



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Education, Children and Young People Committee

**Wednesday 2 March 2022**

**Session 6**



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**Wednesday 2 March 2022**

**CONTENTS**

<b>CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) BILL: STAGE 1 .....</b>	<b>Col. 1</b>
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**EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE**  
**7<sup>th</sup> 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)

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

\*James Dornan (Glasgow Cathcart) (SNP)

\*Fergus Ewing (Inverness and Nairn) (SNP)

\*Ross Greer (West Scotland) (Green)

\*Michael Marra (North East Scotland) (Lab)

\*Oliver Mundell (Dumfriesshire) (Con)

\*Willie Rennie (North East Fife) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

David Belsey (Educational Institute of Scotland)

John Edward (Scottish Council of Independent Schools)

Megan Farr (Children and Young People's Commissioner Scotland)

Liam Fowley (Scottish Youth Parliament)

Paul Little (Colleges Scotland)

Alastair Sim (Universities Scotland)

Diane Stockton (Public Health Scotland)

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 2 March 2022

*[The Convener opened the meeting at 09:00]*

### Coronavirus (Recovery and Reform) (Scotland) Bill: Stage 1

**The Convener (Stephen Kerr):** Good morning, and welcome to the seventh meeting in 2022 of the Education, Children and Young People Committee. The first item on the agenda is evidence on the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 1.

We will take evidence from two panels of witnesses. Our first panel consists of Paul Little, the vice-chair of Colleges Scotland's college principals group; Matthew Sweeney, the policy manager for children and young people at the Convention of Scottish Local Authorities; David Belsey, the assistant secretary of the Educational Institute of Scotland; Diane Stockton, a consultant in public health at Public Health Scotland; John Edward, the director of the Scottish Council of Independent Schools; and Alastair Sim, the director of Universities Scotland. Paul Little, Matthew Sweeney, David Belsey and Diane Stockton are joining us remotely—I can now see your faces on the screen, which is good—and John Edward and Alastair Sim are with us in the committee room.

Good morning to you all, and thank you in advance for the evidence that you will share with us. Unfortunately, time is limited this morning, so please do not feel that you must answer every question that is posed. I will try my best to bring people in, but I have to ensure that the session concludes by 10:30 at the latest. Any outstanding matters can be followed up in writing.

I will start with a question for Alastair Sim. In the first page of your written submission to the committee, you say:

“At no point has the Scottish Government had to use the emergency powers in the existing Coronavirus Act 2020 with regard to higher education.”

Is that correct?

**Alastair Sim (Universities Scotland):** Yes, that is correct. We have worked very successfully in partnership with the Scottish Government, within the overall framework that the Government has set, to ensure that universities successfully manage the risks and successfully support

students through the very disruptive time that they have had. That partnership arrangement has worked very well and is a model for what should be done in the future.

**The Convener:** In your submission, you say:

“We are concerned that the Bill gives Ministers responsibility to make regulations at a level of detail that cannot competently be done by government”.

Can you explain why you say that?

**Alastair Sim:** Of course. If the Government is to have emergency powers—I can understand why it feels that emergency powers might need to be on the statute book—I think that the powers should be framed a bit differently from how they are framed in the bill. The powers are framed basically in a way that reproduces the Coronavirus (Scotland) Act 2020, which was produced in a tearing hurry at the beginning of the crisis. We now have the opportunity to step back and think more profoundly about what is necessary.

From my point of view, it would be much better to have a framework in which ministers set out the general requirements but in which institutions decide the granular stuff, such as who should come into universities in person to complete their studies, what buildings should be open, what research projects need to continue, when students do assessments and how they are assessed. Such matters need detailed consideration at an institutional level, with consultation with staff and students. To be frank, no Government would have the detailed local knowledge to be able to do that.

We are trying to help by saying that there is an alternative framework that will achieve the Government's objectives but that will not draw it down into a level of granular detail that could not be dealt with competently by any Government.

**The Convener:** Are you basically saying that the guidance has worked during the past two years, so there is no need for permanent legislation in those areas?

**Alastair Sim:** Guidance and partnership have worked very well, so we do not see an absolute need to legislate. However, if the Government is absolutely minded to legislate, it should do so in a way that is much more with the grain of what has worked. It should set out general requirements but ensure that the granular implementation of those requirements is done by the people on the ground who know how to do it.

**The Convener:** Your submission makes specific reference to admissions. Can you explain that part of your evidence?

**Alastair Sim:** Yes. Section 8(5)(d) gets into the business of requiring

“specified people ... to attend a specified educational establishment”.

From my conversations with Scottish Government officials, I think that part of the well-intentioned objective of that provision is to allow students to move to a course in another university if their university is closed. I can see the good intention, but I do not think that the Government can just move people around like that, because the Government will not know whether that course has capacity or whether it will meet students’ academic needs.

The bill has quite a lot of good intentions, but it draws the Government into making decisions that it cannot competently make and that institutions might not be able to competently implement.

**The Convener:** That is also true in relation to student accommodation, because the bill contains regulation on that, too. What is your response to that?

**Alastair Sim:** The partnership approach has worked very well in that regard. Among others, Diane Stockton from Public Health Scotland has been at the core of that approach. If there is an emergency, it should be the university’s management, in consultation with staff and students, who decide exactly how students should be supported through the crisis. Those decisions should be taken very much in consultation with Public Health Scotland and the local health board; they should not be a matter of ministerial direction. The Government just does not know the detailed, granular information on the ground to enable it to make those decisions.

**The Convener:** Is your message, “Give us the guidance and we will act responsibly”?

**Alastair Sim:** That is how it has worked over the past couple of years. If there has to be legislation, it should go with the grain of that approach, because it has been successful.

**The Convener:** I will turn to Paul Little. In your written submission, you say:

“On the basis of this experience”—

the experience of college operations during the pandemic—

“we would advise that the intended provisions which have been proposed within the Bill are not required.”

Could you expand on that, please? Why are they not required?

**Paul Little (Colleges Scotland):** Many of you know that I am the principal of the largest college in Scotland—I will make some reference to that—but I am also a member of the ministerial advisory group and the subsequent Covid-19 education recovery group, so I have real insight into all the planning and responses at sector-wide and

national levels. I believe that the proposed regulations are completely unnecessary. They represent central planning overreach. They do not address harms 3 and 4, nor do they in any way mitigate the lost learning that we are trying to work through or the mental health challenges.

I support what Alastair Sim said. My institution closed one full week before we received any advice from the Government to do so. During the entire two years, we were ahead of the overwhelmed officials—in fact, we were able to support them during that time.

The challenge that we faced related to the particular practical learning and education that colleges provide, such as the need for access to specialist facilities. Understanding of that was limited at the centre. Ultimately, those on the front line are best placed to support students with their mental health and with their digital and practical learning.

There was a good example of that at City of Glasgow College, which supported not only the local community but the care sector and the small and medium-sized enterprise sector. We also supported the maritime sector. Many of our vaccines and goods came to Scotland via our ships, and my institution had 245 cadet officers at sea during the pandemic. We were very much on the front line in responding to the pandemic, and we have detailed plans to upskill and reskill people.

The bill does not deal with the aftermath or with any of the urgent needs. The college sector faces more than £15 million in potential cuts, but we are not talking about that. We are talking about the potential for a future pandemic when we are dealing with a real crisis in education.

**The Convener:** Are we talking about the wrong things?

**Paul Little:** I would prefer, and I am sure that many of my education colleagues would prefer, to talk about how we can mitigate lost learning and how we can support the mental health of those in our student population who self-harm or have attempted suicide. The long shadow of Covid has been further complicated by the implications of Brexit, by a decade of austerity and by the present instability in eastern Europe.

Colleges are facing very real pressures. There is a clear and present challenge for 26 colleges across Scotland, with more than half a million learners. We have already demonstrated that the college sector had an agile response to the pandemic with no such planning or legislation. Those two years of learning stand us in good stead. If we are distracted by a set of regulations in the bill, we will not be able to concentrate on

dealing with lost learning and day-to-day learning, which is our fundamental responsibility.

**The Convener:** You mentioned being part of the ministerial group and being involved with the Government. Have you made those points directly to ministers?

**Paul Little:** Ministers and officials are well aware of those points. During the pandemic, we had a very good and strong partnership in supporting ministers, officials and all the public agencies.

Yesterday, we published our economic transformation proposals, but two years ago—one month before the pandemic—we were asked by ministers to publish the blueprint for the economic transformation of colleges at that time. It was known as the Cumberland-Little report. We are now past the two-year anniversary of that report, but its recommendations have not been implemented. As we replace one priority with another one, that is another example that shows that the more recent priorities are perhaps less of a priority than the new ones.

**The Convener:** That is very clear.

I will turn to David Belsey. In your written submission, you say:

“The EIS believes that extending such powers to issue regulations indefinitely could upset the balance of power between local authorities and the Scottish Government.”

Can you expand on that, please?

**David Belsey (Educational Institute of Scotland):** Our submission to the Parliament about the bill sets out the EIS’s concern. Although we welcome the existence of regulations that give the Government powers to close schools during a pandemic, were those powers to be extended indefinitely, as the bill suggests, that would give a degree of power and oversight over schools, and thereby over local authorities, that does not currently exist. Although the intention today is to protect and maintain education provision, there might be unintended consequences in the future, because there is a very delicate balance between the Government’s role in delivering strategic oversight and funding for education and local authorities’ role in delivering education on the ground. During its work on previous education legislation, the Government considered that balance between the Government and local authorities and decided to keep the current balance. That is what we have set out.

In a public health emergency, the Government should have powers to, in effect, take strategic control over school closures and reopenings.

**The Convener:** During the past two years, has there been a breakdown in the ability of local

authorities to make such decisions for themselves? In your submission, you say:

“The EIS would have liked to have seen an explicit delegation to local authorities to also make decisions to close schools or move to remote platforms in the interests of safety”.

You feel that local authorities, with guidance from the centre, should be making such decisions on the basis of delegated authority, which they already have. Is that correct?

**David Belsey:** No. We are saying that, at the moment, the power to open and close schools remains with the Government, which acts with the public health authorities. A local authority has a very limited ability to close a school. In some schools in Glasgow, hundreds of pupils and large numbers of teachers were ill, but the schools were kept open because supply teachers were provided to staff the schools, classes were merged and so on. As we understand it, a local authority does not have the lawful authority to close a school on public health grounds.

09:15

We are saying that the Government should have strategic oversight and should make such decisions, but that local authorities should also be able to close a school and move to online learning. We are looking for greater flexibility. That is not a reflection on the Government’s ability or its right to make strategic decisions for Scotland as a whole.

**The Convener:** I think that I understand that. You are arguing for what I said—you feel that local authorities should have that power. I must confess that I thought that local authorities already could close schools.

**David Belsey:** They cannot do so on public health grounds. If a local authority cannot physically staff a school, it can close the school. However, if a local authority wants to close a school on public health grounds, it has to get permission from the local public health authorities and, in effect, from the Scottish Government. When we were looking to close schools before Christmas 2020 in order to protect staff and pupils, local authorities told us that they could not close schools early before Christmas because of the way in which the powers are set out.

**The Convener:** That is very interesting.

Michael Marra has a question about schools.

**Michael Marra (North East Scotland) (Lab):** I have a brief supplementary question for Paul Little and Alastair Sim. I was quite intrigued by what Paul Little said. What did not happen in the past two years that the Government wanted to happen? If it is asking for more power to direct, what were the things that did not happen? What is the

problem that the Government is trying to solve with the bill?

**Paul Little:** I am at a bit of a loss to understand that. Such was the very close working relationship and the almost real-time, daily, 24-hour access that no problems were left unresolved during the emergency response.

The problems that were left unresolved were those for which the response had to go to the next stage, such as with lost learning, mental health or understanding that different institutions have different requirements. There was not a full realisation of the nature of college education; more than three quarters of it is about practical learning, practical instruction and workshops, and that was not properly understood.

There was a very good response from the Government and colleges and the wider university and tertiary sector. In fact, the sector was very much a lifeline for communities and businesses. I was not aware, either as a college principal or as a member of those advisory groups, that we failed in that response, which is why the bill is completely unnecessary. I do not believe that it will address harms 3 or 4—the social and economic harms. There was a very late realisation as part of the response that those were real and present harms.

**Michael Marra:** Alastair Sim, do you understand my characterisation of the situation?

**Alastair Sim:** In a sense, my answer is exactly the same as Paul Little's. The emergency powers in the Coronavirus (Scotland) Act 2020, which, in effect, the bill mirrors, did not need to be used because the partnership approach was successful.

**Michael Marra:** Did you not feel at any point that the Government or ministers were asking you and your colleagues in universities to do something, and the universities were just saying, "No, we cannot do it"—perhaps the bill seeks to take more power to the centre to compel you? Do you not recall conversations along those lines?

**Alastair Sim:** No, that was not required. Through the group that Paul Little referred to, there is constant dialogue between the sector, the trade unions, the student movement and the Government about what should be done. Different views are tested in that forum and, usually, a consensus is reached. At no point did push come to shove and emergency powers have to be used.

**Michael Marra:** Thank you. I have my substantive questions as well.

**The Convener:** Yes. Before you ask them, I just want to get my head straight on this, so I have a final question for David Belsey. Is the EIS arguing for the opposite of what the bill seeks to do? Are you saying that powers should be given by the

Government to local authorities? Is that the rebalancing that you are talking about?

**David Belsey:** No, we are saying that local authorities as well as the Government—not instead of it—should have the powers to close schools on public health grounds.

**The Convener:** As well as the Government—yes, that is what I am saying. Your argument is that that power should be given to local authorities.

**David Belsey:** Yes, it should have the ability to close schools.

**The Convener:** They do not currently have that power, which is the opposite of the intent of the bill, which is to bring powers to the centre.

**David Belsey:** In many ways, the bill sets out the regulatory and statute bedrock, but I imagine that the Government will operate in a different way in reality—perhaps in the way that Paul Little and Alastair Sim have explained. In other words, there is currently a way of making universities and colleges follow education continuity directives, but the Government does not use it—it has followed a partnership approach.

We are saying that the Government is putting the statutory bedrock down for continuing the powers that it has now. We have no problems with that, but, in addition, we would like local flexibility so that councils have the ability to close schools on public health grounds—not simply on staffing grounds. We do not see that as a contradiction; we see it as complementary.

**The Convener:** Half the committee wants to come in but, before I bring in members, I will bring in Matthew Sweeney.

**Matthew Sweeney (Convention of Scottish Local Authorities):** I wanted to come in on where we are with this. I agree with some of the discussion that we have had so far. Local authorities do not have the power to close schools. However, under the School General (Scotland) Regulations 1975, the appropriate person—that might be the legal term; in practice, it would most often be the director of public health—in a health board has the ability to do it school by school. With the bill, we are talking about a situation, such as in March 2020, in which there is a need to take action at national level. I do not think that there was a clear legislative vehicle to do that before the emergency act.

We are quite mindful that the International Council of Education Advisers has been clear that pandemics might become more frequent in the future, so we see a legislative need around this. What my members are interested in—the schools space is perhaps quite different from the situation of our colleagues in further and higher education—



is that there is a duty for us to provide education to every single child in our area and, therefore, a legal protection was given to our members by waiving some duties through the use of the continuity directions. Although some of the mitigations might have been controversial, local authorities had additional support and comfort in cover around the national direction, based on strong partnership working, which was very important.

**The Convener:** Do you need legislation to do that, given that you have just described what seems to be a pretty robust framework for authorities? Why do we need new legislation?

**Matthew Sweeney:** The difference is that, if we are in a situation with a new virus and, in the same way as with coronavirus, there is a need to take action nationwide, it makes sense to be where we are.

The bill will bring in the additional resources and support that were achieved through close working with the Government. However, we are clear that the bill must be changed to ensure that there is close engagement and consultation with local authorities before any direction is created.

**Oliver Mundell (Dumfriesshire) (Con):** I want to come back to David Belsey from the EIS about whether the same kind of discretion should be given to headteachers in schools. It is all well and good to say that local authorities should have the power to shut a school on health grounds, but the example in Glasgow that you cited and other experiences that I have seen in my constituency have involved difficult judgment calls, and the person who knows the school, young people and community best should surely have a say in such decisions, too.

**David Belsey:** Headteachers should have a say, but the final decision should be taken by the local authority.

**Willie Rennie (North East Fife) (LD):** I am curious about this issue. It surely does not matter who makes the final call, because the professional advice from the public health officials will be the same no matter who makes the decision. Why is it necessary to have multiple people legally entitled to close the school when the advice will be the same? The issue here is surely about ensuring that we have the right advice about how to proceed and clear authority and partnership to make it happen. David Belsey, why is it necessary to have multiple bodies making the call?

**David Belsey:** As Matthew Sweeney set out a few minutes ago, a national ability to close all schools in response to a national emergency is a worthwhile lever to have. Sometimes, events in a particular school or community developed in such a way that we believed that a school or a number

of schools should have been closed. We put our requests and views to local authorities and they said to us that they could not legally close schools on public health grounds. A school might have 400 kids off or the kids might be sitting in the school hall with supply teachers and, strangely enough, some pupils might benefit from having remote teaching at home, but the local authority is unable to close the school because it does not have the authority to do so. We believe that, in addition to the powers that the Government would have under the bill, local authorities should have the ability to close a school.

**Ross Greer (West Scotland) (Green):** I want to go back to points that, in particular, Alastair Sim made. I understand entirely the line of argument that the partnership approach that was taken in the pandemic was successful, so why would we wish to alter it? However, there is an assumption that the people who are involved on either side next time will be as reasonable and willing to cooperate as those who were involved last time. We generally do not make laws on the basis of the individuals who are around the table at any particular time—the laws that are proposed would be here permanently. Should we be pursuing the line of argument that, because partnership worked this time, it will definitely work next time? Is not the point of the bill to have a back-up option in place if partnerships break down?

**Alastair Sim:** If there is to be legislation, it must be legislation that works. In our submission, we say that, if you are to have emergency powers legislation, have emergency powers legislation that goes with the grain of what has already been proved to work. One could conceive of ministers taking emergency powers that enable them to say, at a general level, “There is a severe public health emergency and the access to in-person provision at universities has to be restricted” and, for instance, students being prioritised who are about to sit their final exams, who have practical learning or who are about to graduate from the health disciplines and will go and address the crisis. If ministers have the power under emergency legislation to say that as a generality, it has to be up to institutions, with their staff and students, to implement that at the level of granularity that is needed—to consider which students need to come in, what courses need to continue, what experiments need to continue and what buildings need to be open.

Our problem with the way in which the emergency powers are framed in the bill is that they draw ministers into making decisions that need to be made locally within an overall framework that is set by the Government. If there has to be emergency legislation, let it be emergency legislation that works by giving ministers and the Government their proper role in

setting out overall requirements and giving managers with staff and students at institutional level the granular responsibility for making the decisions to implement those requirements.

09:30

**Ross Greer:** Do you think that the Government's intention in bringing this legislation forward is to be able to make decisions wholesale at the granular level that you are talking about? My assumption about the intention here is that the partnership approach that we have pursued up to now would be the preference, but it cannot be guaranteed that every partner will be co-operative in the future. The universities themselves were a very good example of that level of co-operation with the Government, while some of the private student accommodation providers were not. Surely it would be better for the Government to have the ability to intervene at a granular level, with the intention of doing so not wholesale across the country, in every institution and every instance, but in those instances in which someone is not co-operating, whether it be with local public health teams, the local authority or the Scottish Government directly. We cannot guarantee that everyone will want to take a partnership approach next time, so surely the Government needs the ability to intervene at a granular level if and when necessary, even if it is regrettable that that is the case.

**Alastair Sim:** If the Government takes general powers to require emergency things to be done during a public health emergency and a particular institution or provider of purpose-built student accommodation is not doing them, it can take that institution or provider to court. It has remedies, and it can just get in there and insist that these things are done.

However, it is not for the Government to get in there and say that a particular building has to be closed, prescribe the access arrangements to a particular building or say, course by course, exactly who should still be coming in for in-person provision. I do not think that the Government is competent to do that. That is no criticism of any particular Administration; I just think that it draws the Government deeply into areas where it cannot know enough at the granular level to exercise those powers well.

**Ross Greer:** I am conscious that I was asking a supplementary question, convener, but can I just ask one more follow-up question?

**The Convener:** Sure.

**Ross Greer:** On the point about taking people to court—in this case, the Government's ability to take an institution to court—what if, this year, we face another pandemic that forces us into making

decisions hour by hour? With the best will in the world, pursuing court action cannot result in your getting a response as quickly as you might like in the face of a public health emergency. That is exactly what we are talking about here. If you are faced with having to make decisions urgently—say, within a couple of days or, indeed, on the very same day—and the partnership approach does not work, by the time you have gone to court to get that resolved, the situation might or might not have got markedly worse in an avoidable way. Is this not about reflecting the urgency of a future pandemic?

**Alastair Sim:** I think that the same is true however you exercise those powers. Even if ministers took those granular powers, they might well find that they were not able to be exercised on the ground, and you might end up with a dispute that has to be sorted in court. One would hope not.

We should remember that this was all done in a rush in March 2020, so this should be a time for thoughtful reflection on what works. If ministers were to frame emergency powers better than they are framed at the moment and put in place a framework that allowed them to prescribe the general requirements and allowed for those requirements to be locally implemented, that would be the law and people would just have to get on with it.

**Ross Greer:** That was useful. Thank you very much.

**James Dornan (Glasgow Cathcart) (SNP):** Alastair Sim and Paul Little have made a lot about this legislation being unnecessary, but, given that they have just told us how they were able to work in partnership when the 2020 powers were invoked, why is there a problem with it? Following on from Ross Greer's questions, I would suggest that the Government must surely have powers to act quickly when required. You must trust the Government, given that you have worked with them for a number of years under the 2020 legislation. Why are you panicking in your responses with regard to these powers?

**Alastair Sim:** Our submission says:

"we recognise the case for Ministers to have emergency powers in the event of another severe new public health crisis, even though we hope these will never have to be used.

If there are to be emergency powers, we want these to be operable in a way that protects public health, takes account of the 'four harms', and will be operable on the ground."

That is what we are trying to achieve here. We are not having a dispute from first principles with the Government. Instead, we are trying to help the Government and the Parliament to frame emergency provisions—if the Government wishes

there to be such provisions—in a way that we believe will be better operable than what is in the bill, which reflects what was done in a rush in the 2020 legislation at the beginning of the crisis.

**James Dornan:** But your evidence suggests that that has worked well and that the Government has been working with you on this. What makes you think that, if this legislation is passed, the Government will stop working well with the universities and colleges?

**Alastair Sim:** We certainly hope that it will continue to work well with us, but, as has already been pointed out, the law is the law. We have to ensure that it is operable for whoever happens to be in our various positions when the next emergency hits us.

**The Convener:** I am going to bring in Diane Stockton at this point.

**Diane Stockton (Public Health Scotland):** I was going to explain how things work when there is a significant outbreak in a school. There would be a meeting of the local public health team, the head staff in the school and local authority representatives to discuss whether the school should shut. I take David Belsey's point that there should be a comprehensive discussion, and we, on the public health side, would consider the wider harms—in other words, the wider picture—in shutting a school on public health grounds. It has been quite unusual for schools to be shut on public health grounds in the pandemic so far; more often, they have been shut for staffing reasons.

**The Convener:** That was very useful. I call Bob Doris.

**Bob Doris (Glasgow Maryhill and Springburn) (SNP):** I think that, in his comment on the 2020 emergency coronavirus powers mirroring the powers that the Scottish Government is seeking to take in this bill, Alastair Sim was drawing an equivalence. If the 2020 powers were fit for purpose with regard to partnership working, meaning that they did not have to be exercised with universities and colleges, what is the difference with this set of powers?

**Alastair Sim:** The 2020 powers never needed to be used, but we doubt whether, if they had had to be used, they would have genuinely been operable. Schedules 16 and 17 of the Coronavirus Act 2020 get ministers into this extremely granular level of deciding who should come on a course, what buildings should be open or closed, what the opening times should be, when assessments should be sat and so on. If the Government had reached for those emergency powers, it might have found them quite problematic to use, which is why we are trying to help the Government and the Parliament find a framework that will be more

robust and operable and will go with the grain of our two years of experimenting with what works.

**Bob Doris:** I am interested to know what criticisms you made at the time, Mr Sim—and I apologise if you did so. It would be very informative for the committee if you could tell us what criticisms you made of the emergency powers in 2020. I think that you are conceding—constructively—that there is a need for an emergency framework power to be put in place now. What changes would you make to the current proposals in that respect?

**Alastair Sim:** The emergency powers went through the Parliament in four days in 2020, so there was really no opportunity for stakeholder—

**Bob Doris:** But 2020 is a whole year, Mr Sim. You had constant conversations with the Government; indeed, you said how constructive your dialogue with it had been. I assume that, at some point during 2020, you must have mentioned to the Government what parts of the powers you were not happy with.

**Alastair Sim:** The issue never came up, because the powers never had to be reached for. When they went through, there was no opportunity for effective parliamentary or stakeholder scrutiny, which is why I think it is important that we take the time now to ensure that, if there are to be emergency powers, they are crafted well and are operable instead of just reproducing what was done—to be frank—in a rush in 2020.

In our submission, we have suggested an alternative approach that we think the Government would find more operable. It would give ministers the powers to introduce emergency legislation—which they clearly should have—to set out the sort of restrictions that need to be imposed to control a public health emergency, along with some of the exceptions that need to be made to provide continuity of education and look after students' welfare and educational needs, and to require the people on the ground to make the granular decisions to implement that.

**The Convener:** I presume that, if the Government needed further emergency powers, we could have a repetition of what happened in 2020 with the four-day turnaround in legislation.

**Alastair Sim:** Of course.

**Bob Doris:** But Mr Sim has just said that four days was not enough. The scrutiny that we are having now is taking a lot longer than four days, convener.

Mr Sim, it is helpful to hear you confirm that you raised no concerns at all at any point in 2020. Mr Little, did you raise any concerns about the powers in 2020?

**Paul Little:** Because of the good partnership working, we did not have concerns, but colleges have experienced overreach in previous legislation, such as the Post-16 Education (Scotland) Act 2013 bill, that has reduced—

**Bob Doris:** We are talking about this bill, Mr Little, so could you please stick to it? Did you raise concerns in 2020?

**Paul Little:** The concern would be that institutional autonomy would be further eroded.

**Bob Doris:** Did you raise those concerns in 2020?

**Paul Little:** We raised concerns about the throughput of officials who had to produce the legislation. As I have said, officials were overwhelmed, and there was a lot of throughput. If there is no institutional autonomy, you will not, when the next pandemic comes along, have an agile response—you will not have the community response, the economic response, the educational response or, indeed, the safety response that you will require. Particularly in my own situation, with a very large metropolitan economy and institution, the real danger of getting a weekly or even daily diktat that creates a bureaucratic response, when the response should be an agile one, is that we will not have as effective a response as we had in 2020.

**Bob Doris:** Can I just check some information, Mr Little?

**The Convener:** I am sorry, but I am going to move the questioning on now.

**Bob Doris:** On the daily diktat—

**The Convener:** Bob—

**Bob Doris:** Does Mr Little really believe that this bill is a daily diktat? If so, I think that he loses credibility.

**The Convener:** Thank you, Bob. We will move on. I will bring in David Belsey.

**David Belsey:** The EIS is the sole recognised trade union for FE lecturers, and we are also recognised in the HE sector. As a result, we, together with Paul Little and Alastair Sim, have been on the Covid-19 advanced learning recovery group.

I want to make a couple of observations about what Universities Scotland has said about its plans. At the moment, the Government has the ability to use statutory powers, but it has worked in partnership with all the representatives of, and major stakeholders in, the two sectors on detailed, prescribed guidance for further and higher education.

The EIS believes that that process has worked well, particularly in colleges, which have delivered education in a quick, agile way and have protected staff and students. We have had very few problems across the college sector. The situation in the university sector, however, has been slightly different. Some universities have been pushing the envelope and requiring our members to go in despite the detailed, prescribed FE and HE guidance. On the whole, the process has worked well, but the Government's ability to sit back and rely on statutory powers, if necessary, is welcome.

Ultimately, I do not think that the granularity that Universities Scotland is saying that the Government seems to be wishing for is a factor. I do not think that any Government can control individual buildings across the university estates, and we would not welcome that. That said, we have concerns about Universities Scotland's proposal for a general framework in which there is no trade union involvement at all at the local level. Instead, it talks about staff representatives. Such an approach would also lose the amount of close collaborative working that has been taking place over the past two years, which we are keen to maintain. The views of the workers in those two sectors need to be taken into account as well as those of the senior leadership.

09:45

**Paul Little:** We were trying to get evidence-based policy making into this legislation. For example, we have found that, across the 265,000 students in the college sector, the rate of satisfaction or happiness with the colleges is 93 per cent. Our response during the pandemic has been heightened, but, in addition, we have demonstrated a constant partnership and dialogue with ministers and officials and with our partners in the trade unions, in the universities and in community learning and development.

That two years of evidence is worth remembering. The leaders who have been experiencing that will still be leading the colleges if a further virus emerges, and we have also captured that learning in writing for the next generation of leaders who might be unfortunate enough to face this experience. The challenge is that you want your institutions to have an agile response, and, if you hamper that with unnecessary bureaucracy or overreach, all you will do is have everyone play safe and dumb down their response. We do not want that.

**Oliver Mundell:** At the start of the pandemic, we were all willing to tolerate things in legislation that we might not normally have been comfortable with. Have things moved on? Obviously, partnership is important, but so, too, is proportionality. I have been listening carefully and,

from what you are saying, it seems that you do not feel that the bill is proportionate to the scale of the task or the degree of emergency that we face. I am happy for anyone to comment.

**The Convener:** I will bring in John Edward, because he has been sitting patiently and I worry that we have not heard from him.

**John Edward (Scottish Council of Independent Schools):** We have two issues in principle with the proposals and one issue in practice. The first issue in principle, which I am surprised has not been mentioned at all this morning, is that my Government and Parliament have already established a formal inquiry into Covid-19 under the leadership of Lady Poole. If we are to legislate to learn the lessons of Covid-19, we should wait for the public inquiry that has been established particularly to learn those lessons before we start legislating for them, especially as we are not out of Covid-19 yet. There is a very sophisticated process to learn about what has worked and what has not.

The other point of principle is simple. Slightly differently from the situation of my colleagues, our institutions are entirely autonomous—the fact that “independent” is in the name is a bit of a giveaway. Legislation that requires the trustees and governors of independent institutions, whether they are mainstream or special needs institutions, to do certain things that they may or may not entirely agree with needs a lot of scrutiny.

To go back to what everyone else has said, we have not had many issues. I can think of one example in the past two years when we had a difference of opinion with the civil servants. We have worked extremely closely with them, as we have with Public Health Scotland and infection control groups in national health service boards and so on. The issue was with the extended isolation period of boarding pupils in residences beyond what was required for other individuals. We did not see that as proportionate or necessary. The biggest risk that boarding school pupils from abroad ran was picking up infections in local communities. All the figures showed that they were safer being inside the school rather than out.

We had no issues with the approach. Other people have talked about the panic about the proposals. There is no panic, just as there was no panic over the two years in dealing with the measures that were put in place. Our schools, although entirely autonomous, all closed on exactly the same day as every local authority school, and they would do so again. The system works, if that is the system. If it is not the system, let us wait and see what the community says through the inquiry to decide what the system should be.

The practical point is simply that what works for a small alternative school in the car park of Cameron Toll in Edinburgh does not work for a large residential school in the woods of Elgin. Having a Government-level responsibility takes us away a bit from the approach that we see, for instance, to extreme weather situations. If there is extreme weather in the east of Scotland, our schools in the west of Scotland do not shut. If there is extreme weather in one end of Aberdeen, our schools in the other end of Aberdeen do not necessarily shut. To me, it is the same principle.

Our schools have worked closely with Public Health Scotland and the Government and have made the best of the appalling situation that we have all been through in the past two years. We simply do not understand the need for an obligation on us beyond the obligation, which we demonstrably met through the past two years, to keep the continuity of education, to try to prevent attainment from dropping and to protect the mental health of our pupils. In that respect, for the next period, we would be more than happy to work with what we have rather than seek to replace it with something else.

**The Convener:** That was helpful.

I see that Oliver Mundell wants to come back in. Be very short, Oliver, because Michael Marra has been sitting patiently for about half an hour.

**Oliver Mundell:** I am sure that it will be worth the wait.

I have a question for the witness from Public Health Scotland. I want to push on that point. In relation to building public trust and confidence and encouraging people to continue to follow the guidance as we move into the next stage, how important is proportionality? How important is it that the legislation matches the situation and the level of emergency and fear that people across the country feel?

**The Convener:** Who is that addressed to?

**Oliver Mundell:** It is for the witness from Public Health Scotland. Do you factor in how the public as a whole feel, how organisations feel and how decision makers feel if the legislation on the statute books is out of step with the perception of the risk and state of emergency that we are in?

**Diane Stockton:** Communication has become more important, especially during the omicron stage of the pandemic. Perceived risks have reduced and it has become more important to have consistent messaging across sectors, across public health and the Government on the importance of the mitigations, the speed of reduction of mitigations and balancing the anxieties of some of the population as mitigations are relaxed versus the speed that others want

them to be relaxed. That is a tricky balance, and we constantly look at the evidence—

**Oliver Mundell:** Has something gone wrong in that communication when senior people in a wide range of organisations are, in effect, saying that the Government's proposed legislation is an overreach? Does that not break down some of the trust, partnership and confidence that has been built up in the past two years? Does that not put public health at risk?

**Diane Stockton:** My view is that the communication from different organisations has been very consistent. That strong partnership working that the other witnesses have talked about has come through in the consistency of the message that has been put across. If that broke down and different messages came from different sectors, that would be a problem for public trust, but that has not happened so far. We have had strong and consistent messaging on the key issues.

**Michael Marra:** I will move on to section 2 of part 2, which is regarding consultations on proposed changes to school estate and provision. I will hopefully keep it reasonably brief. When the proposals first emerged, concern was voiced to me regarding a power shift to central Government. The issue is about the consultation process and taking people's views on board. The EIS written submission comments on any moves to remove public meetings from the process of consultations on whether a school should close permanently or be merged with another one. I ask our colleague from the EIS to set out why it is particularly important for those physical meetings to continue.

**David Belsey:** [*Inaudible.*]—digital divide.

**Michael Marra:** I am sorry, but we did not catch the start of your answer, David. Could you start again?

**David Belsey:** There is a digital divide. Some people can join online meetings but others cannot. For some people, it is easier to obtain printed materials and to attend a meeting in person. To our knowledge, a concern has never been expressed regarding the current process by which consultations are carried out in person. Any change that reduces that in-person contact and replaces it with online contact might mean that fewer teachers, parents or local community members can engage.

We suggest in our written submission that hybrid meetings might be possible. The benefits of fewer people attending a meeting by some of them going online might address the public health risks of holding meetings in person. However, for consultations regarding changes to schools, we are clear that we want the maximum number of people to be able to engage with the process, and

that suggests that they should be able to do so in the maximum number of ways, including digitally and in person.

**Michael Marra:** I strongly agree with that.

I will put a similar question to the representative from COSLA. My experience of the process is in my local authority in Dundee, in a recent consultation prior to the pandemic on merging two secondary schools. The local authority did not get the answer that it wanted, so it ran the consultation again to get that answer. My concern with the measure in the bill is about precedent. Even though it might be reasonable to agree to the emergency legislation, if we agree to it, there could be a kind of seeping situation and we could end up with no physical meetings. Does COSLA still believe that we should have physical meetings to maximise engagement, as the EIS has said?

**Matthew Sweeney:** In the broader sense, we have for some time raised with the Government the fact that some aspects of the Schools (Consultation) (Scotland) Act 2010 are quite burdensome. This perhaps did not apply in the exact example that you give, but in a case in which a school has been mothballed for some years and a consultation was done on that, another consultation is required on closure. That is a burdensome process. It is genuinely challenging and takes a lot of resource.

We have been clear that the measure in the bill is only about the use of public meetings during a pandemic. During the past year, there were periods when, across large parts of the country, it was impossible to have people together inside at all. Because councils were not given flexibility, they were required to pause their processes. They might have been planning around opening new nurseries in relation to the expansion of funded childcare to 1,140 hours, or thinking about the future of the school estate. Some of those processes were paused, which meant that we could not have the conversations that we needed to have to ensure that everyone understood some of the steps that we needed to take to improve services for communities.

That is the crucial point. We are talking about a situation in which there is a public health crisis and there are limits everywhere on the number of people who can meet indoors. More broadly, we would absolutely still support holding public meetings when it is safe to do so.

**Michael Marra:** Would it be useful to signal in the bill that we should have the maximum possible participation? Should there be a duty on local authorities to maximise participation in such consultations? Would that be reasonable?

**Matthew Sweeney:** I do not think that it would be unreasonable. I think that the words that we

would use would be that we should use “best endeavours”. Throughout the pandemic, across a number of areas, local authorities have made their best endeavours to make sure that consultations were as accessible as possible—not just school consultations, but more broadly. However, there have been real challenges. Other panel members have raised issues about the digital divide. We agree with those points and think that it is important work for us all collectively to make sure that we prepare for the future, upskill people and ensure that devices are available to all.

10:00

**Fergus Ewing (Inverness and Nairn) (SNP):** The Covid-19 pandemic took us and everybody else by surprise, which will also be the case for any future pandemic. I recognise and want to thank all the institutions represented today, and local government, for their valuable work during the pandemic. I am perfectly sure that the Scottish Government will always continue to use a partnership approach as a central way of operating. I do not think that anyone would dispute that.

There seems to be an elephant in the room, however, the presence of which has been so far ignored. In a pandemic there is a need for speed. Although Mr Edward is quite correct that it would be desirable if we could pass the bill after Lady Poole’s inquiry findings are known, as far as I know there is no time limit on the inquiry and it may well be a long time before we reach that stage.

It seems to me that, as democrats, we all want consultation and participation, but we must also recognise that in a pandemic there is a need for speed, and that delay of even a few days can be critical. I put it particularly to Mr Sim and Mr Little that, even if there is substance to some of their arguments—I will be interested to hear what the cabinet secretary says about the granular detail and why the powers are necessary—nonetheless, in principle, if Government cannot act quickly, as it can in England where it already has such powers and has had them for 10 years, surely that must carry with it a very serious risk to public health that none of us should be willing to thole, permit or accept.

**Alastair Sim:** I refer to what I said to Mr Dornan. We are trying to ensure that, if there has to be emergency legislation, it is crafted well so that it can be used well, at speed, in the event of another unforeseen severe public health emergency. I think that it will be used better at speed if ministers are able to say in general terms what should be done—for instance, that there should be severe restrictions on in-person learning because of the emergency—but let institutions get

on with the granular implementation of the overall direction. Within the overall strictures imposed by ministers, the institutions can decide, course by course and student by student, who are the people who absolutely need to be there because ministers cannot do that.

**Fergus Ewing:** With respect, how long will that take? I am advised—it is not a world with which I am familiar—that the decision-making process at universities can be swift—

**Alastair Sim:** Yes.

**Fergus Ewing:** —but we have seen very serious criticism of both the Scottish Government and the Westminster Government for acting too slowly. Whether those criticisms are well founded or not, time will tell; the inquiry will look into that. I think, however, that many people suspect that the right decisions were taken, but not quickly enough. Are you not proposing a system that will inevitably lead to delay? The Scottish Government process would involve making decisions in close consultation with your member universities, and you would then overlay a college or university consultation process. Even if you did that in a week, surely that would be too late, and that is the whole point.

**Alastair Sim:** I think that what we are proposing would be quicker, because ministers would not have to come up with a list and wonder, “Are podiatrists on our list or not?” or, “Have we thought about every possible health discipline that should be prioritised for continuing education?” If ministers said, “Here are our broad priorities”, the experience of the pandemic is that universities could, within a day or two—extremely quickly—decide what needed to be closed and what needed to be open within that general stricture. We are trying to create something quicker.

**Fergus Ewing:** With respect, what would happen if there were a disagreement? In a pandemic there has to be emergency action. At the end of the day, if the Government did not have power to do something, as Mr Greer pointed out, you could end up in the courts and by that time it would all be too late and thousands more people would have the virus. With respect, although your argument is well intentioned and no doubt discussions can be had about the granular detail—in my experience in Government, officials constantly worked closely with those affected, as I think that you have indicated yourself—surely you must accept, as a point of principle, that the buck stops with the Government. If it does not have the powers, it could end up in a situation in which it could not take the action necessary, on the basis of the public health evidence, to protect public health in Scotland.

**Alastair Sim:** As we describe in our paper, we see a case for the Government having emergency powers. We think that those will be used more swiftly and more effectively if Government says at an overall level, “Here is the emergency action that is required,” and then lets the institutions get on with it—and, indeed, holds the institutions accountable for getting on with it.

**Paul Little:** Fergus Ewing is talking about a future pandemic. I want to emphasise that there is a present crisis, today. We are not talking enough about lost learning or the swingeing cuts that are facing colleges. I cannot wait for those to come: I have to plan for them now, should they come. I have to plan to reduce 1,300 learning places and to cut 70 courses. I have to plan to help well over 1,000 learners catch up on their learning. I have to plan for mental health responses: I had to deal with an attempted suicide last weekend and with self-harm that happened yesterday. Those are very real issues.

At the same time, I have to help the upskilling and reskilling of the city centres. I have a number of distressed economic sectors in retail and in construction, for example, and in hospitality. Those need to be upskilled and reskilled. During the pandemic we were able to help 10,000 employees, but more is coming. I have to help the mothers who are new to Glasgow and wish to learn English as a second language. I am presently able to help only 1,700. There are 10,000 on the waiting list. [*Interruption.*] Those are real issues of mine.

**Fergus Ewing:** Convener, I do not want to interrupt, but I am aware from previous work with Paul Little of the good work that he does in his college; I applaud him for that and I value that. However, with respect, that is not what we are here to talk about. It is very important, but it is not the question that I asked. Behind you, to your left, there is a plaque, which I assume is yours, which has the Latin motto “Semper Paratus”, which as I understand it means “Always Ready”. My point is that Governments must be always ready and unless they have emergency powers they cannot act swiftly.

That is the point. We will not be semper paratus. We will be unprepared and without the powers that may be necessary because, in a future pandemic, the problems that we have may be slightly or entirely different from the problems that we face in the Covid pandemic. History does not repeat itself precisely in many respects, so surely we need to be ready for the future. That is what I asked. It was not about the other problems that you face. I am not in any way denigrating your raising them, but they are not relevant to today. With respect, I think that both you and Mr Sim have protested too much and have not accepted the absolute fundamental

principle that Governments—this is the case with the UK Government; presumably you would support that, convener—have to be able to act swiftly.

**The Convener:** Fergus, could you ask a question so that we can move on or are we going to go back to—

**Fergus Ewing:** Does Professor Little not accept that Governments must have powers to act swiftly and it is not possible to know in advance precisely what action must be taken? At the end of the day, it must be the Government that has the powers, otherwise we are not able to protect public health.

**Paul Little:** I will answer briefly. I will trade you carpe diem for semper paratus. Seize the day. The challenge is that our experience of previous Government legislation pertaining to the college sector is that it has been burdensome. It has fettered colleges’ ability to respond in an educational way and this legislation might fetter that response in an emergency way. That is based on our experience. We are dealing with experience and learning from it. If there is further legislation that will fetter colleges, that will substantially undermine institutional autonomy and the institutional response in an economic and a social and an educational way. That is based on experience of right here, right now, and since the last piece of legislation was enacted.

I appreciate your kind comments about what we have achieved so far. Thank you.

**John Edward:** I will respond to a couple of things. The first is about speed. On one day, I was at Victoria Quay in a meeting of the Scottish Qualifications Authority contingency group, which had not met for over 10 years, and examinations were cancelled within 48 hours and schools were closed that week. Speed is not a problem. In some cases, we were ahead of England—which, as has been pointed out had different legislation—in some cases, we were behind. England had as many problems as the rest of us in terms of getting the story correct, so I do not think that there is necessarily any comparison to draw there.

The other thing I would say—and I go back to our autonomy—is that the proposals in the bill present a financial risk as well as a governance risk to our institutions. I am not naive enough to expect that, if I came begging for a huge amount of financial support, our sector would be at the front of the queue in any part of Scotland. I do not expect it would be, and that is fine. The idea, however, that any of our institutions, any of our staff or any of our governing boards would not put public health absolutely at the top of whatever they would do in any situation is, frankly, laughable. Protecting public health, protecting the wellbeing, health, advancement and development of the



people in our care is our number 1, our sole priority. The idea that it requires legislation for us to do what is right by them is wide of the mark.

**Michael Marra:** The idea that Fergus Ewing is expounding that the pandemic was not predicted is completely wrong. Pandemics were predicted globally by many experts. They are high on risk registers internationally. We had pandemic planning activity in Scotland that was ignored by the Scottish Government and when the review that is being undertaken reports, we will get a better idea of that.

John Edward mentioned the comparison with England. Are the witnesses aware of any other international comparisons that we might look at where the response was better? I am fairly critical of the Government response in England, Wales and Scotland. Is there an international example of a legislative framework for emergency response that you are aware of that the committee and the Parliament should look at? Is there a better framework that will help us get the response correct next time?

**Alastair Sim:** I will be honest: I do not know. I think that everyone has been operating in different legislative contexts. It would be very interesting to know. Our nose has been a bit too close to the grindstone over the past two years to have had that look.

**Michael Marra:** That would be my point. It would be better if we were looking at the bill in a broader sense, when we can understand the impact of the pandemic, and that we do it properly. We must not legislate in haste and repent at leisure.

**The Convener:** As we conclude the session, I ask our witnesses whether there is anything that they would like to add to the evidence they have given us this morning, perhaps because the conversation did not go in the direction that would have raised that issue. Is there anything that you feel you need to get on the record? Your evidence is informing our consideration of the legislation in an important way.

**Alastair Sim:** The partnership with students and staff, through the trade unions, student associations and so on, has been incredibly important. To pick up on a point that David Belsey made, our proposal specifically says that that consultation with student and staff representatives would continue to be an important part of any structure that was put in place to address a further emergency.

**Paul Little:** I would reinforce the fact that colleges were not only part of saving lives but were very much part of saving livelihoods, and that is on-going. Further, probably for the next decade, we will be very much part of saving life chances.

We have spent a lot of time today talking about urgent situations, but we will have to live with the after-effects of the pandemic. We all know that the poor and those who went into the pandemic weaker will probably come out of it weaker. Colleges are very much at the sharp end of that. The challenges that we face in supporting social cohesion are great, as are the challenges of supporting economic renewal.

10:15

I would be happy to contribute to your future discussions on regeneration, because some of the effects that we spoke about today are probably pertinent to that.

**The Convener:** We would welcome that very much.

**Matthew Sweeney:** I would like to expand briefly on a point that I touched on earlier. Although we are supportive of the continued direction powers, we are keen that a mechanism is put in place that means that the views of local government are taken on board when those are crafted. There are wide-ranging powers at the moment and we need assurances that those are deliverable and that we could meet them within the resources that we have.

One of the other things that we are keen to point out is that partnership has worked well in terms of the Covid-19 education recovery group that we co-chaired with the Scottish Government. In fact, we are disappointed that that approach has not been expanded into other areas. The Scottish education council looks at these issues in the round, and we would be keen that it was included. More broadly, we welcome further engagement in relation to consultation around the national care service and particularly the possible inclusion of children's services within that.

**Diane Stockton:** I will just point out that, on 1 February, the scientific advisory group for emergencies published some papers on the likelihood of future variants. It suggested that omicron is unusually mild and that future variants are likely to be closer to variants such as delta. So, however it is best achieved, we need to be able to respond quickly if a more severe variant comes along in the near future.

Partnership working has worked brilliantly from the public health point of view. How that quick response is handled is not a matter for me, but I make the point that we need to be able to respond quickly across the spectrum of activity—surveillance, testing capacity, genomic sequencing, vaccine effectiveness, mitigations as required, guidance, and so on. We need to have that capability in whatever way is best to achieve that.

**David Belsey:** Again, partnership working has worked. We have been on the schools recovery group and the advanced learning recovery group, and I think that the partnership working has led to an improved response and is clearly in the best interests of all stakeholders.

I urge the committee to consider the EIS's proposals around giving local authorities, working with public health professionals, committees and directors, the ability to close schools on public health grounds, should the local conditions warrant it.

Lastly, I make the point that staff representatives are not trade union representatives. A staff representative can be anybody that a university chooses, but trade union representatives are elected democratically by their trade union branches. That is the point that I was trying to make earlier with regard to Universities Scotland's submission.

**John Edward:** We have not talked about the vaccines and immunisations aspect of the bill. I stress that you should look at the huge raft of vaccinations and immunisations that are given to school-age pupils now. If we are looking to future pandemics and the likelihood of future vaccines—we are now vaccinating primary school kids, giving the human papillomavirus vaccine to boys and so on—we need to try to put some order to that huge programme, which is added to every year.

On the stuff we have been discussing this morning, I stress the point that, for us, the situation around schools being asked to close presents not only a financial risk but an existential risk. Therefore, our schools will jealously protect their ability to serve their pupils.

Our work with the Government, Public Health Scotland and the national health service has been exemplary throughout this period. There is no criticism whatsoever in relation to how things have gone, which is why we would not necessarily seek to change how it is handled. I make the point that we represent international pupils, day and boarding, from 50 or 60 different countries and we have slightly different obligations to each them in terms of their ability to travel, their ability to liaise with each other and their wellbeing. Just to stress that point, this is the first week in two years that we have been worrying more about the emotional wellbeing of our Ukrainian and Russian students than about the wellbeing of the other boarders. It is a big issue, and, although all this stuff seems esoteric at one level, it directly affects the lives of young people.

**The Convener:** I thank all our witnesses—Paul Little, Matthew Sweeney, David Belsey, Diane Stockton, John Edward and Alastair Sim—for joining us this morning. Your evidence has been

valuable to us and will inform our evidence session with the cabinet secretary. Thank you for your time.

We will have a brief suspension to allow for a change of witnesses.

10:21

*Meeting suspended.*

10:25

*On resuming—*

**The Convener:** We will now hear from our second panel of witnesses as we continue to take evidence on the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 1. I welcome Megan Farr, policy officer at the Children and Young People's Commissioner Scotland, and Liam Fowley, vice-chair of the board of directors of the Scottish Youth Parliament. Unfortunately, we are a bit short of time today and we have a lot of questions, so I ask you to give us quick, brief answers—that would be fantastic. If any outstanding matters need to be followed up, that can be done in writing.

Megan Farr, in your written evidence, you say:

“states' abilities to interfere with human rights in a time of emergency are not unlimited. Any emergency powers must be lawful, necessary, proportionate and time limited ... We therefore have considerable concerns about the proposals in this legislation which would place what were time limited emergency measures permanently into statute, for use by any future government without prior reference to Parliament.”

Would you like to expand on what you gave us in writing?

**Megan Farr (Children and Young People's Commissioner Scotland):** That is one of the major tests in international human rights law. As our submission says, article 15 of the European Convention on Human Rights and article 4 of the International Covenant on Civil and Political Rights allow human rights to be interfered with when there is an emergency, but they place quite a high test on that happening.

We acknowledge that the Government has put tests of proportionality and necessity into the proposals, but we are still concerned that those judgments are left up to Scottish ministers. I think that the parliamentary scrutiny that this Parliament and Westminster were able to put in place at the beginning of the pandemic, when the emergency legislation was passed, which enabled organisations such as ourselves, members of civil society and others to provide evidence and some challenge, was important. The Scottish Parliament, in particular, did quite well in pivoting to working online through virtual sittings, for

example, and we are all much better at that sort of thing than we were two years ago, which is important. It is also important with regard to creating a sense of public legitimacy in any future pandemic.

The other thing that I want to mention is that, at the moment, this bill is largely putting in place what it might have been useful to have had in place at the beginning of the current pandemic. However, the next emergency that Scotland faces might not be a pandemic; it might be something else. There is a risk that we might end up doing a lot of work to put in place arrangements for the previous emergency instead of planning in advance for the next one. In your previous evidence session this morning, you discussed the planning that is done in local authorities around civil contingencies. That can certainly be drawn on, and there was a lot of planning done around future pandemics in that regard.

It is absolutely legitimate for the Scottish Government to have planning in place and to have draft legislation that is reviewed and updated regularly, so that it is ready to go, so to speak. However, our concern is that there is a risk that, without the level of parliamentary scrutiny that the emergency legislation received the last time around, a future Government—not necessarily the current one, because these powers are not time limited—could bring in quite significant interferences with human rights, and particularly with children’s human rights in respect of issues around youth justice and around education, in a way that might not ensure that the measures are proportionate, necessary, time limited and lawful.

10:30

**The Convener:** My second question may lead you to repeat some things that you have already said, but it is useful to get this on the record. In your evidence, you call into question the lawfulness of the bill under article 15 of the ECHR. Why did you say that?

**Megan Farr:** That is because it anticipates powers that are potentially emergency ones going into place permanently. I cannot say whether the bill is legitimate under article 15 of the ECHR—it would be up to the European Court of Human Rights to decide that—but it might be unlawful under it.

Some of the proposals in the bill may also breach other rights. In particular, there are a couple of issues that link into article 8 rights on private and family life. There are two specific examples, one of which relates to directing individuals to attend specified educational establishments. Parents have a duty to educate their children, but they also have a right to choose

how that happens. Therefore, there is a risk that that could be open to challenge. The other example, which is a relatively obscure one, involves childminders who usually work in their own homes, which usually contain children, and giving the Government the power to legislate on what happens in the homes of individual families that include children. Those are just a couple of examples. That is why parliamentary scrutiny at the time that emergency legislation is brought into force is important.

I am aware that the Scottish Government has proposed that regulations should be laid under the affirmative procedure. However, if members look at our evidence to the Delegated Powers and Law Reform Committee on the made affirmative procedure, they will see that the effect of that procedure, as it has been used over the past two years, has been that measures have been brought into force often very late and without there having been advance sight of them, and they have often been published at the point of coming into force. Those interferences have already happened before the opportunity for parliamentary scrutiny.

Our comments are not a criticism of the current Government. With human rights law, we need to legislate on the basis of any Government using the powers. Political situations in countries can change, and it is a risk to have sitting on the books legislation that interferes with human rights to such an extent and that could be inappropriately used at a future date by a future Government.

**The Convener:** Basically, you hold out the prospect that, should the bill become law, it would be open to challenge in the courts.

**Megan Farr:** I think that there is the possibility that it could be, either now or at a future date.

There is another issue around lawfulness. I caught some of the previous discussion as I was waiting outside. There was talk about taking people to court. If, for example, organisations failed to voluntarily close schools, as has happened in the pandemic, the situation would not be any different if they ignored legislation that told them to close schools. Both situations would result in having to take the establishment to court. That would be on a different basis.

**The Convener:** What are Liam Fowley’s concerns about the human rights issues raised by the Children and Young People’s Commissioner Scotland?

**Liam Fowley (Scottish Youth Parliament):** The technicalities are quite vast for the bill in general. I should caveat all that I will say by saying that we have had very minimal opportunity to engage on the bill with young people. That would take longer to do due to the technicalities involved, but those who have been consulted have a broad

range of concerns, although there is a broad range of agreement as well. There is not one clear thought process from young people with regard to the bill and, indeed, its human rights aspects. The big thing that concerns young people—this came through quite clearly in the consultation that we have done—is that decisions will have to be made on the ground of public health, but provision also has to be made for the alternative.

If we look back to March 2020, we see that digital exclusion was rife and the provision for young people with additional support needs was practically non-existent. Young people are almost scarred by that. They think, “If they’re going to shut schools again, they’ve got to have something better in place.” Things improved over time, but the bill should have provision for young people to be given proper, quality education that will not be impacted if the schools close.

**The Convener:** What specifically do you propose in that area?

**Liam Fowley:** I would not want to propose anything specific, because I have not consulted young people on that, and I take great pride in saying that we do that. However, I think that there should be provision in the bill so that, for example, young people will have access to high-quality online learning, which was not in place in March 2020.

**The Convener:** Megan Farr is shaking her head very vigorously.

**Megan Farr:** No—I am nodding.

**The Convener:** Sorry—you are nodding vigorously.

**Megan Farr:** I echo what Liam Fowley said about the importance of involving children and young people. I mentioned Governments planning for future emergencies, not just a pandemic. When it comes to planning for education provision, that can and must happen with the involvement of children and young people. The opportunity is there before things are put in place.

As part of the process of the Parliament as a human rights guarantor scrutinising legislation in another pandemic, it must look at whether the Scottish Government, when it was putting the planning process in place and considering its draft legislation that is—we would hope—sitting ready to go, consulted children and young people. It must look at whether children and young people participated in the decision making in a way that ensures that we do not repeat some of the issues that have come up during the past two years, when children and young people’s views and, indeed, their needs and their rights have often been overlooked.

**The Convener:** Will you talk a little about your concerns about school closures specifically?

**Megan Farr:** It may be necessary to close schools again for public health reasons or, hypothetically, for another reason. We would not oppose that absolutely, but it needs to be acknowledged that, as a society, we have a much better understanding now than we had two years ago of the impact that closing schools has on children and young people, their families, and wider society. It has profound workforce implications for social care and health, for example. That is why we think that a decision of that magnitude needs parliamentary scrutiny at the time to ensure that all the impacts on children and young people have been considered when the decision is made. That might need to be made very quickly on public health grounds, and that is why having the preparation ready is important.

My understanding is that individual schools can close on public health grounds, usually on the recommendation of the director of public health, and that the power to do that is in place, but I am not an expert on how individual education authorities work. Different local authorities may have different practices in place for school closures. Individual schools are closed occasionally—in non-pandemic times, probably a handful of schools a year are closed under different public health measures. However, closing every school in the country wholesale is a significant interference with children’s human rights, and doing that needs to be treated with the gravity that reflects that.

**The Convener:** Is your conclusion that the Scottish ministers should not have the power to do that unilaterally?

**Megan Farr:** I think that the Scottish ministers should bring emergency legislation to Parliament to achieve that. Members and staff of the Parliament have shown amazing innovation and resilience in the past two years, and I think that Parliament is up to that job. The only justifiable exception would be if Parliament were unable to consider emergency legislation in a timely manner.

**The Convener:** So there should be something on the shelf that can be pulled down, dusted off and utilised in a situation if it meets the need.

**Megan Farr:** A fairly basic part of emergency planning is that Governments, local authorities, businesses and even the office of the Children and Young People’s Commissioner Scotland should have plans ready for something major happening that interferes with how they operate. For Government, that is at the level of whether all the schools have to be closed.

**The Convener:** Going forward, is your position that we should revert to the powers that existed before the pandemic?

**Megan Farr:** That is not my decision to make. Our position is on the importance of parliamentary scrutiny in bringing powers into force. How the Parliament legislates to achieve that is a matter for members and, obviously, the Government in respect of how it drafts its bills.

**Ross Greer:** The point about the Government's potential to introduce emergency legislation if the existing legislation is not sufficient was part of our discussion with the previous panel about the importance of parliamentary scrutiny and wider public scrutiny of legislation. Those of us who were there at the time were quite proud of the process that we undertook for last year's two bills. Emergency legislation vastly limits the opportunities for both parliamentary and public scrutiny—indeed, both your organisations had very limited opportunities to contribute to those pieces of legislation. Is it not a better process to proceed through the use of legislation that is not emergency and time-limited legislation, so that parliamentarians and organisations like yours can thoroughly scrutinise and amend it if necessary? Is that not a preferable approach to an emergency one?

**Megan Farr:** There are two middle grounds: one is having legislation ready to go; the other is amending the bill in a way that ensures that the test of being proportionate and necessary will definitely be put in place before a measure comes into force. I am theorising. Potentially, there is a workaround in which there is parliamentary scrutiny of particular bits that are being brought into force in an emergency situation.

The fix to the ability for there to be public involvement—particularly the involvement of children and young people—is that the planning is much more transparent and is not done in a corner. People know that emergencies happen. We have more knowledge and experience of that in society than we have had in most of our lives—in fact, in probably all our lifetimes. Nothing like these interferences in individuals' human rights has happened since the second world war. If the planning is done in a transparent way, opportunities to be part of the discussion can happen before the legislation is brought to the Parliament. The Parliament, as a human rights guarantor, can then ask whether things happened and can ask to see the children's rights impact assessments, the equality impact assessments, and the human rights impact assessments. If the Scottish Government has done that work in advance, that will help members to do their job. We are not convinced that it is impossible to bring this in as emergency legislation and allow for it to

be fine tuned to take account of the specific circumstances of the next emergency.

**Ross Greer:** Another point that you have quite rightly made is that, in legislating on a permanent basis in areas such as human rights, we need to think of not just the current Government or the current composition of the Parliament; we need to think that anyone could be in power in the future. Does that not equally apply to the other organisations that we are talking about?

We discussed with the previous panel the fact that there was very good partnership working with universities, colleges, student accommodation providers and so on last time round. We cannot guarantee that the next time round, but we can guarantee that Governments will always be held accountable by the Parliament and, ultimately, the public. However, it is much harder to hold to account a private provider of student accommodation, particularly in an emergency situation. If it is about a balance of where the power lies, is it not better to have that power with a democratically accountable Government rather than a private accommodation provider, even when we do not know who the individuals will be and what their motivations might be?

**Megan Farr:** Student accommodation is not always recognised as being someone's home, but it is the permanent home of some students, particularly those who are in it all year round. It is the permanent home of older students and young people who are care experienced. What you are suggesting is legislation that interferes with people's lives in their homes. That needs to be considered with quite a lot of care and in the context in which it is being brought into force.

Whether people are going to co-operate does not depend on whether the legislation is passed on an emergency basis as a situation evolves or has been passed in 2022 and has sat on the books for 10 or more years. We do not know when it will next be needed. I am inclined to think that the legislation that has been brought through in the context of a specific evolving emergency is probably more likely to meet the needs of children and young people.

**Oliver Mundell:** For absolute clarity, could the lack of proportionality make the legislation unlawful?

**Megan Farr:** No, but the lack of a test for proportionality, necessity and whether the powers are time limited could. The powers can be brought in, but legislation on the book is on the book permanently. It is not that the bill itself is not proportionate; it is that there is no democratic scrutiny of the judgment of the Scottish ministers and their ability to bring in the powers, and of whether the decision is necessary and

proportionate. The fact that the made affirmative procedure could be used means that the powers could be brought into force with that parliamentary scrutiny happening retrospectively.

10:45

**Oliver Mundell:** Do you think that there is a difference or a sort of sliding scale? Passing new emergency legislation requires the full parliamentary process. Does having a provision just to bring the legislation into force not lower the bar? Should we question whether that is proportionate for the scale of measures that the legislation enables. We are talking about pretty fundamental rights to education being removed. Is scrutinising the ability to bring it into force enough?

**Megan Farr:** Under ECHR article 15, it is legitimate to have those rights and to use them in an emergency context, as we did.

**Oliver Mundell:** Would a bring-it-into-force provision meet that test?

**Megan Farr:** That would be a decision for the court. As far as I know, case law on it is relatively limited. I am not an expert in ECHR case law. I can ask a colleague who is an expert and get back to you on that.

**Oliver Mundell:** I would be interested, because there is obviously a different type of consultation. In effect, a member of the Parliament is relying on a different type of consent to bring something into force than they would need if they were putting the legislation on to the statute book and having it sit there. I would be interested to hear your thoughts on that and anything more you could provide, but I do not want to push you if you do not feel comfortable. Anything from a colleague would be helpful.

**Megan Farr:** The test is whether it is proportionate, legitimate, necessary and, importantly, time limited, and the current emergency legislation has been brought back to the Parliament regularly for review. That would be the condition whatever was put in place, whether it was a bill that was brought into force or a new piece of legislation that the Government had introduced. We are effectively talking about having something on the books or in a drawer.

**Oliver Mundell:** One has a lower hurdle to get over. That is my point. One has a lower—

**Megan Farr:** No. From a human rights point of view, whether existing legislation is being brought into force or new legislation is being created, both must pass those four tests: necessary, proportionate, time limited—

**Oliver Mundell:** But one faces a lower parliamentary hurdle than the other in terms of the

scrutiny and the kind of process it has to go through.

**Megan Farr:** That would be a decision for the Parliament and how it approached the two things. We have made our views known to the Delegated Powers and Law Reform Committee about some of the issues that arise with the use of made affirmative procedure and retrospective scrutiny.

**Oliver Mundell:** In your view, the case for using that procedure would diminish over time and it would be less proportionate if you were planning in advance for an emergency. Is that a fair comment?

**Megan Farr:** I am very aware that pandemics and other emergencies can change course very quickly. We saw that with omicron. I would not like to give a categorical answer about the use of that procedure in specific instances. We said that in our response, but it predated omicron. Things can move quickly, and such a measure might be necessary but it is a weakness if that measure does not come under the same amount of scrutiny. That is our concern about the measures in the bill being brought into force on that basis.

I am very aware that Liam Fowley is not getting a chance to speak.

**The Convener:** Liam Fowley, do you want to add anything?

**Liam Fowley:** It is very technical and I am not an expert. What I can tell you very concretely is that, in both processes that are outlined here, young people regularly feel as though they are an afterthought.

In March—a scary time—it came through clearly that young people felt as though they were being ignored and that they could not get their voices heard. I sit on the Covid education recovery group and the Scottish education council. I am not representing them today, but we were invited on to those groups after a lot of advocacy and later on in 2020. Getting a seat at that table was fantastic, and it is important to engage young people by getting them around that sort of table. However, at that time, when things were happening very rapidly, young people agreed that they had to happen very rapidly but they still felt as though they were just shoved to the side. It is a very difficult reality, unfortunately, that young people come through.

On the legislation and the limited amount of consultation with young people, as I have said, there was overwhelming majority agreement that the Government should have those powers, especially on the basis of protecting public health. However, some young people were more sceptical about the level of power, what is classed as an extreme circumstance and how clear that is. A

couple of young people came out and said that the balance between risk and freedom was off. It is only fair that I represent them here, so I will give you a quote from one:

“The way it’s run, they’re killing people, Covid’s killing people, mental health is killing people. I know that is very blunt and very harsh but it is true.”

To say that the mental health aspect of a school closure is immeasurable rings true. It has a vast impact, and you will regularly hear young people say that there was a concurrent pandemic—the mental health pandemic.

**The Convener:** That is well said.

**Willie Rennie:** Megan Farr, you have given a pragmatic response and set out a potential way ahead that deals with the concerns that some of my colleagues, including Fergus Ewing, expressed earlier about the need to respond quickly in an emergency while making sure that we do not have permanent and disproportionate emergency powers.

There are two elements to this. There is the length of time that the powers are in place and there is the content of those powers. In an earlier session, we heard that leaders of various higher education institutions think that what is proposed is micromanaging far too much, that there should be broad principles and that they should be allowed to get on with implementing them. There is a debate about whether that is right, and then there is the debate about the length of time.

I would like you to comment on the content aspect, if that is okay. Are you saying that we should use the time now to debate the content and then have the legislation ready to roll if the event were to happen again? Are you saying that, perhaps rather than legislating now, we should debate now and get it ready?

**Megan Farr:** It is not for me to dictate what you do—

**Willie Rennie:** Go on.

**Megan Farr:** —or what the Scottish Government should do. For some of the content in the bill, there probably is too much detail and there is a risk that it is responding to the previous emergency and not the next emergency. That is often a pitfall of emergency planning, and it could put us in the same position as we were in two years ago, of not being as prepared as we should have been. Certainly, we have been talking about a pandemic of the extent of this one. Emergency planning circles were definitely talking it before the H1N1 pandemic, which is now 13 or 14 years ago.

If we concentrate too hard on the most recent emergency, we risk not taking into account the other things that could happen. We are lucky in

Scotland because we do not have volcanoes, earthquakes, tornadoes and other big emergencies, but other things could happen and have a serious impact on society. My mind is currently blank and I have no examples, but we need to think carefully about the best thing to do at this point in the pandemic.

There could be a place for emergency powers continuing, but is this the point at which we should set down legislation that will be available for use, unless repealed, by any future Government of any political flavour, of any attitude, possibly after all of us have long retired? Except perhaps Liam Fowley—sorry, I should not single out the young person. Should we make long-lasting legislation that is potentially significant in human rights terms at this point or should we still be reviewing what happened and how things could have been done better? We are still not at the point at which children and young people have been listened to enough, and all the rights issues for children and young people that arose during the pandemic have still not been addressed.

You will have heard—and this was not planned; I did not know when I wrote my evidence to you that this would happen today—that Her Majesty’s Chief Inspector of Prisons for Scotland has issued a call about the 16 and 17 year-olds who are in prison in Scotland. An average of 18 children were in prison in Scotland each week during the pandemic. There are now 14, 10 of whom have not been tried. Three have been convicted and sentenced and one is awaiting sentence. That number has moved from being 41 per cent in the first three months of the pandemic who were untried to 78 per cent in the final three months of the pandemic who are untried.

At certain points in the pandemic—not just in the early stages—when there were outbreaks and also as a reaction to omicron, some of those children were confined to their cells for up to 23 hours a day, having received no education, no time for recreation and no time for support and counselling. The commissioner said on the radio this morning that, in many cases, those children have not committed serious crimes.

We have heard of one instance of a child being sent to Polmont young offenders institution for failing to appear as a witness in a recent court case. We wrote to the cabinet secretary about that just a couple of weeks ago—the details of that are in our evidence. We have also heard of potential trafficking victims being remanded to Polmont despite the fact that we have a non-prosecution presumption for victims of trafficking, let alone child victims of trafficking, in Scotland.

The bill also addresses early release measures. To our knowledge, no single child has benefited from the early release measures in the two years

since they have been in place, and none of the children who are on remand—roughly 80 per cent—can. We would like to see the bill make a progressive human rights response to the pandemic for children and young people by altering or updating that legislation to ensure that children who are in prison but are untried can be moved to more appropriate settings. That might be secure care in some cases, but in secure care they would have been able to continue with education. That is those children's homes, so they are not subject to the same restrictions. Children in secure care continue to receive education support, the kind of therapy that they need to rehabilitate themselves, and they are supported to rehabilitate themselves. That is how we should approach children who are in conflict with the law.

I am aware that I have gone a little bit off topic and it is mere serendipity that the inspector's views have come out today, but that is an important issue that has been overlooked. I think that it got about a minute and a half's attention at the Criminal Justice Committee last week, and that is one of the reasons why I have jumped in. Apologies.

**Willie Rennie:** As a Liberal, I am really grateful that you have raised that issue. What has been the response from the Government to that proposal?

**Megan Farr:** It has been mixed. I believe that a letter came last night, but I have not had a chance to look at it, unfortunately. I could not get into my system when I came into the Parliament this morning. The Government is talking mostly about long-term strategies and about getting 16 and 17 year-olds out of the adult justice system, including prisons and young offenders institutions. Polmont is a prison; it is not a secure care setting. It is not based on care and rehabilitation in the same way as secure care. The Government is talking mostly about long-term aims.

In terms of this committee's remit, there is a big issue around 16 and 17-year-olds in the children's hearings system, which is a barrier to ensuring that children in conflict with the law are dealt with as children, because not all 16 and 17-year-olds can be referred to the children's hearings system. I noticed that the committee's website says that that comes under your remit.

The Government is talking about long-term plans to reform children's hearings rather than about addressing the short-term issue of really vulnerable children, many of whom have not committed serious crimes, because serious crimes often get them secure care. We have also heard of an instance of a child ending up in Polmont because of a lack of available places in secure care. That is urgent, because, although the numbers remain low, the proportion of untried

children in prison has doubled because of delays in the court system during the pandemic.

11:00

**Willie Rennie:** Thank you. That merits quite a lot of further discussion, but it would probably try the committee's patience if we were to go too far down that route.

**Megan Farr:** Thank you for indulging me.

**Willie Rennie:** Perhaps the committee will look at whether we want to return to the issue another time.

I have one question for you both. Earlier, it was suggested that it would be logical for us to wait for the public inquiry to consider, debate and conclude before we consider what further legislation is required for future emergency situations. Would that be a wise thing to do? We will start off with Liam Fowley.

**Liam Fowley:** I will not give a definitive answer on the specifics of it, but I think that children and young people have to participate meaningfully and regularly in the bill process. One could make the argument that they should be front and centre of it.

Ultimately, the bill has to have further engagement with children and young people so that the legislation can be made, because young people were hit hard during the pandemic. We all were but, of course, young people were as well.

Whether the inquiry should have concluded by the time the bill passes is the specific question, but an inquiry should mean more proper and meaningful consultation, not one young person stuck in the room at the end of the table. Those are two very different types of participation.

I have just realised that that is what is happening here, but that is not what I am referring to.

**The Convener:** I put my hands up.

**Liam Fowley:** Proper meaningful participation with young people during the inquiry and the bill process is required.

**Megan Farr:** I absolutely agree with Liam Fowley about the importance of meaningful, active participation that changes things. If the participation of children and young people does not change what happens, you might as well not do it.

During the pandemic, we saw examples of children and young people, or a child or young person—often Liam Fowley or one of the other members of the Scottish Youth Parliament—at the table, but it is difficult to see what impact they had. That is why this model cannot be the only model.



Things like public inquiries are judge led and often based on a formal approach to taking evidence and to gathering views, and there is a risk that they privilege people who are already privileged in society. That goes beyond children and young people, but children and young people are the ones I am here to speak about. A lot of good work has been done recently to improve the quality of how inquiries are conducted, including taking in a wider range of people, but, conversely, you often hear—often in the Parliament—that views will be heard, or people talk about hearing views. Participation is not just about hearing views; it is about being part of decision making and making a difference. Hearing views is one thing, but, if you say you will hear the views, that also leaves you open to being able to ignore them. Participation must be active and look at a broad range of children's and young people's experiences.

**The Convener:** I have to say that one of the most disturbing things that I have read in any of the evidence that we have ever received as a committee is this sentence from the Children and Young People's Commissioner Scotland:

"conditions for children in prison were in breach not only of the UNCRC, but also the prohibition on torture, inhuman and degrading treatment or punishment in terms of Article 3 of the European Convention on Human Rights".

That is quite an extraordinary thing to read in this day and age in our country, so thank you for taking us down that avenue. I now call Michael Marra.

**Michael Marra:** I have a slight reflection to make on that issue. I do not believe that that is tangential at all; it is absolutely critical to our understanding of some of the unintended consequences of legislation, whether that be emergency legislation or properly scrutinised legislation. It would be remiss of the committee not to make urgent representations to the justice minister, given the evidence that we have heard today about the increase from, roughly, 40 per cent to 80 per cent in the number of young people sitting in prison without trial or recourse to justice. That is totally unacceptable, and something must be done about it immediately.

I welcome the focus on rights, including the right to education. You may have heard in the previous panel discussion about the risks in the short term of further mutations in and strains of the virus, which might result in further school closures. I want to get your reflections about what some of the consequences of that might be. There was discussion about digital access. We know that such access is far from widespread at the moment and that there are still challenges in that regard. Will Liam Fowley reflect on that?

**Liam Fowley:** Yes, there are lot of challenges. I will highlight just a few of them. Digital access is

important—that came through loud and clear from the start. Young people had to learn online, but they could not access that learning. A slight tangent to that is that the virtual learning environment was not a very positive one at that time. It was not as simple as young people having no wi-fi or not being able to afford a device. For example, some young people's mums work from home all day, using the only computer in the household. We have heard stories of young people who were up until 3 or 4 in the morning doing their schoolwork because they could not do it during the day.

On the flipside of that, there is a rare bit of positivity. Some young people found that online learning suited them better. For example, care-experienced young people who could not attend school because of their caring responsibilities at home could engage in their learning throughout the pandemic because they had access it virtually and in a better environment.

Online learning is one element that has two sides to it. However, that relies on there being a robust system in place. The online learning platform or offer has been co-designed with young people being part of the process, especially the young people who will be using it.

Mental health is the other huge issue. Schools are not just educational settings; they are places for young people to go to, and it dramatically helps their mental health when they go. When schools were closed, although hubs were provided, they were not up to standard. Young people felt that they could not access them or get support when they needed it most. That is in relation not just to the wider sphere of mental health support but to the simple support that you get from chatting to your guidance teacher in the corridor. That was cut off overnight for an extended period, and young people did not have informal chats with their pals and things like that. It sounds very dramatic to say this, but young people will probably never get over the fact that they missed that support during school. That aspect came through time and time again as being really important.

I will stop there, because I could keep on going for hours.

**Michael Marra:** I will come to Megan Farr on that issue in a moment.

The Scottish Government's policy is that every child should have access to a digital device and the connectivity to enable its use, but I believe that that will not be provided until the end of this session of Parliament. Would the lack of provision post a real risk were there to be another mutation that lead to further school closures?

**Liam Fowley:** Categorically, yes.

**Michael Marra:** Does Megan Farr have any comment?

**Megan Farr:** I agree on that point. Nonetheless I am aware of the issues that schools and local authority staff face in rolling out devices. It is not a simple matter of handing a child a device—during the pandemic, issues arose in some cases when that happened with no support. I am also aware that there is a global shortage of computer chips, because everyone suddenly discovered that we all need devices.

Liam Fowley made an important point, which will probably still exist, around broadband connections. During the pandemic, I think that we all probably experienced having to ask someone else in the household to get off the wi-fi network. Even though we thought that we had good connections, it turned out that you could not have three online meetings at the same time. That will always be a problem.

We have heard that the online learning experience of children and young people has been enormously variable. Our young advisers group did a session on that with the committee last year. Some young people's experience has varied from class to class. They have had excellent online teaching from one teacher and almost nothing from another teacher in the same school. Therefore, it is not an issue about specific schools, areas or local authorities; it is partly that teachers are human beings who also had things happening in their lives during the pandemic. I think that young people were aware that everyone was going through that and that no one was unaffected.

There is another group to mention. Liam Fowley has touched on how online learning was better than school for some children and young people. There should never be a group of children for whom online learning is better than school, because school should be appropriate for all children and young people.

Children in Scotland, the National Autistic Society Scotland and Scottish Autism published some research—I think that Mr Mundell was at the launch with me; it was a good few years ago now. The research, "Not included, not engaged, not involved: A report on the experiences of autistic children missing school", is available on the [notengaged.com](http://notengaged.com) website.

The research found that a fairly substantial number of children and young people are absent from school for issues other than routine childhood illness. They do not have chickenpox, flu, a cold or Covid. They are absent because of mental health problems or anxiety, or because their parents feel that their needs are not being met and they are not

safe at school. Many of those children have autism spectrum disorders or similar conditions.

We have heard directly from families and from children and young people, as well as from organisations that support them, such as Salvesen Mindroom Centre, that some of those children were suddenly experiencing the first education that they had had from their schools in years. Some of them had been receiving nothing; some had been receiving as little from the local authorities as one hour a day. Suddenly, because things were being provided online through the school and the local authority, and through platforms such as e-Sgoil, all this education was available to them. We must not lose that. Even if we were to address some of the issues that prevent that group of children and young people from attending school, there are still children who cannot attend schools for short or long periods. We have done an amazing amount to build our capacity to support them, and we cannot lose that.

**Michael Marra:** I have a brief final word, convener. Should the bill include a guarantee about educational access for young people, should there be school closures?

**Liam Fowley:** Yes, it absolutely should.

**Megan Farr:** In principle, yes. I think that there needs to be more involvement with children and young people, as well as with providers of education, on what would be achievable, because I would not like to see a promise that cannot be kept. That would be worse than saying nothing.

**Michael Marra:** There are too many of those.

**Megan Farr:** There are far too many of those for children and young people.

**The Convener:** Thank you for your time. I apologise to colleagues who want to continue this very interesting conversation. I thank Megan Farr and Liam Fowley for their evidence and time this morning.

That brings the public part of our committee meeting to an end.

11:12

*Meeting continued in private until 11:55.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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