council nursery, a childminder or a private or voluntary setting, the parents could choose where they want their child to take up the funding provision.

That would start to address the transparency of how the service is funded and how we look at outcomes. Looking ahead to the implementation of the United Nations Convention on the Rights of the Child, the passport would address the question of whether we are making sure that every child has equal support and opportunities, regardless of where the parents take up the provision. We think that there are solutions out there, but the health of the sector is very worrying.

Michael Marra: Do the other witnesses have specific comments about the pandemic?

Graeme McAlister: Obviously, at the moment, we have new programme for government commitments coming through to extend ELC down to one-year-olds and to develop a new wraparound system for school-age childcare. There is a real risk that, if childminding businesses and PVI businesses go, providers will not be there to deliver those policy ambitions. There is also a

risk that we will think the 1,140 hours policy has been delivered, but it has come through this morning that a lot of things need to be addressed. The financial health check found that, during the pandemic, there had been a sustained reduction in demand for childcare, due to the requirement for parents to work from home or because parents were on furlough. After the pandemic, the most vulnerable providers were those who provided school-age childcare and childminding.

If the original intent of ELC was about closing the attainment gap as well as about free childcare, there is a real need to go out and actively drive demand for childcare, in order to bring it back. Demand is starting to come back but, with changes and hybrid working, nobody quite knows what the future demand will be, so we need to drive it.

Kaukab Stewart: On the back of the questions on the impact of Covid, in response to the omicron variant, the Scottish Government released funding of £9.8 million through the childcare sector omicron impacts fund. I am curious about how that helped and how useful it was. The best person to answer that would be Jonathan Broadbery, followed by Graeme McAlister.

Jonathan Broadbery: We asked our members about the level of support that they had received through funds such as that, as well as a couple of earlier funds. The majority of people were able to access the funds. It helped and it came at a useful and helpful time for them, but the vast majority of feedback that we got was that it in no way replaced what had been lost.

That support was vital. Again with my UK-wide hat on, I have to say that the Scottish Government responded by providing direct support to providers in a way that other Governments in the UK did not. However, that support did not make up for the kinds of losses that we have seen. On that subject, when we asked providers how they expected to perform last year, just under three quarters said that they expected to operate just at the break-even point or at a loss. Therefore, their financial health is really struggling, and the pandemic has eaten into reserves of human and financial capacity in the sector.

Kaukab Stewart: Would Graeme like to comment on that?

Graeme McAlister: I will comment very briefly and in similar terms to Jonathan. The omicron grant was very welcome. Childminders had a slightly different experience in the sense that, throughout the two years of pandemic, consistently and proportionately, childminders received less financial support—at the UK and Scottish levels—than other providers.

There have been real issues around sustainability. Childminders were unable to access the hardship grants for self-isolation. They were hit by that regularly, and had to close their settings on a number of occasions. The omicron grant was very welcome, but childminders are still in a worse place than they were before.

Willie Rennie: Returning to the money, the funding is supposed to follow the child, so why is there not a straight formula that divides the total amount of money by the number of young people or places and then allocates the funding accordingly? Why do we have to have this elaborate cost-finding exercise? Why is it not just truly what it is supposed to be, which is that the money follows the young person?

Matthew Sweeney: It is complex—there is no way to get around that. At the end of our submission, we tried to explain visually some of the different costs that local authorities have. One of the big drivers of those costs is pay. We are being told by the Scottish Government that the funding that it has given us is to allow private and partner providers to pay the real living wage. At the same time, funding for local authorities must be able to meet the nationally set rates—through collective bargaining—for our workforce.

I have heard loud and clear—and the point has been made again—that the sector is really interested in the conversation about pay equity. If that is to happen, it will take a significant amount of additional investment from the Scottish Government, if that is the sort of space that it is looking to move towards.

I am not sure what “funding follows the child” means. If you look at the document, I do not think that it is ever said that there would be equitable funding for all settings. There has always been an understanding of the clear parameters that the Scottish Government asked local authorities to provide when they were setting funding rates for private and voluntary provision.

Willie Rennie: I am staggered by the admission that, somehow, those who work in the PVI sector are worth less, even though they are supposedly doing exactly the same job. I have some examples of pay rates. In Falkirk, a local authority head of centre is paid 71 per cent more than their private nursery manager equivalent, despite working fewer hours. In Glasgow, a deputy head of nursery is paid 87 per cent more than a deputy nursery manager in the PVI sector. Are you surprised that there is an exodus of staff from the PVI sector?

Matthew Sweeney: Are you still addressing me?

Willie Rennie: Yes. I am sorry—you have got the tough job today in having to defend this.

Matthew Sweeney: I would say that, fundamentally, that was a policy intention that was set by the Scottish Government. It is written clearly in the guidance that sustainable rates must be set at a level that enables national policy priorities such as the payment of the real living wage. If there is a conversation to be had, and interest among our provider employers in ensuring that there is a greater level of equity between local authority and private provision, that is fine—I am happy to have that conversation—but that will require significant public investment at a time when ELC funding to local authorities and the core budget for local authorities are being cut.

The Convener: Are you saying that the impact that the policy would have on the PVI sector was already factored into the policy?

Matthew Sweeney: I do not know about that. The question about the Scottish Government's decision on the real living wage is one for the Scottish Government. We were happy to support the approach, because it is important for us that provision is as high quality as possible, and the real living wage is part of that.

As I have mentioned, there are other areas where the Government has gone further than the real living wage. Social care is now providing £10.50 an hour but, at present, ELC is still providing the real living wage. The funding that is coming to local authorities is not only being cut but is predicated on the idea that we are paying the real living wage to private and voluntary providers.

Willie Rennie: The real living wage will not stop an exodus.

We know that nurseries are reducing the number of rooms that are available for the service; many are closing; and lots of staff are moving over, so they are really struggling to provide the service. The issue is important, and it is not about "Private good, public bad"—it is about private and voluntary nurseries providing a much more flexible service, which is what the First Minister said was important.

We will all remember the debate that we had on the issue four or five years ago, because a lot of parents spoke out at the time, saying that they needed flexibility to fit care around their work patterns. We are therefore in danger of undermining the objective that the First Minister set out all those years ago by cutting out the private sector and treating people in it as second class citizens. I find it staggering that we have got to this stage.

11:15

I commend you for being the first person from whom I have heard such an open explanation,

because things have been very opaque up to now. We have now had an open and transparent admission that the system is designed to pay those in the council sector much more than those in the private and voluntary sectors. The situation is not sustainable—we are going to undermine the policy if we carry on as we are.

I am not blaming you for all this, Matthew—you have been sent out to defend it—but it is just not sustainable.

Matthew Sweeney: As I said, we have made it clear that, if there is further funding, we can enable change, but the funding that we have been provided with just now was calculated on the basis of and predicated on payment of the real living wage. I understand your concern about that, but I am making it clear that it was not a policy decision by the local authorities. In the first instance, it is about the design of the policy. The fact is that local authority funding for ELC is being reduced and there are conversations still to be had about whether local authorities can meet their commitments to providing care at the expected levels.

As I have mentioned, inflation, too, is rising at the same rate. Further investment in ELC will need to happen if we are to meet some of the ambitions that have been expressed today.

Willie Rennie: You have set the cat among the pigeons, and I commend you for that, but this is not the end of the debate. We need to return to the matter.

The Convener: I think that Jonathan Broadbery and Graeme McAlister want to comment.

Jonathan Broadbery: I feel that Willie Rennie has hit the nail on the head. The frustration that is experienced by our members on the ground relates to the real fact that people are able to earn much more and potentially work fewer hours by moving across. Earlier, I highlighted the example of people taking step-downs in responsibility and still securing higher pay.

Something that jumps out from the SSSC data is the fact that, from March 2019 to March 2022, the number of managers in publicly funded nurseries almost doubled. The figure used to be higher in the private and voluntary sector, but we have suffered a dip and are trying to recover to that level. What is the real-world consequence of that? It is the closure of private and voluntary settings, because they cannot hire the managers that they need to stay open within the requirements of the rules and regulations.

We need urgent action in the area. We have asked local authorities to have more grow-your-own schemes and to restrict and limit the recruitment from partner providers, because in the

end everybody suffers on that front. Finally, I point out that some progress was being made on the issue in the lead-up to the pandemic; it was not ideal, but things were getting a little better. The pandemic, however, has exacerbated that growth over the past few months.

The Convener: The extraordinary thing that we have learned from this morning's evidence session is that this was deliberately designed into the policy. That is something that we should all contemplate.

Ruth Maguire: I see the difficulty for the sector but, if it was a deliberate part of the policy to ensure that providers were paying a living wage, one might presume that they had been occasionally paying less than that before. There is that side to consider, too.

The Convener: I am just going on what Matthew Sweeney has said, with a great deal of transparency, about what everyone knew was going to happen, which is exactly what is happening.

At this point, I will bring in Bob Doris and then ask one last question.

Bob Doris: I want to ask about the diversity of the workforce. The recent exchange with Mr Rennie was helpful because it flushed out quite a few things, but we need to see the bigger picture.

We have had a revolution in the provision of early learning and childcare, the number of local authority staff in the sector has gone from 10,000 to 18,000 and there is now a requirement to pay the real living wage across all providers, which is the right thing to do. My earlier line of questioning was about the financial challenges on the sector, irrespective of that, but we have to look at things in the round.

There is something called a stability index, which is very important. That is about the retention of early years staff in the sector—

The Convener: Are you now giving evidence, or are you asking a question?

Bob Doris: This is important, convener, and others on the committee are allowed to give a context to what they say.

The stability index shows that 78.9 per cent of staff in the sector are there at the start of the following year—they are retained for a year—and that is up by 2.5 per cent.

The Convener: It is in our papers.

Bob Doris: The reason why I put that on the record is that it is exactly the same as the level of retention across the wider social services sector, so it might be that there is an issue across that wider sector.

The Convener: Are you going to ask a question?

Bob Doris: I am now going to ask a question, convener.

I want to look at the people who are in the sector, because recruitment and retention remain a challenge. They tend to be female and lower paid. We are not doing very well at attracting men into the sector, and that is an opportunity for recruitment and retention.

That was the context, convener. Would any of the witnesses like to pick up the cudgels? I know that, previously, there was a men in early years challenge fund of £50,000 to get men into the sector. What work is being done to achieve that and what success has there been? Clearly, if we are ignoring 48 per cent of the population for careers in early learning and childcare, we are letting down 100 per cent of the children. We need a diverse workforce—not just men, but black and minority ethnic individuals as well.

The Convener: You have a taker—Jane Brumpton wants to come in.

Jane Brumpton: It is a very good question. In the long term, we want to diversify the sector; we absolutely want to have wide diversity. When I was a commissioner on the gender commission, we talked at length about that. The factors around it have also been mentioned today—how attractive the sector is to more diverse groups and to men, as you specifically say. Some of the anecdotal evidence that the commission heard was that young secondary pupils—male pupils, in particular—were asking why they would want to go into the sector. It is perceived as a female sector and as low paid.

Unless we address all the issues that we, as membership bodies, have raised today, it will be a continual challenge. The gaps between the job roles that Jonathan Broadbery mentioned will just keep widening. There is also the aspiration to pay the real living wage, which we have heard is not enough to be sustainable for the sector.

I have been involved whole-heartedly in Early Years Scotland in many ways of trying to diversify the sector. We would love that to happen, but we need to look at the critical needs of the sector at the moment or we will not have a sector to diversify, if that makes sense.

Graeme McAlister: We would be very keen on and supportive of doing work to increase diversification in our workforce, but the reality is that we need to tackle the underlying causes, which do not make recruitment into childcare attractive at the moment, regardless of gender.

I want to go back briefly to Willie Rennie's question about the living wage. As I said,

childminding is not a high-income profession. Many childminders have fed back to us that they struggle to pay themselves the real living wage. They could be disadvantaged further by ELC, because there is a requirement—it is a national standard—for staff to be paid the real living wage.

The data coming through from the Improvement Service shows that 70 per cent of children receiving funded ELC are in local authority nurseries, 28 per cent are in the PVI sector and only 2 per cent are in childminding. A lot of data on the impact of ELC expansion on the PVI sector has been shared with the committee today. However, if you take away only one statistic, please let it be this one: in our last audit, which was last year, we found that only four out of the 32 local authorities in Scotland had undertaken assessments of the impact of their local expansion plans on childminding. That tells you all that you need to know about where the main emphasis has been in local authority nurseries. We need to change that.

The Convener: I have one last question for the last minute. I am always concerned about outcomes. At the end of the day, that is what we have to be focused on—what improves, what changes and how did we do against the objectives that we set ourselves? From this morning, however, it is not clear to me who is doing the measuring of the outcomes over time. I will go round very quickly, and I ask for very short answers to this, please. Who is doing the vitally important work of measuring those outcomes?

Matthew Sweeney: At a local level, local authorities will be measuring outcomes as part of their existing processes, whether that be in relation to specific plans for childcare, their integrated children's services plans or their local outcomes improvement plans.

At a national level, there is obviously work being done through the Scottish study of early learning and childcare, which is being led by the Government and is looking at outcomes.

The Convener: Your answer is local authorities and the Government.

Jane Brumpton: I agree. It is such an important question. Ultimately, are we getting it right for the children? We have inspection data and we have quality assurance evidence from the settings, which have very robust ways of collating evidence on whether we are getting things right for children. It is a partnership approach, looking at an audit of how we get that information, who is currently collating it and whether we have enough. It is about remembering the value of settings as well—*[Interruption.]*

The Convener: Who is doing the work on the outcomes?

Jane Brumpton: We have inspection information coming through on outcomes. Is that what you mean around addressing whether things are improving for children?

The Convener: I am not asking how we are going to measure outcomes; I am asking which body is doing it. Who is going to do the work of collating that information to measure those outcomes?

Jane Brumpton: I am not sure about it in that way. I am simply aware of the different ways in which it is happening.

The Convener: Someone obviously needs to pick that up. Matthew Sweeney offered local authorities and the Government. I will turn to Adam Hall. It is not the Improvement Service, as he said earlier.

Adam Hall: We have fed into the longer-term monitoring and evaluation strategy that the Scottish Government is looking to collate. We are prepared to feed into and support that in any way we can.

The Convener: Your answer is the Government.

Adam Hall: Yes, in terms of the national measuring of the outcomes of the policy.

The Convener: Jonathan Broadbery?

Jonathan Broadbery: *[Inaudible.]* I think that there is a role for Education Scotland in its reformed state in relation to children's learning outcomes. There is the potential to look there.

As a representative body, we will continue to work with our members to provide feedback on their experiences.

Given the amount of public funding that has gone into the policy, there will also be follow-up work from Audit Scotland on how effective it has been and what value for money has been provided.

First and foremost, however, I go back to the point that it is about the outcomes for children and what they are achieving.

The Convener: Your answer is Education Scotland and Audit Scotland.

Graeme McAlister: I sit at a national level on the monitoring and evaluation group for the Scottish study of ELC, which is under way. It has already started to undertake research on the earlier stages of ELC. The committee can be assured that it is undertaking independent research into a range of outcomes across family wellbeing, employability and closing the attainment gap, which involves independent epidemiologists from Public Health Scotland. That work is very

much under way in parallel with what is happening at a national and local level around audit and implementation.

The Convener: I thank Matthew Sweeney, Jane Brumpton, Adam Hall, Jonathan Broadbery and Graeme McAlister, who have been our panellists this morning. We appreciate you giving us your time and evidence, which has been very interesting. As I think you can tell, it has stimulated a lot of response from the members of the committee.

We will have a short suspension to allow for a change of witnesses. To those leaving us, I say thank you very much and have a good day.

11:29

Meeting suspended.

11:32

On resuming—

Subordinate Legislation

Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022 [Draft]

The Convener: The next item on our agenda is an evidence session on the draft Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022.

We will take evidence from Clare Haughey MSP, who is the Minister for Children and Young People, and from Scottish Government officials Hannah Graham, team leader at the improving lives for care experience unit; Tom McNamara, the head of youth justice and children's hearings; and Claire Montgomery, who is a solicitor. Good morning to each of you.

I invite the minister to make an opening statement of up to five minutes.

The Minister for Children and Young People (Clare Haughey): Good morning to the committee. Scottish ministers have committed to keeping the Promise by reducing and, ultimately, ending cross-border placements, whether children's liberty is to be deprived or restricted. We also have a responsibility to uphold children's rights and ensure that their wellbeing is our paramount consideration. That applies to all children in Scotland, not only to children from Scotland.

Last week, the committee heard evidence from the office of the Children and Young People's Commissioner Scotland, and I record my thanks for the careful and thorough analysis of the issues involved. We have engaged with the children's commissioner's office and other key actors throughout the development of the regulations. We all agree that cross-border placements should occur only in exceptional circumstances and that we want to see them reduced to the minimum number possible.

Last year, the United Kingdom Supreme Court ruled that the use of the inherent jurisdiction to authorise deprivations of liberty in non-secure accommodation is lawful and is not incompatible with article 5 of the European Convention on Human Rights. There needs to be an appropriate legal mechanism for recognition of those orders. Currently, it involves petitions to the Court of Session to recognise the deprivation of liberty orders made by the High Court in other parts of the UK. The Supreme Court noted that it is the chronic lack of capacity in England in secure and high-intensity residential childcare accommodation

that is driving the placements. Members can be assured that I have pressed and will continue to press the UK Government to urgently address those shameful capacity issues.

The Scottish Government is not the author of the circumstances, but we find ourselves in the invidious position of having to mitigate their impact, which falls on the children, on their families and on Scottish services. We cannot delay in taking action to better protect the children.

The options that are before us are stark. The current process of petitioning the Court of Session in respect of dozens of exceptional individual applications is not sustainable. It is imperative that we provide improved safeguards to better protect the children and young people who are in the placements.

The only way that we could achieve full parity of treatment with Scottish children, as advocated by the commissioner's office, would be to accept wholesale responsibility for cross-border placements into our Scottish care and legal systems. If we took that approach, we would be complicit in severing a child's links with their home community and support networks, and we would be absolving the placing authorities elsewhere in the UK of the responsibilities that properly lie with them. The likely consequence is that we would, first, see a marked increase in placements. Then, as placements multiplied, they would have a knock-on, unplanned and unfair resourcing impact on Scottish authorities and services.

The regulations that are before the committee provide for recognition of DOL orders in Scots law but with conditions that bring greater accountability to placing authorities and greater protections for the children in the placements than currently exists. The regulations do not transplant responsibility to Scotland, but they offer better notification mechanisms and carefully constructed failsafes, including the requirement for the placing authority to notify key Scottish authorities of placement details and to give an undertaking that it will provide or secure and cover the costs of all services that are required to support the child. That is not happening in practice currently, and it will become a legal requirement. The regulations also provide for the Scottish ministers to apply to the relevant sheriff for an order to enforce the implementation authority's duties in relation to the child if they are not being fulfilled.

We have listened and responded to stakeholders' views when developing the regulations. Our original proposal included an advisory role for children's hearings to facilitate the provision of information to the High Court in England and Wales about a child's progress in placement and, importantly, to consider a child's access to local rights protections. We also

proposed that it should be open to children's hearings to appoint a safeguarder, to consider legal representation and to ensure that advocacy provision had been offered to the child.

That earlier, stronger proposal was not supported by the commissioner and other stakeholders. In particular, the commissioner raised several issues about a child's ability to challenge the basis of the deprivation of liberty. Challenging, varying or overturning the High Court's order is not in scope here. The scope of available powers cannot influence the decisions of a superior court in another jurisdiction.

The regulations improve on the status quo and represent an interim step that will allow us to get to longer-term solutions as part of the proposed children's care and justice bill, which is the space where we can consider more fully and fundamentally how to address cross-border placements. That is why, in the consultation for the bill, we are seeking views on regulation, scrutiny and monitoring and on the Care Inspectorate's role in relation to cross-border placements—all issues that the commissioner's response highlighted.

The improvements to existing cross-border DOL processes and the protection of Scottish local services that the regulations afford must be implemented as soon as possible. I therefore commend the regulations to the committee.

The Convener: Minister, on the committee's behalf, I thank you for your helpful correspondence in the days leading up to the meeting.

Ross Greer (West Scotland) (Green): I echo the convener's thanks for the minister's letter, which was useful in preparation for the meeting. Once regulations are laid, they cannot be amended—Parliament can make a judgment on them or they can be withdrawn. That presents us with questions of process before we get into the substance.

The commissioner's office has presented us with proposed alternatives. If the Government adopted them, they would require the withdrawal of the existing regulations and the laying of new regulations. That begs a question about process. Did the commissioner's office have specific knowledge of the regulations that you intended to bring forward? Obviously, you had engaged with the office on the broad principles, but, before those regulations were laid and published, had the commissioner's office been given a draft of the regulations or a summary of the specific policy intentions? If that was the case, did the commissioner's office come back to you at that point with something equivalent to the list of alternatives that it provided to us?

I am trying to understand how we have ended up in a place where alternatives are coming forward from the commissioner's office but regulations have already been published, so we cannot amend them in order to accept those alternatives, even if we were minded to.

Clare Haughey: We initially put out a call for views and held an engagement with stakeholders in January this year, to which the commissioner's office contributed, and a summary of the stakeholders' views was also published in March this year. It was not appropriate for us to share drafts of the regulations before sharing them with Parliament.

I am happy to hand over to Hannah Graham, who will explain the process for regulations of this type.

Hannah Graham (Scottish Government): We have had a long and constructive dialogue with officials from the office of the commissioner. Looking back, we had around 10 meetings to discuss the proposed regulations and what they should contain. As the minister highlighted, we published a policy paper in January, and the commissioner came back on that with suggestions around how we could strengthen our proposals. One of the suggestions was the requirement to have a notification sent to appropriate Scottish agencies and the commissioner's office. We took that feedback and built it into the regulations.

We also took on board the commissioner's concerns around the role of the children's hearings system. The commissioner had some concerns that the child would not be able to challenge the basis for their deprivation of liberty. That is correct, because that ability sits with the High Court, so, accordingly, we removed that aspect of the proposal.

In our second policy paper, which we published in March, we set out the key features—based on the stakeholder feedback that we had received—of what the regulations would say. The regulations will require a suite of notifications to go to Scottish agencies in order to address information deficits, they will set the placing authority as the implementation authority and they will provide Scottish advocacy. We did not get anything further from the commissioner's office in respect of those specific proposals. To take a specific example, the officials' evidence to the committee stated that they consider that a child's order should be recognised under Scots law for 22 days. We had not heard that suggestion prior to the regulations being laid, so we had to set out, at a high level, what the key features were. I do not think that we received more specific detail of that back from stakeholders.

Ross Greer: I am keen to get into some other points of substance. However, given that you have raised the 22-days proposal, which I asked the commissioner's office about last week, I am interested in your perspective. My understanding was that we could not, through regulation, address the proposal that the officials laid out. The specifics of what they asked for would have to be addressed through primary legislation or, indeed, are entirely outwith the scope of the Scottish Parliament, given that we are talking about an English High Court order.

Hannah Graham: Yes, absolutely. It is important to be clear that, although, in their evidence, the officials asked for the court order to be restricted to a maximum of 22 days, we do not have any power over how long a High Court is able to grant its orders for; that is not a decision that we can influence. Instead, we propose to set a timeframe for how long the orders are recognised under Scots law, which is different from us presenting a date to limit the court orders. We chose the period of three months because that is analogous to what happens for secure care approvals.

I think that it is helpful to make that point, because, in their subsequent evidence to the committee, the officials questioned how we had the power to make that order. We are not making an order; we are merely recognising it in Scots law.

11:45

Ross Greer: That is really helpful. I will move on to some specific points of substance.

Part of the regulations give Scottish ministers the power to pursue the placing authority if it has breached various conditions. A reasonable question from the children's commissioner was how ministers would become aware that there was an issue in the first place, and specifically how the young person might be able to notify ministers that there was a problem that would justify the Government's pursuit of the placing authority. Can you respond to that? How would someone be in a situation to actually make use of that power?

Clare Haughey: The regulations give Scottish ministers the power to apply to the sheriff court for an enforcement order if a placing authority does not comply with its obligations under the regulations. The process to be followed broadly mirrors the process that would apply if a Scottish local authority was in breach of its obligation to a Scottish child when a children's hearing had made an order. Scottish ministers would give the authority a notice of intended application by them to enforce the authority's duty. The matter would escalate to the sheriff court only if the authority did

not fulfil its duty within 21 days, as per the order that I previously referenced.

If ministers brought the matter to court, the sheriff could make an enforcement order if it was found that the placing authority was in breach of its duties under the regulations, and that order would be final. That process, if it was required, would be undertaken by ministers—who retain oversight through engagement by way of the child's advocate—Scottish local authorities and the Care Inspectorate, all of which would be able to report concerns or worries.

Ross Greer: When I discussed the role of the advocate with the children's commissioner's office, my presumption was that the advocate would be the most likely route through which ministers would become aware of a concern, but you will be aware that the children's commissioner's office has asked why that would be an advocate rather than specifically legal representation. I assume that, in a number of cases, the advocate might well be someone with relevant legal qualifications anyway, but that is not guaranteed. Can you expand a bit on why the regulations do not give those young people guaranteed legal representation? That could be provided alongside the advocate, since the commissioner's office acknowledged that the advocate can play a really powerful role. However, given that the young people are unlikely to be entirely familiar with their rights under English law, never mind Scots law, there is a need for clear understanding of what their rights are under the Scottish system.

Clare Haughey: The legal restrictions on the young person's liberty are governed by English law. They have the right to legal representation and advocacy within that legal system. We are putting in place advocates to support the child and to avail them of their rights under Scots law, but also to help their voices be heard on whether they feel that their children's plan is being followed and, with respect to the service provider, whether they feel that their needs are being met. They will be able to interact with those advocates in the legal process, because the advocates are not part of that legal process, to pass on concerns or whatever the child wishes to be conveyed to the English legal advocate. However, the advocate will be looking primarily at the child's welfare and their needs here, in Scotland, and not at their legal needs.

Those advocates have access to a legal support service through Clan Childlaw. I absolutely accept that some advocates will have a legal background, but they are also able to access Clan Childlaw, which I think they all accept are experts in the field of child rights and welfare.

Ross Greer: I have one final question. Your letter is useful in explaining why some of the

specific proposals that the commissioner's office has offered as alternatives either would not be appropriate or are not possible. There is one proposal that you said would not be appropriate, but I am not clear why—the proposal that one of the conditions be that the facilities that a young person might be placed into must have been rated at least "adequate" by the Care Inspectorate in the past six months. That sounds entirely reasonable to me, but the Government has taken a different position on it. Can you explain exactly why the Government thinks that that is either not appropriate or not possible?

Clare Haughey: The regulations are about achieving the recognition of DOL orders in Scots law without having to go through a superior court route. They are therefore quite narrow in their intent. However, we have added on to that some additional safeguards and services such as advocacy for children.

We are currently undertaking a consultation on the proposed children's care and justice bill, part of which will consider regulation and the role of the Care Inspectorate in secure care placements. Such issues should be examined in the consultation process; they are not within the scope of the regulations that are before the committee.

Ross Greer: I understand that the proposed bill would provide us with a significant opportunity to make improvements in this area. I do not object to the regulations; it is better for us to agree to them than not to do so. However, I am still not clear on one point. Given that you have included a number of additional safeguards and conditions, why would this one not have worked? Before you published the regulations, had the children's commissioner raised with you the proposal for there to have been at least an adequacy rating in the previous six months?

Tom McNamara (Scottish Government): It might be useful if I were to come in on the practical point about more detailed engagement with representatives from the office of the Children and Young People's Commissioner Scotland.

Committee members will have seen the thematic review that the Care Inspectorate produced in January and February, which focused specifically on DOL placements rather than on the broader cross-border cohort. It was clear from that review that the Care Inspectorate was responsive to the level of concern that both we and ministers had raised with it during the summer and autumn last year. It had prioritised satisfying itself as to the conditions in which children had found themselves in such placements. It has been able to flex its current responsibilities to a useful degree in order to supply the evidence and support the regulations in the limited locus that Ms Haughey spoke about.

Discussions with the Care Inspectorate about the broader shape of the registration and approval processes and about its satisfying itself as to the continuing suitability of particular facilities are currently live, and we intend to explore those aspects as part of the work on the proposed care and justice bill during the summer and towards the end of the year.

Ross Greer: Thank you. I am keen to come back in if there is time, convener. However, I will be happy to leave it there for now, because I know that other members would like to ask questions.

The Convener: Thank you, Ross. It is very helpful that you are taking the lead on that.

Kaukab Stewart: Good morning, everyone. The number of children who are affected is relatively low—it is 35—but we all know that they will have complex multiple needs. I am deliberately not going to list any of the needs that they might have, because those children are few in number and we should protect their right to privacy. Minister, can you reassure me that the regulations will ensure that a child's additional support needs will be met?

Clare Haughey: As I outlined in my opening statement, the placing authority and High Court outside Scotland are responsible for determining that a placement is necessary, proportionate and in the best interests of the child. That will include consideration of the suitability of the placement for the child in the light of any protected characteristics or particular needs that they might have, including any disability or additional support needs. The undertaking that the placing authority must give under the regulations in order for the DOL to be recognised in Scots law will clarify that it is the placing authority that must provide or procure services to support that child, including services that are required to support particular needs.

It might be helpful for the committee to know that the UK Government tells us that the Care Planning, Placement and Case Review (England) Regulations 2010, and the accompanying guidance, are clear in setting out a placing authority's responsibilities in general and on making out-of-area placements, in particular. Placing authorities should draw up other plans, such as those for education or health and care in respect of any child who has special educational needs or disabilities, and the care plan must form part of those. The care plan must include a record of the education and training that are proposed for that child. There are additional layers to this. The responsibility is very firmly with the placing local authority, but there are safeguards in the placement process.

Kaukab Stewart: That is great.

Willie Rennie: I agree. The letter that you sent to the committee was really helpful in clarifying a lot of the issues.

I am interested in what is motivating the change. Are excessive pressures on the court the driving force?

Clare Haughey: There are certainly pressures on the court in that the mechanism for approving DOLs, or recognising DOLs under Scots law, as it currently stands, was not designed for routine use; it was for exceptional use. I am not putting that in legal language—

Willie Rennie: That is good enough for me.

Clare Haughey: I will pass that to the lawyer to put into legalese.

We know that cross-border transfers are happening. We know, following the Supreme Court judgment, that those transfers are legal and do not breach a child's ECHR rights. We therefore made an undertaking with the court that we would look at creating a legal mechanism to recognise the transfers. However, we have also taken the opportunity to try to better protect children's rights. It is better than the status quo.

Willie Rennie: As you probably saw, there was quite a bit of debate last week about whether the new arrangements will make the process easier or more difficult. I can understand the motivation for the change, but could it potentially encourage more cross-border placements?

Clare Haughey: We are aware that there are cross-border placements, but I do not think that the new arrangements will incentivise them. The current Scottish process provides legal recognition of the order, but the High Court does not scrutinise the order or challenge why the order was made or extended. The High Court fully owns the order and reviews the placements, and that will continue. Placing authorities will still need to apply for DOL orders, and any extension of those orders, under the jurisdiction of the High Court. The regulations provide for the recognition of those orders only for a renewable period of up to three months at a time. There will have to be a regular review of the child's placement and whether it is still appropriate and in their best interests.

The regulations and administrative arrangements seek to better regulate cross-border placements through the information-sharing requirements that we have spoken about and through making it clear that the placing authority is responsible for the child and for the care that they get in their placement. It will incentivise placing authorities to remain fully engaged with the child's placement and to actively safeguard the child's welfare.

Willie Rennie: The representatives from the children's commissioner's office made the point last week that there would be a disparity between the rights of children coming from England and the rights of those in Scotland. I can understand why you would potentially have to double up the process—that is probably not legal language, either—in order to overcome that, which might create some difficulties for those who come from England. Are you concerned about the difference between the rights of children who come here from England and the rights of those who are already here?

Clare Haughey: The only way that we could have absolute parity is if we took those children into the Scottish system. As I said in my opening statement, that would have implications for a child. We are talking about children who are very vulnerable and who, in most cases, have already been through very traumatic experiences. They are already going through one legal system.

In addition, DOL placements are temporary in nature. Kaukab Stewart referred to the small—significant, but small—number of children who have been transferred; most of those children have now returned to England. They come to Scotland for a specific reason—for their safety and welfare—but the ultimate aim is for them to be back in their own communities. That might put up a legal barrier to doing what you describe.

12:00

Graeme Dey: As other colleagues have done, minister, I thank you for your very helpful letter in advance of the meeting. The regulations, whatever else they have done, have shone a light on the whole issue, in particular given the commissioner's response to them.

I will touch on one point. There is a report in *The Times* this morning on the problems down south. It asserts that there are “scores of inexperienced ... owners” opening children's homes, with the inference that that is clearly not good for vulnerable children who have been taken into care for very serious reasons.

How do we, in Scotland, ensure that settings in which those children, or any children, are placed are of a type that we would deem appropriate? Are there any plans to strengthen safeguards further in the forthcoming primary legislation?

Clare Haughey: Mr Dey raises a very important point. That situation does not sit comfortably with any of us. None of us feel comfortable with children being deprived of their liberty in secure or non-secure settings. For some of those children, however, that is in their best interests at that particular moment in time.

I am happy to bring in Claire Montgomery in a moment. The difference between the system in England, as I understand it, and the system in Scotland is that any place where a child is placed in residential secure care is regulated by the Care Inspectorate. Not all accommodation in England, in my understanding, is currently regulated.

I know from my conversations with my counterpart in the UK Government—as I mentioned in my opening speech—that they are very much alive to the issue. Obviously, I am not here to speak for the UK Government, but they have assured me that they have put substantial investment into trying to address some of the issues such as a lack of appropriate accommodation for children and young people in England.

I will pass over to Claire Montgomery, who can talk about our plans for the care and justice bill.

Claire Montgomery (Scottish Government): We have heard about really concerning placements through legal cases down south. For example, children have been placed in caravans and Airbnbs; those are completely unregulated settings, and we are clear that that absolutely would not happen in Scotland. Indeed, the regulations make it clear that a service that is running any setting in which a child is placed where they are subject to a DOL order has to be registered with the Care Inspectorate. The Care Inspectorate would provide regulatory oversight and, if any concerns were raised through the channels that the minister described, follow-up action would be taken. The issue that Mr Dey describes seems to be peculiar to the situation down south, but we are clear, in the regulations and more broadly, that we would not accept such a situation for children in Scotland.

Tom McNamara: Mr Dey asked specifically about the proposed care and justice bill consultation. As part of that, we are exploring whether we need to do a little bit more on the specificity of the service setting and what regulation that attracts in terms of the shape of inspection, registration and approval, along the lines that Mr Greer was exploring.

We might need to think about whether we need to do something prior to a service operating, and whether we look at the frequency and intervals at which the Care Inspectorate would interact with new and existing settings—in particular, when a setting moves from one use to another. We are aware that some of the settings that children who are subject to DOL placements are in have sought registration for a childcare setting, for example, but very shortly thereafter they have offered a deprivation of liberty service. As I said, there is a question whether we have the balance right about the precision of the definition and whether it refers

to deprivation or restriction of liberty. We are certainly exploring that with regard to the bill.

Graeme Dey: The response of the Office for Standards in Education, Children's Services and Skills to the article in *The Times* indicated that there might be shortcomings in the legislation in England in relation to the oversight of such places. It is not unreasonable to suggest that, down south, there might be a push to clamp down on them in the short to medium term. If that leads to an upsurge in applications for such placements from England while the primary legislation is going through the Scottish Parliament, are we geared up to cope?

Clare Haughey: I am not quite sure what you mean by "geared up".

Graeme Dey: Do we have the capacity to deal with it?

Clare Haughey: Scotland has limited capacity in terms of the premises that are registered. We must remember that at the centre of all this is a very vulnerable child. That is one of the reasons why, although our ambition is to reduce cross-border placements to the absolute minimum, we recognise that there will always be exceptional cases, such as when a child leaves a situation involving county lines or when they are at risk of trafficking. We want to absolutely minimise the number of cross-border placements as an iterative exercise, but even the Promise recognises that there will always be exceptions.

Again, I bring the committee back to the point that the regulations have a very narrow scope, which is about the recognition of DOL orders in Scots law. That is essentially what the regulations propose to do. There are many other issues around secure residential care that are quite rightly being explored in primary legislation and in the consultation on the proposed bill. I am sure that the committee will have lots of input into the development of that legislation.

Graeme Dey: I am trying to make the point that the reason why we find ourselves in the situation is that there is a lack of suitable accommodation in England and Wales. If action is taken now that leads to a further reduction in capacity in England, despite the best of intentions here, there might well be an increase in applications to house such children. If we are to assist in that, I want to be absolutely sure that we have the capacity to do so.

Tom McNamara: As the minister said, the regulations are drafted to deliver a specific set of legal and procedural objectives on conditional recognition. However, you are absolutely right, Mr Dey, that they do not exist in a vacuum. We were conscious that we did not want, in order to salve our own conscience or just for the sake of clarity, to displace demand elsewhere.

As you will know, in the secure care world, there is a cross-border statutory route, but we were similarly uncomfortable about those placements, although they are in settings that are suitably designed, serviced and staffed for that purpose. At the ministerial level and then the official level, it is about working through capacity issues that relate to the entire UK to ensure that we do not clear the decks in one particular sector only to move the problem somewhere else. We are trying to retain an aggregate sense of the demand and capacity in Scotland to ensure that, in order to clarify matters in a purist way, we do not create a situation in which individual children who have a great degree of need and risk and who could be helped in Scotland are just left in limbo.

Graeme Dey: Thank you. That clears it up.

Michael Marra: The answers to those questions were very useful. We are all concerned about the impact on individual children. We need to ensure that the sector as a whole has the ability to provide the care that we all want to see. That relates to the answers to Willie Rennie's earlier question. Was any modelling done on whether recognition of deprivation of liberty orders in Scots law could result, for any reason, in a decrease or increase in the number of cross-border placements? Has any analysis been done of that?

Clare Haughey: No, there has been no analysis or modelling of that specific issue.

Michael Marra: I appreciate that. I also recognise that that might be challenging in and of itself. My question was not about whether it would be helpful—

Clare Haughey: I am sorry to interrupt, but we need to be really clear that the Scottish Government does not want to be in this position. We are in this position because of a lack of capacity and availability of the service in other parts of the UK. As I said earlier, I have pushed my UK Government counterpart to address the issue at source. It is not a problem that Scotland is able to fix. The UK Government recognises that and assures me that it is working apace on trying to alleviate the situation.

Michael Marra: Let us hope that it does so. The report in *The Times* that Mr Dey referred to is horrifying.

Senior policy figures in Scotland have said to me that cross-border placements are essentially allowing institutions in Scotland to keep the lights on and that funding is attached to those young people. I recognise that they are individual children and that it is not about monetisation, but we are talking about how we ensure that those facilities are well inspected and well run. Is that the case?

Clare Haughey: As you have said, monetisation of the placement of children is certainly a concern for the Scottish Government. As part of the care and justice bill consultation, we are looking at our current secure provision, what secure care provision we would need for the Scottish population and how that can be sustained. We need to think about how we can assist that service to be economically viable. We are alive to that and officials are working through how we can sustain provision. We will need secure care for Scottish children.

Michael Marra: In your letter to the committee, you are clear that

“funding models based on the acceptance of cross-border children cannot be sustained, and that Scotland must do all it can to prevent the monetisation of the care of our children.”

You have confirmed that. That is a question for both the UK Government, in terms of its actions to provide appropriate care in England, and the Scottish Government in ensuring the security and viability of facilities in Scotland, whether that is based on Scottish children alone, a reduced number of Scottish children or otherwise.

Clare Haughey: Yes, it is.

Michael Marra: I appreciate that confirmation.

Ruth Maguire: I, too, found the minister’s letter very helpful. The areas that I wanted to explore have been clarified by the minister, particularly in relation to exactly how additional support needs will be met. I do not have any further questions.

The Convener: Do you want to come back in, Ross?

Ross Greer: I am probably at risk of asking the minister to repeat herself; if so, I apologise in advance. I want to be absolutely clear about the policy intentions of the regulations compared to the aspirations for the bill.

Minister, you confirmed to Willie Rennie that the intention is not to incentivise placements, but to raise the standards of placements. You also confirmed to Graeme Dey that one of the Government’s longer-term objectives, which will be addressed through the bill, is to reduce the number of cross-border placements overall. For clarity, will you confirm whether one of the policy intentions or objectives of the regulations is to disincentivise cross-border placements and to temporarily try to limit the number of placements, or is that not a material consideration for the regulations but a longer-term aspiration to be tackled by the bill?

Clare Haughey: The scope of the regulations is very narrow. It is about the recognition of DOL orders in Scots law. That is the nub of the regulations.

The issues that you raise are extremely important and we will explore them through the proposed care and justice bill. We have committed to reducing cross-border placements, unless, as I have said, it is absolutely necessary for the individual child’s welfare. However, the scope of the regulations is really quite tight, with the addition of notifications from the policing authority, advocacy and so on.

Ross Greer: That is helpful. It might well be that the regulations disincentivise placements, but that is not their intention, which is purely about raising the standards of the current situation until legislation is introduced to make wider changes.

12:15

Clare Haughey: In addition to the recognition of the DOL order in Scots law, it is also about ensuring that the placing authority remains engaged with the child and has overall responsibility within law to ensure that they have all the services and support that they need when they are placed in Scotland.

Ross Greer: Thank you. That is extremely helpful.

The Convener: As members have no further questions, it falls to me to thank you for attending the committee this morning, minister. Again, thank you for your helpful correspondence in advance of the meeting. I also thank Hannah Graham, Tom McNamara and Claire Montgomery for joining us.

The public part of today’s meeting is now at an end. We will consider our final agenda item in private.

12:16

Meeting continued in private until 12:42.

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