



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Education, Children and Young People Committee

**Wednesday 18 May 2022**

**Session 6**



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**EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE**  
**14<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)  
\*Graeme Dey (Angus South) (SNP)  
\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)  
\*Ross Greer (West Scotland) (Green)  
\*Ruth Maguire (Cunninghame South) (SNP)  
\*Michael Marra (North East Scotland) (Lab)  
\*Oliver Mundell (Dumfriesshire) (Con)  
\*Willie Rennie (North East Fife) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Maria Galli (Children and Young People's Commissioner Scotland)  
Nick Hobbs (Children and Young People's Commissioner Scotland)  
Graeme Logan (Scottish Government)  
Shirley-Anne Somerville (Cabinet Secretary for Education and Skills)  
Alison Taylor (Scottish Government)

**CLERK TO THE COMMITTEE**

Stephen Herbert

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Education, Children and Young People Committee

Wednesday 18 May 2022

*[The Convener opened the meeting at 09:30]*

### Scottish Attainment Challenge Inquiry

**The Convener (Stephen Kerr):** Good morning, and welcome to the Education, Children and Young People Committee's 14th meeting in 2022. The first item on our agenda is our final evidence session in our Scottish attainment challenge inquiry. I welcome Shirley-Anne Somerville MSP, Cabinet Secretary for Education and Skills, and Graeme Logan, director of learning, and Alison Taylor, deputy director for improvement, attainment and wellbeing, both with the Scottish Government. Good morning to you all.

Cabinet secretary, I invite you to make a brief opening statement of up to five minutes.

**Shirley-Anne Somerville (Cabinet Secretary for Education and Skills):** Good morning. It is a real pleasure to be here in the committee's final evidence session. I have followed the committee's inquiry closely to date. Quite rightly, given the prominence that we all place on tackling the poverty-related attainment gap, you have placed a great deal of importance on canvassing views and engaging with organisations and individuals from across the sector. I have been pleased to hear the views on what is working well and obviously what we can improve on, too.

Since being appointed to the role of Cabinet Secretary for Education and Skills, it has been a real privilege to work with the education workforce and to see the dedication of that workforce under the most difficult of circumstances. I recognise and appreciate the immense efforts that the workforce has made to ensure that our children and young people are given the best care, support and opportunities to achieve their full potential, regardless of their background.

I know that you, too, have been struck by the exceptional efforts and good practice taking place in our schools. There is a strong body of evidence that the programme is having a positive impact. The great majority—96 per cent—of headteachers who responded to the attainment Scotland fund headteacher survey felt that they had good awareness of the range of approaches that can help to close the poverty-related attainment gap,

while 93 per cent felt confident about selecting the approach that is most effective for their school.

I think that we can all—I include myself in that—do more to celebrate what has been achieved. I know, too, however, that we all share a determination to intensify the efforts to close the poverty-related attainment gap and to tackle any variation in the outcomes that are achieved by children in different parts of the country. We expect and need to see results on that.

That is why I am committed to working with everyone in education and beyond, including of course the committee, to accelerate efforts to achieve excellence and equity for Scotland's children and young people. As we seek to create a more cohesive, simplified and consistent education system to continue delivering excellence and equity for Scotland's learners, we can build on the work that is already being undertaken, as well as the important principles that are set out in Professor Muir's recent report.

My appearance here is timely, following the successful launch of the refreshed Scottish attainment challenge programme at the end of March. Like the committee's wide engagement with this part of the inquiry, we have drawn on a wide range of evidence and valuable engagement with a range of stakeholders to help to refresh the programme. Reflecting on the evidence, some key considerations were drawn on in developing the refreshed programme. Progress in tackling the poverty-related attainment gap was made before the pandemic. That, alongside the learning through the programme to date, provides a solid foundation on which to accelerate recovery and process.

We recognise the need to make quicker progress, even on pre-pandemic gains, and to tackle variation in outcomes between and within local authority areas. There is a need to address the negative impact of Covid-19 on children's health, wellbeing and learning. Improving leadership, learning and teaching and the quality of support for families and communities, as well as targeted support for those impacted by poverty, remain the key levers to improve outcomes for children and young people.

In refreshing the programme, there is an opportunity to reinforce our collective commitment to equity in education, mitigate the impact of poverty on children's outcomes and tackle the attainment gap. That is evident in the mission of the refreshed challenge, which is

"to use education to improve outcomes for children and young people impacted by poverty, with a focus on tackling the poverty-related attainment gap."

That mission gives greater focus on outcomes and everything that underpins positive outcomes for

children and young people, including their health and wellbeing and their wider achievements and experiences, as well as their academic attainment.

The new framework for recovery and accelerating progress will underpin the ambition of the refreshed mission and has been developed to reinforce our collective commitment to equity in education and set high expectations, including ambitious locally identified stretch aims.

All of that is backed by a £1 billion additional investment, which is empowering local authorities and our headteachers, who know their children best. That includes the commitment of more than £520 million of pupil equity funding over four years, empowering our headteachers and allowing them to plan over short and longer terms. We know that schools cannot do this alone so, for the very first time, in recognising that poverty exists in all local authorities, funding will now go direct to each and every local authority, thereby supporting them to develop strategic approaches to working with schools, wider local authority services and national community partners.

Each local authority will develop stretch aims, so we will know how much progress is expected and by when, with an offer to provide tailored support and challenge through Education Scotland and the regional improvement collaboratives. That approach was developed and agreed with partners, including local government and headteachers. Multiyear allocations confirmed over a four-year period will also allow local authorities to plan for the longer term.

The refreshed programme will also provide continued additional support for care-experienced children and young people through the care-experienced children and young people fund. A number of national programmes, including a number of third sector organisations, will also be supported.

I close by stressing that nothing is more important than ensuring that every child and young person has the same opportunity to exceed in education, regardless of their background. I believe that the refreshed SAC will help to deliver that for them but, as the challenges of the pandemic and the cost of living crisis continue, and as our evidence to date shows, we know that there is more to do. I am pleased to be able to take part in the discussion and the debate with the committee on how we do just that.

**The Convener:** Thank you, cabinet secretary. I will begin the questioning with a very simple question. Is it still your plan to close the attainment gap?

**Shirley-Anne Somerville:** Yes.

**The Convener:** When will we see improvement to the extent that the gap has been closed?

**Shirley-Anne Somerville:** One important aspect that we have looked at as we have refreshed our Scottish attainment challenge is the stretch aims—they are an important development. I will not set an arbitrary date for when the attainment gap will be closed, particularly so close to the experiences that we are still having with the pandemic. We know that the pandemic has had an impact on attainment but, through the stretch aims and working with local authorities, we intend that they will be able to determine what can be done in their areas and what support is required from our national agencies.

**The Convener:** In your statement, you mentioned local authorities having stretch aims or targets—let us call them targets. What is the Government's stretch target for the fund if you are not prepared to commit to timetabling or signposting? By the way, Audit Scotland specifically said about the fund that

“the Scottish Government needs to be clearer about the anticipated pace of change, identify and measure against appropriate milestones, and consider the lessons about what works in determining how funding is directed.”

You seem to be saying that you are not prepared to say any of that—you are not prepared to give any milestones or measurements.

**Shirley-Anne Somerville:** With this type of work, there are two possible approaches. We could do it with a top-down approach, where I sit in St Andrew's house dictating policy and a target, or we can work with local government, which has responsibility to deliver education. We are working in partnership between national and local government so that local authorities can set the aims that are correct for their areas. There will be different local authority aims as they come through. I prefer not to have a top-down approach; I prefer to work with local government. Of course, our ambition is no less than to close the attainment gap, but we need to recognise that that is a long-term endeavour. Indeed, you quoted Audit—

**The Convener:** What does “long-term” mean?

**Shirley-Anne Somerville:** You quoted Audit Scotland, which has said:

“Reducing the poverty-related attainment gap is a complex challenge and will take time”.

It will take time to deliver the reductions in the poverty-related attainment gap, but we are determined to see a greater pace of progress than we had before the pandemic, and the stretch aims are an important part of that.

**The Convener:** I am not asking you to dictate to anybody or anything, but you have a responsibility.

You are spending £200 million a year on the issue, and you have a responsibility to set out what your expectation is for the outcomes that we expect. On the stretch aims, what is your expectation for closing the poverty-related attainment gap this year, in the next five years or whatever? It would be helpful to the committee, and I think to the public at large, and certainly to Audit Scotland, if you would be more specific.

**Shirley-Anne Somerville:** When Audit Scotland reviews the process again, as I am sure it will, I hope that it will appreciate that we are working with local government in the area. We are collating the local aims, which will help us to provide a picture of what will happen nationally.

**The Convener:** What about setting expectations? What are your expectations for closing the attainment gap?

**Shirley-Anne Somerville:** My expectation is that every single local authority will work with Education Scotland as they deliver their stretch aims, and that they will be as challenging as possible. Those will differ in the—

**The Convener:** None of that is very measurable, is it, cabinet secretary? That is the problem.

**Shirley-Anne Somerville:** With the greatest respect, convener, it will be measurable once the local authorities have developed their stretch aims, and my understanding is that they will be developed by September, for the new academic year. They are very accountable, and they will be obvious and measurable—we will be able to measure progress. I think that, actually—

**The Convener:** Will they all be published?

**Shirley-Anne Somerville:** I am clear that we need more transparency in the area. As a national Government, we have listened to what Audit Scotland has said. Once the data is in a state that can be published and once we have collated all the data from the local authorities, absolutely, I see no reason not to publish. I would, of course, expect local authorities to publish the data as and when they set their stretch aims, because that is part of their local improvement work. There should not be a secretive manner of development at local or national level. We will absolutely make sure that material is published to allow people to see what is happening locally and at a national level.

**The Convener:** The framework stipulates that your responsibility is to collect data, so when will the Scottish Government publish the data that you are describing?

**Shirley-Anne Somerville:** The local authorities' stretch aims need to be in by September. Obviously, once those are collated and we ensure that we have the correct information from local

authorities, I would like to publish very soon after that.

**Graeme Dey (Angus South) (SNP):** I will come at the issue from a slightly different direction, cabinet secretary, and perhaps get a more detailed answer to the point that the convener is making. To approach the issue from the bottom up, teachers we have spoken to in our evidence gathering have been clear that the impacts of the pandemic have been significant, and we have to recognise that. We also have the cost of living crisis. Teachers have also acknowledged that they now have a much clearer idea of what works in addressing the attainment challenge.

We have that as well as the funding and the Government providing direction. Looking at all that in the round, now that those foundations are in place, would it be reasonable to expect that, in the coming years—the next few years—we will begin to see further and quite significant progress?

**Shirley-Anne Somerville:** We would expect to see significant progress. The challenge that we have coming out of Covid is that the progress that was being made pre-pandemic has been impacted by Covid as teachers are working day in, day out to support children and young people through the impact of Covid. The entire purpose of having the refresh and making the changes that we have made is that we expect not only progress but accelerated progress compared to pre-pandemic levels.

**The Convener:** How much of the attainment Scotland fund has been spent so far?

**Shirley-Anne Somerville:** In the previous parliamentary session, we spent £750 million in total on the attainment challenge, and in this parliamentary session the figure is £1 billion.

**The Convener:** So far, one year into this parliamentary session, it is about £1 billion.

**Shirley-Anne Somerville:** Approximately, yes.

**The Convener:** Do you know how the money has been spent?

**Shirley-Anne Somerville:** Yes. The money is allocated to local authorities or directly to schools. Education Scotland has been working with local government and with schools to see best practice in how that money has been spent, the projects that have worked and the projects that have—

**The Convener:** Can you publish how that money has been spent? Can you give a full account to Parliament and to the country of how that £1 billion has been spent?

**Shirley-Anne Somerville:** The figures are available for what goes to local government and what goes to schools.

**The Convener:** No—not how much has been allocated, but what it has been spent on.

**Shirley-Anne Somerville:** Each individual school determines how the PEF money, for example, is spent. We do not collate the data for every school and every project.

**The Convener:** Is it fair to say that you do not know how that money has been spent?

09:45

**Shirley-Anne Somerville:** It is up to individual schools to determine the programmes that they have, and then Education Scotland works with schools to collate the information. I do not have to hand the information about how each individual school has spent its money. It is for Education Scotland to link with the schools to determine how they have spent the money and to work out what has worked and what has not worked. We are keen to have in the new, refreshed attainment challenge more of a link between the local authority and the school so that they are also collating information about how the money has been spent.

**The Convener:** Is it unfair of me to say that you do not know how that £1 billion has been spent? That is, in effect, what your answer was. How can you measure whether it has been spent effectively, with outcomes?

**Shirley-Anne Somerville:** I do not have the information to hand today, convener, but that—

**The Convener:** That is what this evidence session is all about.

**Shirley-Anne Somerville:** I do not have the information to hand. I do not think that the committee would expect me to know, as I sit in front of it, how every single school has spent its money, but what—

**The Convener:** That is not what I am asking, of course.

**Shirley-Anne Somerville:** We absolutely have school and local authority plans and reports—they are a condition of the grant. However, it is for Education Scotland to collate the information. We would be happy to provide further advice after the meeting, but it is a condition of the grant that the schools or local authorities work with Education Scotland on the projects and, importantly, that they discuss what has worked and what has had the greatest impact. We also have the annual evaluation reports that look at a range of different expenditure. However, it is part of our empowerment agenda to empower headteachers to determine how to spend money, and our agencies are there to assist them to ensure that

the money has been spent effectively and that other schools are learning from that.

**The Convener:** That is fair enough, but you still have accountability for how £1 billion of public money is spent and what the outcomes are from that spending. I do not detect that you are shirking that responsibility. I think you have said in your answers to my questions that you will provide us with more written detail as to what that money has been spent on.

**Shirley-Anne Somerville:** We would be happy to provide further information on the relationship between Education Scotland, local authorities and schools and on how the money is spent, but I do not have the detail of every school with me today.

**The Convener:** We want that money to produce the outcomes that we all want, which are that the attainment gap is narrowed, that the level of attainment in general rises and that the poverty-related gap is closed. We all want those things, and we need to see them happening with the commitment that the Scottish taxpayers have made of £1 billion in that direction.

I will ask one last, very quick question before I pass on to the deputy convener. In the time that you have been the Cabinet Secretary for Education and Skills, you have not had a meeting with Education Scotland to discuss the detail of what is happening with this money and the progress that is being made or the measurements that need to be provided. That is correct, is it not? You have not yet had a meeting at which you have discussed those things.

**Shirley-Anne Somerville:** I meet Education Scotland regularly, at different levels of the organisation, to discuss a wide variety of views. I am sure that the committee would expect the SAC to come up very regularly during those discussions—both the use of the previous funding and the development of the refreshed funding. I meet Education Scotland exceptionally regularly, as I think the committee will know.

**The Convener:** It is just that Education Scotland said that it had had one meeting with you to discuss the measurement of this money and the progress that has been made, and that was a meeting to discuss process—yes?

**Shirley-Anne Somerville:** There has been a meeting to discuss the process for the refreshed work. That was one of the quarterly meetings that I have with Education Scotland to discuss the refreshed work that is happening, but, of course, I have met Education Scotland on numerous—

**The Convener:** The specific purpose of those meetings is the focus of our inquiry, but those meetings were not happening before now—that is what I am saying.



**Shirley-Anne Somerville:** They were happening in a different guise in different areas. We have tried to ensure that we have specific meetings to go over aspects of this, but they are not the only meetings that I have with Education Scotland.

**The Convener:** No, but the process is the focus of this particular meeting. Were the minutes of the most recent meeting that you held at which that was the focus of the discussion published, and are the presentations shared?

**Shirley-Anne Somerville:** I am not aware of whether they are published, but we would be happy to ensure that minutes of the quarterly meetings are provided on an on-going basis. However, I stress again that that is one meeting among many that I have with Education Scotland to discuss the Scottish attainment challenge fund.

**The Convener:** I appreciate that, but this meeting is focused on that specific area—it is what we are inquiring into. If those minutes could be made available, along with the data, the measurements and all the other stuff that we are very interested in, that would be fantastic. We look forward to that.

**Kaukab Stewart (Glasgow Kelvin) (SNP):** Good morning, everyone. It has been a fascinating discussion so far. Cabinet secretary, you acknowledge that we have taken extensive evidence on this subject over the past few months. Parents, young people and teachers have said that, prior to Covid, progress was being made in closing the attainment gap—albeit modest progress; nevertheless, we were moving in the right direction. It is clear that Covid has had an impact on that. Briefly—I know that we do not have a huge amount of time—what are the highlights of the progress that you think has been made in closing the poverty-related attainment gap? Has the Scottish Government considered widening the definitions of measuring that attainment?

**Shirley-Anne Somerville:** As, I think, I have said already, the pandemic had an impact on the progress that was being made. However, when we look at the pre-pandemic figures—for example, the year-on-year achievement of curriculum for excellence levels data that was published—we see that the trend was positive.

In the two-year period between 2016-17 and 2018-19, the number of primary school pupils who were achieving the expected levels increased by 3.1 percentage points in literacy and by 2.7 percentage points in numeracy. The gaps in achieving expected levels of numeracy between the young people from the most and least deprived areas of Scotland reduced in both years. Although we saw that progress, and although we

continue to see very good statistics for those who are leaving school and going on to positive destinations—indeed, they are now at a record level—we are obviously keen to see further, more accelerated progress.

**Kaukab Stewart:** It is a complex area. I know, from teaching for many years, that it is not just about education. However, when you look at it, the poverty bit sometimes gets missed. Inevitably, if people do not have enough money, a child is not ready to learn, because they are hungry. That makes it even more challenging for teachers as well, so the two things go together. How does the SAC fit into the Scottish Government's overall approach to tackling child poverty?

**Shirley-Anne Somerville:** I mentioned in my introductory remarks that we have changed the mission of the SAC programme. That is very clearly to draw further focus on the fact that, although we can do a lot within education to improve outcomes for children and young people, we are aware that poverty is not something that can be solved between the hours of 9 and 3, when a child is in school. What happens outwith that period is exceptionally important as well.

That is why we are keen to ensure that there is a very specific link between the education work and the work that is happening in the tackling child poverty delivery plan around increases to the Scottish child payment, taking account of the cost of the school day, increases to school clothing grants, the ability of children and young people to take any subject without receiving charges for it, core curriculum charges, music charges, and so on. We are determined to ensure that the education work and the anti-poverty work are linked very specifically.

That is made more difficult by the cost of living crisis and by policies that are being made elsewhere in the United Kingdom and dictated by the UK Government, which are impacting on poverty levels. Within what we have the ability to control up here, we are keen to make sure that there is a very express link between what is happening in education and what is happening in our wider anti-poverty work.

**Willie Rennie (North East Fife) (LD):** I am interested in how we got here. What is your assessment of why the poverty-related attainment gap was so wide and why we got such a critical report from the Organisation for Economic Co-operation and Development back in 2015? What are the root causes of that?

**Shirley-Anne Somerville:** I think that you will see the poverty-related attainment gap in many different countries. It is not specific to Scotland. We see the same challenges elsewhere in the UK

and, indeed, further afield, but we have also seen a determination to tackle them in Scotland.

**Willie Rennie:** I do not want to go into what comes next; I want to focus on how we got here. You have addressed the fact that the attainment gap exists elsewhere, but I want to know why it exists here and why the rest of the OECD report, which covered a whole lot of other areas in education as well, was so critical. Do we understand how we got here?

**Shirley-Anne Somerville:** I think that the OECD reported that, although, over a number of years, we have continued to say that there is room for improvement in Scottish education, we have a good foundation for Scottish indications. I will push back on the point that the OECD is critical of Scottish education, because I do not think that that is a fair reflection—

**Willie Rennie:** There are several sections.

**Shirley-Anne Somerville:** —of the fact that it has produced reports that have endorsed curriculum for excellence and in which it has encouraged us to develop the way—

**Willie Rennie:** I accept all of that, but we are in—

**Shirley-Anne Somerville:** I think that it is important that I push back on the suggestion that the OECD was being critical, so—

**Willie Rennie:** But we are in politics to improve things, are we not? That is why we are here. If we just keep going on about the positive things, we will not make any progress. We need to identify why things were going wrong in the many areas that the OECD highlighted. Do you understand why that was?

**Shirley-Anne Somerville:** The OECD suggested that we look at a number of areas. One of them was about strengthening the middle, as it was paraphrased, and that was, therefore, one of the reasons why we looked at the regional improvement collaboratives and more collaborative working between local authorities. There has also been a discussion about the empowerment of our teaching workforce, to ensure that we have a workforce that is enabled to take decisions that are right for their schools. I think that that is an important change that we have made. We may have had difficulties in the past not just because of the levels of poverty in the country, but because we perhaps needed to ensure that more power was being given to local authorities and to individual headteachers and that work was going on to collaborate on that.

**Willie Rennie:** The reason why I am asking the question is that I have never heard any Government minister explain what went wrong. They always leap immediately to apparent

solutions—and to quite radical solutions in some areas. It is quite a departure from past practice to have significant funds invested in addressing the poverty-related attainment gap, but nobody has ever explained to me what went wrong in the first place, and you have not been able to do so today. You have immediately leapt towards solutions. I do not think we will make any progress on that, but I would like you to reflect on it, because I think we need to understand what went wrong if we are going to fix it.

**Shirley-Anne Somerville:** With respect, I think I have said that poverty is one of the key challenges in Scotland, as in other countries, and that we have had a system that has perhaps been too top-down and has not empowered the workforce to take decisions that are right for them. That is one of the lessons that we have had to learn. In looking at what we need to improve on from the OECD report in 2015, building on the further encouragement in its latest report, it is about empowering a system and providing resources to that empowered system.

10:00

**Willie Rennie:** I want to challenge your claim that things were getting better before the pandemic. In a number of indicators that I have looked at, the gap has widened. The gap in S3 literacy widened from 13.6 per cent to 13.8 per cent between 2016 and 2018. In the achievement of level 4 of the Scottish credit and qualifications framework, the gap widened from 6.5 per cent to 7.1 per cent between 2018 and 2019. The gap in the achievement of level 6 widened from 35 to 36 points in 2018-19. That was all before the pandemic, so why do you say that things were getting better?

**Shirley-Anne Somerville:** We knew that we were making an impact because of the statistics that I read out to the member earlier, but we knew that we had to do more and that there were areas in which we still needed to improve, which is exactly why we have had a refresh. I will certainly not sit here and say that everything pre-pandemic was going at the pace or with the urgency that we would have liked. That is exactly why we have refreshed the system.

**Willie Rennie:** But it was going backwards. It was not as though more progress needed to be made. Progress was not being made in the indicators that I just listed. Why are you selectively quoting the ones that have seen some improvement—albeit not big improvements but tiny margins? There is still a big poverty-related attainment gap of 35 points at level 6. These gaps are enormous and we are making infinitesimal improvements. If we are going to spend £1 billion,

surely you would expect something a bit better than this.

**Shirley-Anne Somerville:** I think that we are seeing improvements in key areas—or we were, pre-pandemic. We have also seen good progress being made in general. For example, we now have a much more empowered system in which headteachers are much more knowledgeable and able to pick projects that work correctly for the schools; therefore, they feel that they can determine what is driven in their school.

We know that progress was made in some areas. We also know that there is more to do. I would point out again not just that the five-year evaluation report has shown good progress but that we have a record high proportion of school leavers entering positive destinations upon leaving school. While I absolutely accept that there is more to do, when we look at the school leaver destinations and the ACEL statistics that I read out, we see that there is progress, although it needs to be accelerated.

**Willie Rennie:** I dispute that there is progress as you describe it. I think that we need to be honest about how much progress we are making. It was claimed initially that we were going to close the poverty-related attainment gap completely. However, I have heard ministers row back a little bit on the “completely” part of that, saying that it may not be possible to close it altogether. The First Minister used to say that she had a guiding mission or a top priority, but we do not hear her say much about it any more. Now, we also hear that it is a very long-term project. I just get a feeling that ministers are backing off on how much progress we will make on it. Tell me that that is not the case, because I want to—

**Shirley-Anne Somerville:** It is not the case.

**Willie Rennie:** It is definitely not the case. I would like us to get more definitive targets, which you were unable to give the convener earlier, and I would like us to make more progress, instead of dressing up stagnation as progress. Can you give me an assurance that that will happen?

**Shirley-Anne Somerville:** You will see information about the stretch aims. I am not going to make any apologies for the fact that, as the Cabinet Secretary for Education and Skills, I am working with local authorities to allow them to develop stretch aims that are supported by our national agencies. Given your commitment to empowering local government, I think that the committee will be pleased that we are not dictating from the centre but working with local government to deliver the stretch aims that will be publicly available. We are working together with people.

I am not sure about the last time that the First Minister was asked a question about her defining

mission, but it is absolutely the defining mission of this Government to close the poverty-related attainment gap. It has always been a long-term process. That was made very clear right from the start of the project, and, as the OECD and Audit Scotland have made very clear, it will always be a long-term project. Nevertheless, we are determined to see accelerated progress.

**Willie Rennie:** Okay. I have a final question on PEF. If PEF had kept up with inflation since it was introduced, it would now be worth £130 million. Inflation today is at 9 per cent—it could be much higher than that—but we do not have a commitment from the Government to raise PEF higher than the £127 million that it is currently set at. It was set at £120 million and it is now set at £127 million, but we have no guarantee that it will rise with inflation over the next period. Why has it not been guaranteed to increase?

**Shirley-Anne Somerville:** We have guaranteed that there will be £1 billion of expenditure on the SAC over this parliamentary session. For the first time, we have a long-term commitment from the Government that it is not year-on-year funding but guaranteed funding. That was a key ask of both local government and headteachers, and that is exactly what we have delivered. There is £520 million of PEF to be distributed to schools, which is providing further certainty, and we have provided an uplift in the PEF per pupil this year. What we have seen is recognition of the fact that there needs to be a long-term commitment to this. That is what the Government has provided. We have guaranteed that the funding will be there for the next four years.

**Willie Rennie:** It is not as valuable as it was when it was first introduced, because it should be £130 million and it is short of that. There is also no guarantee that it will increase with inflation when inflation is going through the roof. Surely we should be trying to give some guarantees that this is a top priority and, therefore, that PEF will be index linked.

**Shirley-Anne Somerville:** Again, I point to the fact that we have seen an uplift in the PEF per pupil that is given to local authorities. We have established that this year.

**Willie Rennie:** But that is not in line with inflation.

**Shirley-Anne Somerville:** We have also guaranteed £1 billion-worth of expenditure over the parliamentary session. There is, of course, a process that we will go through annually to look at education funding, in addition to what happens within the SAC, but this is an area in which we have been able to guarantee funding in the long term, and that has been welcomed by local authorities and headteachers.

**Willie Rennie:** Okay. Thanks.

**Ruth Maguire (Cunninghame South) (SNP):** Good morning, cabinet secretary. My questions are about variation and the role of local authorities. You covered quite a bit of that in your discussion with the convener about the role of local authorities in the revised approach. Obviously, all 32 local authorities are now getting multiyear funding. What duties are being placed on local authorities to ensure accountability?

**Shirley-Anne Somerville:** We have made an important change in recognition that poverty exists in every area of Scotland. It is very important that we look at the role of local authorities, work with them and provide them with additional support to undertake their work. The Government recognises that there is variation within and between local authorities. One of the reasons behind the introduction of the stretch aims is to tackle the unwarranted variation between local authorities. We hope that the transparent mechanism that we are putting into the system will give a clear understanding of local ambitions.

We are clear that we need to reduce that unwarranted variation. With the support of Education Scotland, we will provide constructive challenge and support to all local authorities to ensure that they are ambitious in what they develop. We know that there is variation in outcomes between local authorities; that is often talked about. The collaborative work that local authorities are doing with Education Scotland will assist with some of that, but we know that we have more to do to tackle unwarranted variation.

**Ruth Maguire:** You mentioned that Education Scotland will provide constructive challenge to local authorities. We all look for simple answers and for a uniform approach to be taken, because that can make things easier to measure. We need to have local variation, but we also need there to be challenge when things are not successful. Can you say a bit more about the actual mechanism for that?

**Shirley-Anne Somerville:** Yes. I should be clear that we do not want to stop local variation in how schools develop policies and tackle the attainment gap. At the end of the day, we are concerned about variation in outcomes. We are certainly not looking at a one-size-fits-all approach. Education Scotland is doing a great deal of work to provide universal support to all local authorities in Scotland, and it can give more targeted support to the local authorities that are most in need. It might do that by looking at the highest levels of poverty in an area or through dialogue with a local authority when it or Education Scotland has identified that more targeted support is needed. Intensive support can also be provided when we see limited progress.

It is key that Education Scotland is there for every local authority. It will support and work collaboratively with schools and local authorities, and it will challenge, when necessary, if we do not see the progress that we might have expected through the work.

**Ruth Maguire:** I am a fairly new member of the committee, so could you be a bit more specific about that challenge? Who provides the challenge? What is the forum? Where does it happen? Does it happen within the regional improvement collaboratives? What does it look like?

**Shirley-Anne Somerville:** It can happen in a number of different ways. Regional improvement collaboratives are important in allowing local authorities to work together, collaborate, share good practice and support one another. Education Scotland will have numerous conversations directly with schools or with local authority central teams to look at the work that is going on. Education Scotland also has 32 attainment advisers, who are able to provide support and, when necessary, challenge to a local authority.

The process is very much intended to be collaborative and supportive. I have not met people in the education system who do not want to see change, but Education Scotland is able to escalate those measures and to have further discussions with local authorities should it feel the need to do that.

**Ruth Maguire:** As well as parliamentary scrutiny, scrutiny from local authority politicians is important. As you said, this is not just about the Government; it is also about local authorities.

**Shirley-Anne Somerville:** Absolutely. The national Government is clear that, when possible, we should work in partnership with local government on many of these issues. As I have said, the work that we are doing on stretch aims, for example, is something that many local authorities have been doing to some extent. We are trying to ensure that all local authorities take part in that process and that there is transparency in that improvement work.

Of course, local authorities are responsible for delivering the decisions on education that are, quite rightly, taken at a local authority or school level. Just as you would expect the national Government to challenge itself on its responsibilities and targets, it is very much the responsibility of a local authority to challenge itself on why there is variation either within the local authority or with another local authority. I hope that the role and responsibilities of local government are very clear in the refreshed attainment challenge, in which we set out the roles and responsibilities of the different parts of the system.

**Ruth Maguire:** Thank you. That is helpful.

**Michael Marra (North East Scotland) (Lab):** I thank the cabinet secretary for her evidence so far. On 23 May 2018, the Deputy First Minister told the Education and Skills Committee that the utilisation of PEF to replace an existing service was unacceptable and would be a breach of the condition of grant. Does that remain Scottish Government policy?

**Shirley-Anne Somerville:** It is very clear that PEF is additional. The evidence that the committee has received from directors of education, for example, shows very clearly that, in their view, the funding is additional.

10:15

**Michael Marra:** Okay. Does the cabinet secretary agree that, when services are withdrawn due to pressure on local authority budgets and schools maintain those services through PEF, that constitutes substitution for cuts and is not allowed?

**Shirley-Anne Somerville:** Again, I point to the evidence that the committee received from a director of education, who said that priorities might change within a local authority. A local authority might determine, as is absolutely its right, that priorities have changed within its area, and a headteacher could then decide that they wish to keep a service, even if a local authority has changed its priorities. As has been amply demonstrated by that director of education, those things can happen, and that is the reason why.

**Michael Marra:** I find that a little bit contradictory. Bear with me, because this is a matter of concern for people such as headteachers, who are charged with implementing the policy on the ground. Are you now saying that, if there are cuts to Scottish attainment challenge funding in their area, they can use pupil equity funding to pay for those services instead?

**Shirley-Anne Somerville:** I am saying that, if a local authority decides to change its priorities at a local authority level—which, of course, would be under the direction of the local administration—a headteacher can determine a project. Again, I point not to my opinion but to the director of education who gave an example of how that might happen.

**Michael Marra:** Are you referring to one of the 32 directors of education in Scotland?

**Shirley-Anne Somerville:** I am referring to one of the four directors of education who sat in front of the committee.

**Michael Marra:** To be clear, I have had conversations with other directors of education

who are perhaps less clear on that point, so I am just trying to get clarity for them.

I refer to a report that you will not have in front of you from Dundee City Council, which is dealing with a 79 per cent cut in its Scottish attainment challenge funding. That report of 24 January 2022 identifies 106 posts that will have to be cut as a result of the £5 million reduction in funding from the Government. Jim Thewliss, a former headteacher from Dundee, was in front of the committee a few weeks ago. He was trying to understand how Dundee would cope, and he did not think that it could on that basis. The report says that

“work will no longer be centrally funded from this funding as schools can now procure this service if required”.

I think that that backs up what you have said about using PEF to pay for SAC cuts. Is that fair?

**Shirley-Anne Somerville:** We have made it very clear, through the process of looking at the Scottish attainment challenge, that we need to recognise that poverty exists in all 32 local authority areas. We were very clear that we need to work on a fair funding model to ensure that we deliver support right across Scotland. I believe that Mr Marra said in a previous evidence session that he recognised that poverty exists right across Scotland.

**Michael Marra:** Absolutely.

**Shirley-Anne Somerville:** The Scottish Government has a responsibility to have a funding package in place that recognises that and provides funding to every local authority. I think that everyone agreed that there needs to be a fair model. That is what we have delivered through the new funding allocation.

**Michael Marra:** I do not think that that is an answer to my question. I am trying to get clarity. You are saying that, in Dundee, it is possible to spend pupil equity funding to backfill the cuts that you have made.

**Shirley-Anne Somerville:** I will not dictate how Dundee City Council or any other local authority should deal with education. It is for local authorities to do that. You received evidence—not just from one of the four directors of education in front of the committee, but from others—about the fact that there is a holistic approach to funding, that local authorities will make decisions in that regard and that a headteacher can use pupil equity funding if they wish to do so, following the local authority’s decisions.

**Michael Marra:** That poses all kinds of other questions about the multiplier effect of the cuts. You are asking us to believe that the way to give support to poor kids is to cut support in the areas that have the most poor kids. Is that correct?

**Shirley-Anne Somerville:** Actually, 59 per cent of children in relative poverty live outside the challenge authorities. If we continued to use the previous formula, we would be ignoring the 59 per cent of children in relative poverty who are in other parts of Scotland.

**Michael Marra:** To be fair, it was your policy, not my policy, to ignore those pupils. It is good that money is now available to local authorities. For example, under the new formula, Fife Council is up £2 million, but it has lost £290 million in the past decade through the cuts that you have made. It is understandable if Fife Council welcomes that £2 million, but that does not deal with the issue that I am focusing on. The challenge authorities were picked on the basis of multiple deprivation, deep poverty and huge barriers. We are talking about more than £6 million this year, and that figure will rise to £25 million over the course of this parliamentary session. Surely the Government can find it in its heart to put that money back in order to protect those 106 posts. Those people include speech and language therapists who work with the absolutely poorest kids. Those are the posts that are under threat.

**Shirley-Anne Somerville:** The Institute for Fiscal Studies has calculated that school spending per pupil is higher in Scotland than it is elsewhere in the United Kingdom. Spending is also 15.6 per cent higher in real terms than it was in 2014-15, so we have supported education—

**Michael Marra:** Cabinet secretary, the IFS's figures for England will be pretty cold comfort to people in Charleston and Dundee, who are—

**Shirley-Anne Somerville:** If you would let me—

**Michael Marra:** Excuse me, cabinet secretary. People in Charleston and Dundee are losing staff who work directly with their children. Can you address those concerns instead of giving numbers?

**Shirley-Anne Somerville:** You have insinuated that there are difficulties with overall education expenditure in different local authorities, so I am merely pointing the committee to the actual overall education expenditure. We have very much looked to provide a fair funding formula right across Scotland. The allocations that were distributed to the nine local authorities were determined based on bespoke bids for resource, rather than a data-driven approach. We have moved to a distribution model that recognises that poverty exists in every local authority in Scotland. I point to that 59 per cent figure that I mentioned earlier.

Ruth Binks, from Inverclyde Council, who was one of the directors of education in front of the committee, made it very clear in her testimony that

“When we started as attainment challenge authorities we were very much told that we were the pathfinders, looking at how to make things work. We were asked to adopt”

and

“adapt”.—[*Official Report, Education, Children and Young People Committee*, 4 May 2022; c 8.]

That is what they did. It is very important to set out that context. I have been invited to find an extra £43 million in the education budget, but there is not £43 million sitting spare, not being spent, in the education budget. If the committee—

**Michael Marra:** The turnout figures for this year, which are to be confirmed in June, currently indicate a £20 million underspend in the education budget. Would that not be a start? The figure for this year is £6 million.

**Shirley-Anne Somerville:** An important area of work with local authorities relates to the fact that we allow money to roll on so that local authorities can blend it, but I point to the fact that, even if that—

**Michael Marra:** I think that I just found the money, cabinet secretary.

**Shirley-Anne Somerville:** Let me finish my point. Even if £6 million was not being used in education, a very substantial gap would still be left. There is not £43 million unallocated in my education portfolio. As with all these things, if the member thinks that I should be spending additional money, he should say where it should come from. Should it come from early years education? We removed core curriculum charges; should it come from that budget? Should I reduce the school clothing grant? The money all has to come from somewhere. With the greatest respect, I cannot just find £43 million of additional funding.

**Michael Marra:** With the greatest respect, I think that I did identify the underspend.

You referred to some of our evidence sessions. In evidence to us on 9 May, a headteacher in Inverclyde said that teachers are “raging” and that the single best thing that could be done to improve the system would be to reverse the biggest cut that you are making.

Andrea Bradley, from the Educational Institute of Scotland, said that she is

“absolutely appalled at the levels of funding cuts to ... the ... challenge authorities. It beggars belief. We do not understand why those cuts would be made at a time when we know that poverty levels are rising, when the pandemic has absolutely bludgeoned some communities and we know that individual families and the young people within those families are struggling as a result of Covid.”—[*Official Report, Education, Children and Young People Committee*, 20 April 2022; c 31.]

The NASUWT said:

“It is clearly not right to be making those swingeing cuts”.—[*Official Report, Education, Children and Young People Committee*, 20 April 2022; c 32.]

Jim Thewliss, from School Leaders Scotland, said that it is

“immoral to take away that funding.”—[*Official Report, Education, Children and Young People Committee*, 20 April 2022; c 34.]

Will you speak directly to those communities? Are you prepared to apologise for the impact of your decisions? If you are saying that you will not put the money back, will you apologise?

**Shirley-Anne Somerville:** The only way that the money could be put back would be if I took it off the local authorities that will be having it for the first time. If that is what the member is suggesting—

**Michael Marra:** It is absolutely not what I am suggesting. I have made that abundantly clear.

**Shirley-Anne Somerville:** You are suggesting that I find additional money that I do not have. For example, the £6 million that you are quoting would take further PEF money from schools. If you are suggesting that we could allocate money by taking the £6 million of current underspend from PEF, which will remain with schools, I do not think that that would be a sensible way forward. Through our allocations, we have attempted to ensure that there is a fair funding formula right across Scotland. There was an understanding, as was shown in the evidence from the directors of education, that we needed to look for a fair funding formula right across Scotland. The policy was also worked on and agreed by the Convention of Scottish Local Authorities.

The Government has to take these difficult decisions. The importance of recognising that poverty exists across all local authority areas, of dealing with that and of addressing the impact of the Covid pandemic across all 32 local authorities led us to change the funding formula. There is no additional money in my portfolio that is not being spent, so money would have to come from somewhere else within my portfolio. I am afraid that no one has suggested where I would find that—

**Michael Marra:** Cabinet secretary, your failure to win arguments about your budget with the Cabinet Secretary for Finance and the Economy is, to be frank, not just a concern that we have here. That is—

**Shirley-Anne Somerville:** Would you like to take money away from somebody else’s portfolio? Would you like to take it from health, justice or social care?

**Michael Marra:** I am afraid that we have had those representations from across the sector,

including secondary schools, primary schools and the tertiary sector. I do not think that we are going to agree on what is happening here. The Scottish Government is taking money away from the poorest communities, and the poorest kids are paying the cost of providing for other kids in poverty across Scotland. Those kids require funding, but I cannot agree, as the cabinet secretary clearly does, that that has to come at the expense of the kids in the poorest communities in this country.

**Shirley-Anne Somerville:** With the greatest respect, the member should suggest where the money should come from.

**Michael Marra:** I already have done.

**Shirley-Anne Somerville:** If it should not come from education, what part of the budget should it come from?

**The Convener:** Thank you, cabinet secretary.

**Bob Doris (Glasgow Maryhill and Springburn) (SNP):** I think that we have entered into this afternoon’s education debate early, convener. I thought we were pursuing an inquiry into the attainment fund, but there you are.

I would like to look a wee bit at evaluation and measures of success. Mr Rennie had an interesting line of questioning when he said that he thought that progress, including on closing the attainment gap, had not really occurred in any meaningful way. I am going to put some statistics on the record, convener, and then make a comment on them with a question to the cabinet secretary.

Two years before the pandemic, the achievement of the expected standards in primary schools was up 3.1 per cent in literacy and up 2.7 per cent in numeracy. The gap between school leavers from the most and least deprived areas achieving one pass or more at SCQF level 5 or better reduced by 12.5 percentage points between 2009-10 and 2019-20. Last year, as you know, I was very proud to talk about St Roch’s secondary school in Royston, in my constituency, which got 100 per cent positive destinations, and about the record positive destinations in Glasgow and mostly across the country.

Those three indicators give a snapshot of progress that might suit the Government, but how do we take a balanced approach to monitoring and evaluating progress? Is it by using the 11 indicators in the national improvement framework? Is there an agreed dashboard of progress that we can look at, at a national level?

The convener also wanted to get under the skin of the issue at a local authority level. I have looked at some of the documentation around the attainment challenge evaluation and refresh, and it

is pretty hard reading. How can we get clear, transparent indicators or a dashboard, if you like, that allows the committee and the education sector in general to take a balanced view of how the Scottish Government is or is not succeeding in addressing the attainment challenge?

10:30

**Shirley-Anne Somerville:** The important areas that we are looking at are the measures in the national improvement framework. We are consulting on those measures to ensure that the right data is being collected and that we are collecting material that is useful to Government and to teachers.

For example, the stretch aims that are coming out from local government will look at the core areas of numeracy and literacy, but it is a core plus model, which means that local authorities are also asked to look at the wider areas around health and wellbeing so that we can determine the impact not just on attainment but on other parts of children and young people's progress. I will bring in Graeme Logan to talk about the dashboard that is published and the information in that.

**Graeme Logan (Scottish Government):** Yes, Mr Doris, the answer is that we do publish data across the 11 core national improvement framework measures. Those 11 measures were developed after extensive consultation to make sure that we were taking a balanced approach to looking at the attainment gap and looking not just at literacy and numeracy but at participation measures, for example. It includes things like the 27-to-30-month review of the youngest children that we do in order to identify gaps as early as we possibly can. That data is published annually in December, as part of the national improvement framework report.

Since the national improvement framework was introduced, in the previous parliamentary session, we have more data on school performance than before. We have school-level data that is published against a number of the measures, and it can be seen by parents and carers at the school level, as well as locally and nationally.

**Bob Doris:** Is that replicated across the 32 local authorities, so that we get a national flavour as well as any local variation? The committee has heard that different local authorities might collect and present the data in different ways.

**Graeme Logan:** Yes. The national improvement framework includes analysis nationally and a breakdown across local authorities. As the cabinet secretary said, we are in discussion with local government colleagues on the current consultation on the NIF measures, because local authorities use some of those measures and they also use

some of their own measures. We are particularly keen to look at a local government benchmarking tool to make sure that there is consistency in the measures that we are all using when talking about improvement. As I say, those 11 core measures were developed after consultation, including with local government partners, to get a broad and balanced account of children's progress and development and of closing the gap.

**Bob Doris:** I would welcome the committee taking a view on, and reporting on, how clear and readable that dashboard is. Maybe we will look at that in the report and return to it.

We met some teachers at St Roch's secondary school, which is in the West Partnership. They told us that their primary concern was that the impact of Covid would mean some slippage in the progress being made by young people. Their secondary concern was that it would also negate a lot of the good work that was being done before and during Covid and that that progress might not be recognised because of the Covid crisis.

Is an impact statement likely to follow every annual reporting process? Such a statement could deal with the impact of Covid on the progress that was made and on other external measures. We are talking about a poverty-related attainment gap, so what were the impacts of the £20 cut in universal credit and of the UK cost of living crisis?

On a more positive note, there is the impact of the Scottish child payment, because massive moneys are at play not just within education but within wider public expenditure at the Scottish and UK level that will impact on the poverty-related attainment gap. Cabinet secretary, will there be an impact statement when we look at future evaluations?

**Shirley-Anne Somerville:** I point Bob Doris to two aspects of the impact of Covid. One is the equity audit that took place some time ago, which looked at and reported back on the impact of Covid. The other is the most recent ACEL statistics, which showed a dip in attainment. It is very difficult to draw a direct correlation between one thing happening and any impact on attainment, but I do not think it would be stretching the bounds too much to say that, during the past couple of years, Covid has impacted on attainment. That was clearly shown in the equity audit.

The context that Mr Doris points to is exceptionally important and will be taken account of as Education Scotland works with local authorities on the stretch aims. The context of every local authority will be taken into account and, as we develop our policies, we will always ensure that we analyse the impact of those policies once we evaluate.



It is very difficult to point to one policy correlating directly to a change in outcomes, but it is clear that the more that we can do to tackle child poverty, for example, the more we will be able to help families in their overall circumstances, and the more that will help with attainment. Likewise, if decisions such as the £20 cut to universal credit that Mr Doris pointed to are taken elsewhere, they will have negative consequences for families and will inevitably impact on how they cope. We will endeavour to look at and take account of the impact of different policies and understand that context as we move forward once local authorities have developed the stretch aims.

**Bob Doris:** Convener, because of time constraints on my questioning this morning, perhaps we could ask the cabinet secretary to write to the committee about the positive destination data, which is quite exceptional this year—I place on the record the efforts of teachers and students to get to that stage. The committee is interested to know what happens to those young people one year out, two years out, three years out, and so on. It is about lifelong learning, closing the attainment gap and making sure that there is a positive impact on life chances. I would like a bit more information about how the Scottish Government and its agencies track the journey of young people in a meaningful way once they have left school and over a longer period of time. It would be helpful if the cabinet secretary or one of her officials could deal with that in correspondence with the committee.

**The Convener:** Yes, they are nodding their heads. That is good.

**Oliver Mundell (Dumfriesshire) (Con):** Cabinet secretary, do you agree that high-quality teaching and learning remains the best way to close the attainment gap?

**Shirley-Anne Somerville:** It is one of the best ways of closing the attainment gap. Tackling poverty is the other aspect that is recognised in our refreshed mission. Yes, it is about teaching and learning, but we have adapted the mission to recognise the overall impact of societal poverty.

**Oliver Mundell:** Do you recognise that you can put many other things in place but that, without core teaching and learning, those young people are still likely to struggle when it comes to the more formal part of learning, such as literacy, numeracy and some of the other metrics that the committee has been looking at? Without good teaching, we will not see improvement in those areas, will we?

**Shirley-Anne Somerville:** Yes. Teaching is an integral part of that.

**Oliver Mundell:** Do you think that we have the focus and the balance right so far?

**Shirley-Anne Somerville:** One of the areas that we are very keen to look at in the refreshed challenge is the wider impact of poverty. However, on teaching and learning, one of the key lessons that we learned from the first iteration of this funding, and which we very much hold dear, is the importance of the PEF going directly to schools and having an empowered system so that schools can determine how the £520 million in this refreshed package will be felt. Teachers and their role have a very important place in the system.

**Oliver Mundell:** Do you completely reject the idea that a lot of this money has been wasted at a time when the numbers of teachers and support staff have been cut, when there has been a failure to reduce class sizes, when we have issues with recruiting teachers in some subject areas in some parts of the country, and when we are still struggling to make teaching an attractive profession, as is seen in the on-going pay and conditions? We have spent additional money on things that are good, yes, but is there not a sense that we have failed when it comes to actually securing the fundamentals of the system?

**Shirley-Anne Somerville:** What we have seen with the Scottish attainment challenge and PEF, in particular, is schools progressing in a range of ways that, from being directly involved with the young people, they have determined are most important in impacting on their health and wellbeing and in setting a child up, through tackling any attainment challenges that we might have. I would, of course—

**Oliver Mundell:** Actually, I think that most teachers say that teaching and learning is the core part of their job. Yes, they are concerned about children's welfare and they see that as being really important, but they feel that they are being asked to do too much, and, by not focusing on the area in which they can make a difference in the classroom, they feel that we are seeing slow progress on literacy and numeracy and on other core components for later education. Do you think that that is—

**Shirley-Anne Somerville:** I will reflect on a conference I was at only last week, at which I was asked by a teacher, in questions and answers, about the importance of taking a whole-child approach and the fact that it is impossible to—nor should we attempt to—look at education just by looking at attainment and not looking at children's health and wellbeing. That is very important. Indeed, the feedback that I was receiving from teachers last week was about the importance of ensuring that we were look at health and wellbeing and other aspects.

We have more teachers now than we have had at any time since 2008. The ratio of pupils to teachers is at its lowest since 2009. There are

more than 2,000 more teachers in Scotland's schools than there were before the start of the pandemic and, of course, we have made additional commitments for the current parliamentary session. That shows that we are investing in teacher numbers, but it is not contradictory to say that, along with headteachers, parents and teachers, we should also look at how PEF should be spent to support those young people. That is a very clear part of the system.

**Oliver Mundell:** I was at the Scottish Secondary Teachers Association conference last week, and there was no political representation from the Scottish Government there. Certainly, the message there was that teachers feel undervalued, underpaid, and undersupported, that our schools are underresourced and that it is starting to have an impact on young people. However, like other committee members, I do not think we are going to agree.

I will ask a specific question on PEF. Obviously, there has been a switch elsewhere within attainment funding to low-income families. Did you look at making that change in relation to PEF, and did you do any modelling on what that would look like for the distribution of funds?

**Shirley-Anne Somerville:** From your questioning, I can see that you are aware that the decision has been taken to stick with the free school meals measurement for PEF. One of the reasons I was keen to see that—

**Oliver Mundell:** Did you model what an alternative would look like, based on low-income families?

**Shirley-Anne Somerville:** I took the decision to stay with the free school meals to ensure continuity in PEF with what schools had previously. I took that decision very early on to ensure continuity within the system.

There were discussions and consultations about the SAC in general before I came to that decision. I am not aware of any modelling having taken place, but there were a number of discussions with stakeholders and groups that were set up specifically to look at the refresh, and continuity was an important part of PEF that I was keen to continue.

10:45

**Oliver Mundell:** Why did you feel that the disruption to other attainment funding that Mr Marra talked about was worthwhile when teacher posts and support posts were going with that funding but not worth looking at for PEF? What was the difference?

**Shirley-Anne Somerville:** PEF already goes to 97 per cent of schools, and it is important that we recognise—

**Oliver Mundell:** But it is not necessarily fairly allocated to where the poverty exists if you are using a measure that is potentially flawed, is it?

**Shirley-Anne Somerville:** I appreciate that there are different measures that we could use, but I have explained the reason why we decided to stay with PEF. I have also explained that I decided to change other parts of the system in recognition of the fact that poverty exists right across Scotland. The fact that we are not using the Scottish index of multiple deprivation, or not using a bid process, which is what has happened before, allowed us to look at children and low-income families who needed help right across Scotland, including in rural areas.

**Oliver Mundell:** I think it is all a little bit inconsistent, but, again, that is probably something to look at further as the committee thinks about the evidence we have heard.

The final thing that I want to ask about in relation to attainment is a challenge that I have become aware of that is impacting a small number of young Ukrainian people who have settled in Scotland. A number of pupils joined too late in the school year to gain qualifications in Scotland and, understandably, they are struggling to complete assessments for courses that they started in Ukraine. I seek your assurance that the Scottish Government will look at that and work in partnership with local authorities to make sure that those young people are not further disadvantaged and that their future attainment is not affected.

**Shirley-Anne Somerville:** I am very happy to meet the constituents that Oliver Mundell has in mind to discuss that. He can send me the details. The Scottish Government is putting in support to assist with Ukrainian children and young people who come here. It will be a difficult time of year to enter the education system, and that will understandably impact on what can be done in the academic year. A great deal of work is being done by local authorities and individual schools to support particular families, because every circumstance will be different. If there is a role that I or Education Scotland can play in smoothing any of that over, we will be pleased to do so.

Education Scotland has put in national resources to assist with Ukrainian students and families who are coming over and moving into the system. There is a lot more in the discussion about what we are doing in education to support Ukrainian nationals, but with the time constraints I am happy to deal with those questions offline.

**The Convener:** Michael Marra has a supplementary question.

**Michael Marra:** I was just reflecting on Mr Mundell's questions about the design of the policy. When we put some questions to Education Scotland last week, I asked it whether it had raised any concerns about the impact on existing challenge authorities of the new formulation and how it was designed, and it said that it had not. I asked whether anyone else had raised any such concerns and it said, "Not particularly." Do you recall whether those things were talked through around the methodology design? Did you raise those concerns?

**Shirley-Anne Somerville:** There was a discussion initially about how we could have a fair funding settlement. We then discussed with stakeholders what that fair funding settlement would look like right across Scotland. In the evidence that the committee has heard, one of the education directors—I think that it was the director from Inverclyde Council—said that she would, of course, have preferred to keep all the money, but she recognised that a fair funding settlement was required.

We discussed the impact of that, as the committee would expect, and that is one of the reasons why I made sure that a taper was in place to allow the changes in funding to be made not over one year, but over four.

**Michael Marra:** Okay. I appreciate that.

**Graeme Dey:** Cabinet secretary, I am one of the majority of members of the Scottish Parliament who very much welcome the funding that is going to the 23 other local authorities and will reach the 59 per cent of youngsters who were not previously captured by the approach. However, I am keen to get an assurance that the money will be accompanied by access to the gathered knowledge that we now have about what works.

I was very struck by the sessions that we have had with teaching staff from the west of Scotland. I found them incredibly positive about the work that is being done. However, I note that most of the knowledge has been amassed in the west of Scotland. We have the regional improvement collaboratives for sharing best practice, but I am looking for some assurance on how that best practice—the gleaned knowledge—will be made available to the other local authorities that have not had the opportunity up to now, other than through individual schools and their pupil equity funding. That is important so that they do not have to reinvent the wheel but can capitalise on the best practice and what we know works. Within that, there is a question about the role of Education Scotland.

**Shirley-Anne Somerville:** A publication was produced by Education Scotland at around the same time as we launched the refresh. Forgive

me—I cannot remember the name of the publication, but the point of it was to look at lessons learned, good practice and so on. Obviously, that happens in Education Scotland, and the national hub also looks at and discusses good practice.

You mentioned the west of Scotland. Every local authority is covered by a RIC, and they are important places for collaboration as well. The RICs are perhaps a part of the system that does not get much discussion. It is perhaps understandable that national Government, its agencies and local government get more attention, but the RICs form an important part of the information sharing and collaborative working. That was absolutely the intent when the RICs were established.

As well as the work that I have mentioned by Education Scotland, we have the 32 attainment advisers—one for each local authority—who are there to advise. They are aware of what is happening right across Scotland and they can relate that. There are also events that go on.

I refer back to the point that I made about the support that Education Scotland can provide to every local authority and indeed directly to schools. It can take the knowledge that has been gathered and disseminate it to headteachers.

It has been good to hear headteachers say—I hope that this is, in part, because of the work of the RICs and Education Scotland—that they feel confident and that they are in a place to be able to implement policies using PEF that they feel will make a difference. They are aware of the policies and they feel confident that they can take them forward. I think that I mentioned that in my introductory remarks, so I will not go through the specific stats on that.

The final part of the collaborative work that is being done is the work by Education Scotland and different local authorities on collaborative improvement. A number of local authorities have been through that process, and every local authority will go through it. The work is being done in close conjunction with the Association of Directors of Education in Scotland to make sure that there is continuous improvement in learning.

**Ross Greer (West Scotland) (Green):** I am interested in the potential for a longitudinal study of the impact of the funding so far. I think that it was Jim Thewliss from School Leaders Scotland who first made the point to us that we are at a stage where entire cohorts have gone through the whole of primary or secondary education while the funds have been in place, and that this is an appropriate time to commission a long-term, longitudinal evaluation of the overall impact that the funding has had in specific settings? Is any

work under way or likely to take place over the coming months that will fit that description?

**Shirley-Anne Somerville:** I saw the evidence that Jim Thewliss gave. There is no longitudinal work of the type that I think he was referring to. A lot of evaluation work has been undertaken, and we are finalising the evaluation work for the refreshed SAC. It is an interesting proposal and I am happy to consider it further, perhaps hearing directly from Jim Thewliss, who can of course feed in his views.

We gather a lot of data on education in Scotland. There is data that is gathered by local authorities and data that is gathered as part of the NIF. I am keen to consider whether what has been proposed would be a worthwhile exercise, and there is a query within that about what impact it would have on teachers' workloads and so on. We have to consider all those caveats, but I am happy to take the proposal away, have further discussions on it and see whether there is a role for it. I will take a decision on it in due course.

**Ross Greer:** That is really good to hear. The last part of that answer probably points to your answer to my next question but, if such a piece of work was to be undertaken, where would responsibility for it sit? Would it be with Education Scotland or with Graeme Logan and the learning directorate? I am interested in the accountability around evaluation of the scheme overall, but if a specific bit of longitudinal evaluation work was to be done, where would it best sit?

**Shirley-Anne Somerville:** I would have to look at what we wanted to achieve from it before that determination could take place. Stakeholders would have views on where that would best sit, and I would listen to them if we were going to take the proposal forward. The overall responsibility for the evaluation clearly sits with the Scottish Government, but Education Scotland plays and will continue to play a very important role in the evaluation over the coming years.

**Ross Greer:** How much of Education Scotland's role is about ensuring that the RICs and local authorities are evaluating and feeding back versus doing its own direct evaluation?

**Shirley-Anne Somerville:** As we went through the refresh, particularly with the introduction of stretch aims, we were keen to ensure that we were not asking local authorities or schools to carry out work that they were not already doing, because we did not want to put an additional burden into the system. The way that the refresh has worked is that it has been done in collaboration with the Scottish Government, and the determination of what could be involved in the stretch aims will involve things that are already part of school improvement plans and local

authorities' work. It is important to me that, as we look at this, we do not put further pressure on the system at any time, but particularly at this time.

National accountability is very important, but I hope that there will also be an ability to have local accountability for the stretch aims and for what happens in local authorities, with discussion at any time, whether that is through the committee, through elections or whatever. It is important to have that accountability at different levels. However, at the national level, it sits with me.

**Ross Greer:** I have a question about encouraging that local accountability. It is not for the Scottish Government to tell local elected members what they should have on their agenda, but how do you strike the right balance between giving local authorities the autonomy that they deserve as elected bodies and trying to encourage and support them to do local evaluation work that can collectively be fed up to build the national picture?

**Shirley-Anne Somerville:** I have been heartened by the overall acceptance of the need to ensure that there is excellence and equity in education. I do not think that that is just a national Government thing; it is also accepted by local government. At both the local and national Government levels, we need to continue to look at what we can do in our different areas in order to see progress. There will be some aspects that national Government should rightly be challenged on, and there are some aspects that rightly sit within local government's focus, on which it should be challenged and asked to consider doing more.

We touched earlier on the variation within and across local authorities. The data that we have suggests that that variation is marked, and if we can tackle that, we should do so. That is another lens for looking at the poverty-related attainment gap, because it cannot all be explained by different poverty levels in different parts of Scotland. I think that there is a real desire and a determination in local government to tackle the poverty-related attainment gap. That is a shared endeavour between local and national Government. When my COSLA counterpart is elected to their position, I will be keen to meet them to continue the discussion on how we can take that forward within our different responsibilities.

11:00

**Ross Greer:** To clarify, where does responsibility for trying to reduce that variation lie nationally? Does it lie directly with Government or would Education Scotland take the lead on that?

**Shirley-Anne Somerville:** Education Scotland is an agency of Government, so the responsibility

absolutely lies with me as the cabinet secretary. However, Education Scotland played a very important role in the refreshed attainment challenge funding around both the support that is provided, but also the challenge where necessary.

Education Scotland is, as I am, keen to have a collaborative approach, but there needs to be a little bit of grit in the system where, for example, the work that Education Scotland has done with a local authority does not then deliver the types of progress that one might expect. It is the responsibility of local government to discuss that. There is a collaborative approach. There needs to be that grit in the system, but it is there only for a situation where the collaboration has not produced the changes that we would all like to see at the pace that we would like to see them.

**Stephanie Callaghan (Uddingston and Bellshill) (SNP):** We have spoken about the comments of Ruth Binks from Inverclyde Council, about the challenge authorities being pathfinders, about the fact that the workforce has skilled up and about the authorities' ability to manage PEF money growing year on year. In the evidence that we have taken, we have heard about teachers being able to reach into families, understand them better and understand the impacts of poverty. We have also heard that teachers have independently reached similar understandings of what has worked well for families and what has the most impact.

Do you consider that the pathfinder funding approach was successful? What has worked particularly well? Were there particular challenges? Mr Marra has commented about cuts quite a lot but, if we look at the pathfinder approach, that is not really what has gone on there. He mentioned some personal conversations that he has had, but that was not committee evidence. Was it clear enough from the outset that a pathfinder approach was being taken, or is that perhaps a learning point?

**Shirley-Anne Somerville:** The easiest way for me to answer that is probably to direct the committee to the evidence that it took from the directors of education, and Ruth Binks in particular. She said that they were very much told that they were pathfinders who were to look at how to make things work. There is always a wish for funding to continue over a number of years, but I think that that was clear. The pathfinders were very successful in trying out different models, looking at what worked in their systems and ensuring that the learning was shared not only in their local authority, but with others. The easiest way for me to answer the question is probably to point to the evidence that the director of education in Inverclyde gave when she was at committee.

**Stephanie Callaghan:** How will multiyear funding support better planning?

**Shirley-Anne Somerville:** One of the lessons that came across loud and clear—not just in this part of Government, but in other parts—was a wish for longer-term guarantees of funding in order to allow better longer-term planning. That was understandable, and it particularly came across from headteachers who wanted to plan out the PEF part of the Scottish attainment challenge funding. I was very cognisant of that and we were pleased to be able to deliver it. It will allow schools and local authorities to do more long-term planning and ensure that there is a bit more continuity—for example, in the staff who are there for young people.

**Stephanie Callaghan:** Mr Dey made some important points about the collaborative working that has developed and really flourished with the RICs at both the local and national levels. Families seem to have had quite a bit of input and there has been close working with teachers and so on. How can we ensure that families continue to influence policy and decision making not just at the local level, but at the national level, too? How do you intend to do that?

**Shirley-Anne Somerville:** At the individual school level, there is the school improvement plan work. Parents and indeed young people should play an important part in that. We should not forget the importance of listening to young people as part of that work. In the national setting, we are very keen to ensure that the voice of parents comes through in different parts of policy right across education. We have connections at both official and ministerial levels with parents' groups and we hear directly from them. They also play an important part in the Scottish education council, which ensures that they are involved.

Although teachers know their young people best and we should have an empowered system, part of a headteacher's work is to take account of parents' views as they deliver school improvement work, and I think that that is to everyone's benefit.

**The Convener:** Cabinet secretary, thank you for the time that you have given us this morning. As convener of the Education, Children and Young People Committee, I would have you here more frequently, because I always enjoy your appearances.

**Shirley-Anne Somerville:** As do I, convener.

**The Convener:** I am very pleased to hear that you enjoy them as well. However, if, as is likely, we next see you at least six months from now, how should we judge your performance as cabinet secretary in relation to the topic of our inquiry? Will you give me and the committee two or three things

on your list of objectives that we can measure you against six months from now?

**Shirley-Anne Somerville:** Six months from now, we will have a fully refreshed system and we will have the stretch aims in place. We will be able to discuss those stretch aims, and not in the abstract. I will perhaps make it easier and just point to that, convener.

**The Convener:** Okay. That is fair enough. I will accept your list on that basis and we will look to revisit that in due course.

I thank not only the cabinet secretary but also Graeme Logan and Alison Taylor for joining us this morning. We wish you a very good day. I will suspend the meeting for five minutes to allow a change of witnesses.

11:08

*Meeting suspended.*

11:11

*On resuming—*

## Subordinate Legislation

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

**The Convener:** Welcome back. The next item on our agenda is an evidence session on the Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022. This morning we will take evidence from officials from the Children and Young People's Commissioner Scotland's office. I welcome Nick Hobbs, who is the head of advice and investigations, and Maria Galli, who is the legal officer. Good morning.

The regulations that we are considering are described by the Scottish Government thus:

"The current process of placing authorities petitioning the Court of Session to recognise DOL orders cannot be sustained. It does not serve the interests of the child or young person at the heart of each application, and it places a burden on Local Authorities and on the court itself, when resources could be better directed elsewhere."

You do not support the measure. Tell us why.

**Nick Hobbs (Children and Young People's Commissioner Scotland):** It is probably important to start by saying that the problem that the regulations are directed at solving is, we recognise, not of the Scottish Government's creation. We are sympathetic about the complexity of the issue that it is trying to address; we have seen that complexity ourselves through interventions in a number of cases that have come before the Court of Session and the United Kingdom Supreme Court on cross-border placements and on use of inherent jurisdiction to deprive children of their liberty.

The complexity of the issue is why it is so important that we get the measure right—and that we get it right the first time. Our view is that we need a coherent package of regulations that could span a number of different areas of law including children's hearings, mental health and education. That is to ensure that placements are made only in exceptional circumstances, that they are made where they are in the best interests of the child, that they are temporary and that they provide clear parity of legal protection around deprivation of liberty and around children's rights to health and education in domestic law. Our concern is that the regulations as drafted provide insufficient certainty.

**The Convener:** Are you looking for a more permanent solution?

**Nick Hobbs:** We are looking for the regulations to be significantly strengthened. You will see that in the appendix to the evidence that we have provided to the committee, where we set out a number of ways in which that could be achieved.

**The Convener:** Yes—but the Government is saying that the measure is temporary to meet the objectives that I just read to you. Is that not reasonable?

**Nick Hobbs:** It is absolutely reasonable to try to put in place something temporary with a view to the proposed children's care and justice bill addressing it on a permanent footing, but implementation of the proposed children's care and justice bill is a couple of years away. Although the measure is a temporary fix, it is a fairly long-term temporary fix, so it needs to be robust, and it needs to be compliant with Scotland's obligations under the European convention on human rights, the United Nations Convention on the Rights of the Child and other international law. The package of regulations needs to be significantly strengthened if it is to achieve that objective.

**Ross Greer:** If you do not mind, I will start with a daft question, because I am certainly not a lawyer. What do you recommend? Is it that the High Court should be able to make orders only for a maximum of 22 days and then a couple of subsequent—potentially, three months—extensions? That is not directly relevant to the regulations, though, is it? That is either for the proposed bill or more directly for the UK Government and UK-wide legislation.

11:15

**Nick Hobbs:** We think it can be ensured that the orders could be made for a shorter period through the regulations. You are right that a number of the issues are outwith the direct control of the Scottish Government. One thing that I think we need is assurance from UK Government ministers that they are doing something to resolve the root of the problem, which is the lack of secure and appropriate provision for children in England and Wales.

We can provide, through regulations in Scotland, significant additional protections for children's rights in respect of the length of time for which an initial order can be made lawful in Scotland, the units that can accept a placement and the undertakings that can be provided by an English local authority. The Government has some levers that it can pull to significantly strengthen the protections in Scotland.

**Ross Greer:** I recognise that there are ways in which the regulations can be strengthened. However, particularly on restricting the High Court's ability in terms of the length of orders, it

seems to me to be questionable whether we would be able to do that through regulation in Scotland. I assume that any English authority that was seeking to challenge that would at least have a pretty strong case, given that the matter is not in primary legislation in Scotland and is not relevant to the UK-wide legislation—the English legislation, specifically—that applies.

You mentioned a couple of other concerns that I am interested in getting into in a little bit more detail. One of them—it seems to be very reasonable—is that under the regulations the Care Inspectorate will not be obliged to inspect facilities. There is an obligation to notify the inspectorate, but it is not obliged to take any particular action. Given that the regulations are a temporary solution, would you be satisfied if the Care Inspectorate simply made a commitment to inspect, although it would not be required to by regulations, given that what we are talking about will—we hope—be in place for two years? If the Care Inspectorate simply made a commitment to inspect facilities, would that address that specific concern?

**Nick Hobbs:** That is about two things. The first is the distinction between a policy commitment and holding units and public authorities—including Scottish public authorities—accountable against particular legal duties and obligations.

It is also about how effective the regulations will be in securing the rights and protections for children that we think are necessary. It is not just about inspection itself; it is about the standards against which units are inspected and providing parity of legal protection that a child would get if they were a Scottish child being placed in a secure unit. It is about trying to provide parity in respect of secure care standards and the additional requirements that are in place for Scottish units that are authorised to deprive children of their liberty.

Broadly, I think that the concern is that we should try to ensure that as much as possible is placed in statute. A Care Inspectorate report was published this morning at 10 am; I appreciate that committee members will not have seen it yet. It very helpfully lays out a number of concerns about the Care Inspectorate's own powers: issues that it has found through consultation and a survey of its inspectors on what they have seen already, and about the ability of the inspectorate and other agencies to hold providers accountable. Our view is that wherever possible that needs to be a statutory duty—a requirement—because that is what gives children the best protection.

**Ross Greer:** The concerns in the Care Inspectorate report are widespread; I am certainly not disagreeing with you in principle. I am trying to figure out whether we are in danger of letting the

perfect be the enemy of the good, especially given that the measure will be temporary. There are a couple more specific points that you raised that I am interested in getting clarity on. You mentioned that

“There is a real risk that without sufficient legal restrictions, Scotland is opening the door to significant numbers of cross-border placements, and to the possibility that this will be exploited by private, profit-making providers.”

My understanding is that that is exactly what is happening now, and that the regulations do not go far enough—which I think the Scottish Government itself would admit. That is why proposals on a children’s justice bill are out for consultation at the moment. Surely what is proposed in the regulations would not incentivise further use of cross-border placements. It might not reduce them by as much as we want, but it would reduce them.

For example—I recognise that you have specific concerns on this point—the regulations will give the Scottish Government the ability, through the sheriff court, to take action against a placing authority. To me, that is a disincentive. If I was an English local authority seeking to place a young person with a private provider that is based in Scotland, the potential for the Scottish Government to pursue me through the sheriff court would be a disincentive rather than an incentive.

Do you recognise that although perhaps the regulations do not go far enough, they do not incentivise further cross-border placements, but instead disincentivise them?

**Nick Hobbs:** On your first point about the perfect being the enemy of the good, we absolutely agree with that. The concern is that we cannot apply the appellation “good” to the regulations—they are not good enough at present. We are not looking to create some sort of utopian legal position; we are trying to make sure that the regulations do the minimum that is necessary in order that Scotland can discharge its obligations in international law.

On your second question, I will let Maria Galli answer on the legal element. I will say that there are questions about how that would work legally and how effective it would be.

**Maria Galli (Children and Young People’s Commissioner Scotland):** One of the main issues that we have a concern about is children’s access to justice and the right of children to an effective remedy and to challenge such decisions—to challenge their being removed from their families and, as is often the case, placed many hundreds of miles away, in an entirely different system, and then being deprived of their liberty and having to face all the rights restrictions that happen there.

There is nothing in the regulations that we consider would be good enough to allow such children to challenge that, so it is immaterial whether the Scottish ministers would seek to uphold the commitment made by the placing authority from England. I think that there is a real difficulty as regards the rule of law with the Scottish ministers taking public authorities in England to court. We might enter into a bit of a debate about constitutional law on that particular remedy. It is the absolute absence of the child’s voice in any of this that is of most significant concern.

A lot more must be done. The regulations are not good enough, as Nick Hobbs said. It is absolutely the case that the minimum standards need to be achieved. Scotland has incorporated the UNCRC into its law, so we should at least be taking the maximalist approach that we can take on rights protections in the regulations. We should not be making new law that allows children’s rights to suffer in this way, and that is our principal argument against the regulations as they stand.

Many concerns have been expressed across the legal profession on remedies and so on, and the Supreme Court raised an interesting and important point. Such placements are inadequate, but they are happening and children are being exported out of England into Scotland. That is not being done through our system. There is a mechanism whereby it could be done through our system, but English authorities are choosing not to use that mechanism; they are choosing to do it through the inherent jurisdiction of the High Court. Such placements are happening because of the lack of suitable placements in England. Scotland will be able to provide a better care service for English children, but it must be the same better care service that our Scottish children are entitled to.

There must be parity, and the regulations and the process and procedure of what has been happening for two and a half years give no parity or consistency for such children from England, who are being discriminated against. There needs to be a much more robust understanding of the fact that the child must be involved in the decision-making processes. Although we are aware that cases have gone to the Court of Session to have the authorisation from the English High Court, many cases have not been taken to the Court of Session. In that sense, the regulations would prevent an incentive if you want such placements to continue.

We must remember that many of the children are placed before any legal action is taken, without any planning. Many of them are placed on an emergency basis. The difficulty that we have seen with the Court of Session cases is that no children



have been represented since the initial case. No child is represented in the court, so the court does not hear the voice of the child. That cannot be right when we are incorporating the UNCRC into Scots law. The rights to an effective remedy and to participation are probably fundamental here.

**Ross Greer:** I am sorry to interrupt. I have huge sympathy with so much of what you have said, but I am trying to drill down and identify each point of concern. Am I right in understanding from what you have just said that you do not believe that the regulations would provide a further incentive?

Part of the question here—not all of it—is whether we will end up in a position in which, for the next two and a half years, we will continue to see a significant increase in the number of placements. Do you believe that the regulations make it more likely that we will continue to see such an increase? That is the bit that I am struggling with here. I accept that it is questionable and that we will end up facing a question of constitutional law, but given the provision that allows the Scottish Government to pursue the placing authority, in my view that is a pretty clear disincentive to an English local authority to try for a placement in Scotland. I am still trying to understand why you think that the process incentivises placement in Scotland.

**Nick Hobbs:** There are two elements to that. The first one is—if we think about what the current process is—that it is necessary to make an application to the Court of Session. It is necessary to instruct counsel and to find Scottish solicitors, and there is significant expense and legal complexity involved in that process. If we create a route whereby such orders would, in effect, be automatically recognised and transferred into a Scottish order, that would be much simpler and more straightforward.

The question about whether the role of Scottish ministers provides a disincentive relates to the question of how effective the regulations are in providing a route through which English local authorities could be held to account against their legal duties. We have the undertaking in there, but it is drafted pretty vaguely. As you will have seen, we have made a number of suggestions as to how that might be strengthened.

As Maria Galli pointed out, the right of access to remedy and redress is removed from the child, which is where it should be, because the child is the one who knows best whether their rights are being respected and whether their needs are being met, and vested with the Scottish ministers. There are real questions of practicality about how the Scottish ministers will become aware of a child whose rights are not being respected in this place. Despite the best of intentions, how is a child expected to communicate that to a faceless group

of individuals in Victoria Quay? How will the Government assess whether those needs have been met? That is before we even get into the practical question of what order a sheriff court could make against an English local authority, which is where we come to the constitutional issue that Maria Galli talked about.

That probably goes to the nub of one of the major concerns that we have about the regulations, which we talk about in our submission. They provide what appear to be significant rights protections but, once we drill down and start to ask questions about how the process will work in practical terms, we are left with a lot more questions than answers. Such protection can appear quite illusory, and that is the case in this instance.

**Graeme Dey:** My question is about the interaction and relationship between the office of the commissioner and the Scottish Government. From what you have said, there seems to be quite a lot of blue water between your position and that of the Government. Was there any discussion between the office of the commissioner and the Scottish Government while the regulations were being put together?

**Nick Hobbs:** We have engaged extensively with the Scottish Government right the way through the process, going back to the very first case that we became aware of some three and a bit years ago. We have been talking to policy and legal officials as part of their consultation process. Most recently—last week—we talked to them about the regulations themselves. We have had a detailed conversation with officials about the amendments that we have proposed and our request that the minister withdraw the regulations, reconsider them, strengthen them and then bring them back to the Parliament, so that they provide the robust and effective children's rights-respecting solution that we all agree is necessary.

You said that there seemed to be clear blue water between us and the Government. On policy intent and the principles that we want to see applied here, we are absolutely in alignment with the Government. The difference between us at the moment is about what is necessary to achieve that policy intent.

**Graeme Dey:** I want to be clear. Are you saying that the conversation about the proposals took place only last week, after they had become public?

**Nick Hobbs:** We could have a conversation about the regulations only once they were public because, until then, we did not know what they looked like.

**Graeme Dey:** That is my point. Were you not having a dialogue before then about what progress in this area would look like?

**Nick Hobbs:** Only as part of the consultation, which sat at a level above the detailed regulations.

**Graeme Dey:** You mentioned the opportunity for the child to challenge, but surely that challenge would lie with the placing authority. The challenge ought to be between the child and their representatives and the placing authority, so it would not lie in Scotland, would it?

11:30

**Nick Hobbs:** One of the questions that is raised by the regulations and the issue to which they relate concerns the complex interaction between two legal jurisdictions. The child is placed by the English local authority, which retains all its responsibilities and duties to meet that child's needs and, under the regulations, it would have to pay for the services that the child required.

However, that is without prejudice to the existing Scots law duties that public authorities such as local authorities and health boards have to a child in their area. The requirement to conduct a child in need assessment under the Children (Scotland) Act 1995 would still apply to the Scottish local authority. We get into issues to do with additional support needs and mental health. It is a challenging and complex area. There might well be a situation in which what the child wants to challenge is the failure of a Scottish public body to respect their rights in Scots law, or they might need advice on their rights in Scots law, because those have not been respected by the English local authority.

Maybe we can talk a little about additional support needs, because that might be the area within education that is thrown into sharpest relief. I will ask Maria Galli to touch on that.

**Maria Galli:** Absolutely. All the children whom we are aware of are autistic; they are all teenagers who have complex experiences of trauma and adversity in their childhood. We are very well aware of the peers and counterparts of these children in Scotland. All of them, as far as we have seen, are not having their education needs met, nor are they having their additional support for learning needs met, which it is an obligation of the state in Scotland to ensure happens.

That is hugely concerning, because without having a co-ordinated support plan, a needs assessment to identify exactly who they are and where they are from, or a mental health assessment, they will not have access to mental health services here. In Scotland, the services all align in the framework for decision making and

assessment—the getting it right for every child framework—which is laudable. The national practice model allows that to happen in Scotland for every Scottish child. That is not happening for the children we are talking about. They are falling between the cracks when it comes to access to services and having their needs met.

**Graeme Dey:** Would the element of access to advocacy services not be a step forward?

**Nick Hobbs:** Advocacy is certainly welcome. There is no dispute or disagreement about the value that a good advocate can bring for a child. Their having a Scottish advocate, in addition to their legal right to an English advocate, is not a concern for us. The issue is that advocates are not legal representatives. An advocate's role is to help the child to speak, but the advocate may not have the detailed legal knowledge to let the child know what their rights are and how to secure remedy or redress when those rights are violated.

**Willie Rennie:** It has been an extremely helpful session. I understand the issue of equality between English children here and Scottish children here—I get that—but is there a particular issue as regards equality between English children here and English children in England? You say that the proposals are not compatible with the UNCRC or ECHR. Is that the case in England as well?

**Maria Galli:** It is not our place to comment on English law or its compatibility with such rights, but we can stress the significant absence of availability of suitable rights-respecting accommodation in England for such children with the highest and most complex needs. That gap or missing link in the chain of rights protections for children in England is what is causing the situation in Scotland that we are discussing. That is as far as we can comment on the English provisions and their compatibility.

The provisions that we are discussing are not compatible with those rights, nor, in many cases, is our existing system. The children in secure accommodation could argue that some of their rights are not being met, but, if we were to do a comparison between a child who is in secure accommodation in Scotland and one who is in one of the privately run children's houses in Scotland and being deprived of their liberty, we would find that there is blue water between them. That is absolutely significant, and we want any regulations that are intended to fix the gap that exists to provide the necessary safeguards for the English children on the same level as they are provided for Scottish children.

All the work has been done in Scotland. Our rights-respecting approach has been fostered and promoted by children and young people

themselves, and the independent care review and the Promise are being implemented in Scotland. We want to see the same thing happening for English children if they come here.

**Willie Rennie:** Are English children who are here worse off than English children in English facilities?

**Maria Galli:** You would probably have to draw such comparisons on a case-by-case basis. For example, it might be in a child's best interests to come to Scotland and to be deprived of their liberty to receive intensive supports, but we cannot take a blanket approach. We must proceed on the basis of meeting the individual needs of the individual child.

**Willie Rennie:** Finally, are you optimistic that the Government will come to an agreement with you on the best way forward?

**Maria Galli:** We are certainly hopeful.

**Nick Hobbs:** It very much depends on the view that the committee takes today. We look forward to hearing the minister's evidence next week, and I am sure that we will have further conversations with officials on the issue after our evidence session.

**The Convener:** The Supreme Court ruled that the deprivation of liberty was in line with human rights, did it not?

**Maria Galli:** That was in the T case, which was the seminal case from last year. The Supreme Court criticised the fact that there was an absence of suitable provision. Essentially, it reluctantly agreed that, in England, children could be placed in alternative provision that was unregistered and that was not secure accommodation. We should bear in mind the fact that secure accommodation in England—both the enterprise and the facilities—is an entirely different thing from secure accommodation in Scotland; people sometimes think that they are the same thing.

The Supreme Court came to its decision because of the significant and horrendous absence of suitable placements. It said that the issue had to be fixed politically, that resources had to be increased and that greater protections had to be provided for children's rights in England, but that, in the meantime, in emergency situations in which children had reached a life-threatening crisis point, placements to keep them safe could be authorised. It did that very reluctantly. It did not address the question of cross-border placements.

**Ruth Maguire:** Colleagues have probably covered the areas that I was thinking about. I wanted to ask about the policy intention and advocacy. I am feeling a bit confused. I care about all children in all countries, but there is an issue about how we influence what is happening in

England if the standards are not being met there. With the best will in the world, if we do not make the changes that are in the regulations, children will still be placed here. The proposed changes include the addition of the advocate so that the child's rights are better supported and their voice can be heard.

This might be a silly question, but I am going to ask it, because it feels like an important topic. How will amending the regulations help the practice in England, which you are saying does not seem to be rights based? Can you lay that out for me so that I can understand it?

**Nick Hobbs:** You are absolutely right that there is limited ability for the Scottish Government or the Scottish Parliament to impact on practice or law in England through regulations made and laid before this Parliament. These regulations provide for a mechanism through which an English order can lawfully be transferred into a Scottish order. You can place restrictions around the circumstances in which that can happen. For example, there could be a restriction on a Scottish residential unit that prevents it from accepting a placement except where certain criteria are met. That is what we have tried to do with the amendments that we are suggesting. We absolutely recognise that tension and that challenge, but we are trying find ways that are within the competence of the Government and the Scottish Parliament to provide some safeguards.

The restriction on which unit can accept a placement; strengthening the undertaking that the English local authority provides; providing access to legal representation in Scotland—all those things can be done with the powers that the Scottish Parliament has and will provide additional human rights protections. The Scottish Parliament cannot require the UK Government to produce more secure units or place direct obligations on the High Court to behave in particular ways, but we can restrict the route through which those orders are translated into Scotland in a way that provides additional rights protections for the children who are coming here.

**Ruth Maguire:** What would that mean for a child in England?

**Nick Hobbs:** It would mean, for instance, that we, in Scotland, would have more confidence that there had been proper planning and consultation between the placing authority and the Scottish local authority. Our amendments would mean that there was a jointly agreed care planning meeting between the two local authorities, in which it was agreed what the child's needs and rights are and who will meet them. It would mean that the child would be much clearer about what their rights are in Scotland and they would be able to contribute to the conversations and processes.

There is a really interesting point of comparison, which is that, if an English local authority is placing a child into another English local authority, there is a legal obligation on it to conduct a consultation and a meeting within five days of doing that, so that they can agree exactly those issues. There is no legal obligation on it to do that when it is placing into Scotland, but the regulations could be drafted in a way that makes sure that that meeting happens, and that is the kind of amendment that we are suggesting.

**Ruth Maguire:** I appreciate that you have already said that the proposed children's care and justice bill is the place to properly sort this out, and I think that we all agree that the use of deprivation of liberty orders should be reduced to a bare minimum and that they should be used only in cases where they are absolutely essential.

This question follows on from what Ross Greer asked, and I ask it to have the issue clear in my mind. The status quo will not stop cross-border placements from happening. Do you agree that it will not decelerate their use either?

**Maria Galli:** An important thing to remember is that this has happened before, with secure accommodation cross-border placements. In 2017, there had to be an agreement between the UK Government and the Scottish Government that English children could be placed within secure accommodation in accordance with our statutory framework. That was a temporary fix to resolve the situation that was happening down south, with an increasing lack of placements and resources. It was exactly the same as what has happened now, but we are now in a much worse position.

When that happened, there was an agreement that the orders from England would convert into compulsory supervision orders in Scotland with authorisation for secure accommodation. That meant that, in Scots law, children who were deprived of their liberty could be placed only in secure accommodation. That is the existing situation.

What has happened since then and what we are hugely concerned about is the sunset clause. There was supposed to be a review of those placements from 2017, but, as far as we know, that has not happened. We have seen an exponential rise in the number of English children being placed in our secure accommodation, and that has had devastating consequences for Scottish children in Scotland, who have not been able to access secure beds. That is an entirely separate issue, but we must learn from the difficulties that happen, because as soon as we authorise and condone the practice of moving children far from their families and communities, we could absolutely see more of it.

The disincentive that is required is to say that Scots law does not allow those types of placements to operate at all, and, if you want to comply with Scots law, you must raise the standards up to what we expect for Scottish children.

11:45

**The Convener:** Graeme Dey has a question.

**Graeme Dey:** Thank you for indulging me, convener.

I am looking at the proposed amendments from the commissioner's office, many of which make perfect sense in the context of the legislation that is coming down the track. However, I want to pick up on one practical point—this is not a hostile question. You say that any care home that accepts young people must be

“registered, regulated and inspected by the Care Inspectorate as a care home for children and young people”,

and must have

“a recent ‘adequate’ inspection report.”

We would all agree that that is fundamental, but it is not practical at the moment, because we are still in the pandemic and there will probably be a backlog of inspections. In fact, what you propose, with the best of intentions, could make the situation worse because, if insufficient numbers of homes met that particular criterion, there would be an issue about where to place the children, full stop, would there not?

**Nick Hobbs:** With that suggested provision, we are trying to avoid the situation that we have seen in England and Wales. In the care system there, many local authorities have divested themselves of their care homes, a lot of private providers have moved into that space, and children in care are very much seen as a commodified resource. Because the area is seen as one for people to secure profit, over the past few years in England and Wales, care homes have been popping up like mushrooms, being inspected six to nine months later and then being immediately closed down—frankly, the inspection reports would give you nightmares. At that point, a child might have been there for a significant period and might have had a quite horrendous experience.

Our suggestion aims to mitigate the risk of that and ensure that we can be confident that we are placing children only into provision that can meet their needs. We would welcome a further conversation with the Scottish Government about that. We can talk about what “recent” means and what time period we are talking about but, when we are authorising and allowing children to be placed in residential units in Scotland and being

deprived of their liberty—it is the most significant human rights interference that the state can make in the life of a child—we need to have a level of confidence that those units are of a minimum standard.

**Graeme Dey:** You are absolutely right about that, but do you recognise the risk that, if the proposal was accepted, we could have fewer opportunities than are required to place the children now?

**Nick Hobbs:** It certainly might restrict the supply, but we would argue that the balance of risk is a necessary consideration in taking a rights-respecting approach.

**Maria Galli:** Nick Hobbs mentioned the report that the Care Inspectorate has published, which is hugely welcome and answers that question. The inspectorate has undertaken an inspection and review of the placements over the past two and a half years, and it has made a number of recommendations and proposals to the Government, and to itself, as to how to improve the inspection processes.

**Graeme Dey:** What would you consider to be “recent”?

**Maria Galli:** From my point of view, and looking at what the Care Inspectorate has been doing, it would have to be within the past six months. The difficulty is that places are popping up, being registered as care homes and perhaps being regulated and authorised as care homes, which is absolutely fine, but they are not meeting the standards that are required for secure accommodation.

**Ross Greer:** I want to bring together two points that Nick Hobbs made that are perhaps related. A couple of moments ago, you said that there is a question about the connection between the young person and Scottish ministers, if it comes to the issue of whether ministers should pursue the placing authority. The issue is about how ministers would know to do that, if the young person does not have any connection with them.

I think that that is related to the question of the role of the advocate. I completely accept your point that an advocate is not a substitute for legal representation. There are complications because, with the young people who we are talking about, if they have a lawyer in the first instance, in almost all cases, it will not be a lawyer who practises Scots law. Is there not a potential role for the advocate there?

There is a question about how to create a connection between the young person and the Scottish ministers for the use of the potential power to pursue through the sheriff court. Could that not be addressed through guidance for the

independent advocates that that is part of their role in advocating for the young person? If, after discussion, the advocate and young person believe that it is necessary, part of the advocate’s role could be to create a connection with ministers and the Scottish Government to see whether the option of pursuit through the courts is viable.

**Nick Hobbs:** The advocate can certainly play a role in that. The advocate’s role is to elevate the child’s voice in proceedings, meetings and discussions that the child is involved in. Advocates play a hugely valuable role, but they will not necessarily know what the child’s rights are in Scots law. We keep referring to this report that I know members have not seen, which is a little unfair, but one thing that the Care Inspectorate report flags up is that children often arrive in Scotland with very little awareness of their rights in English law, let alone in Scots law. They are the most acutely vulnerable children. Therefore, although advocates can play a role, in our view it is not sufficient to rely on them to provide the appropriate level of safeguard and the link to ministers.

**Kaukab Stewart:** What you have said so far has been interesting. I think that we have all more or less accepted that the Scottish Government is in a difficult position. You want to keep the use of the orders to an absolute minimum and keep people as close to home as possible. Therefore, what work have you done with the UK Government? The situation is driven by underprovision in England, so have you lobbied the UK Government and, if so, how did you get on with that?

**Nick Hobbs:** We have been in close contact with our sister offices in England and Wales and with legal and human rights organisations in both jurisdictions. In fact, as I should have said at the start, our position on the regulations was informed strongly by a round-table discussion that we conducted shortly after the regulations were published. That involved children’s commissioner officers, advocates, solicitors from both jurisdictions and human rights organisations. The view in the round-table discussion was absolutely unanimous about what needs to change in the regulations and how strong they are.

The Scottish Government has contact with UK Government ministers and needs to make that argument for additional provision. It is outwith the mandate of the children’s commissioner in Scotland to tell the UK Government how to set up its care system. Our sister office in England has been strong on the issue in the past few years and has conducted a lot of research. The previous Children’s Commissioner for England was very vocal about the matter, and courts in England—both the High Court and the Supreme Court—

have been vocal about it. In the T case, Lady Black referred to matters having been brought “repeatedly” to the attention of those whose job it is to do something about them, so the UK Government is not unaware of the issue.

We now have before us Scottish regulations that are very much within the mandate of the Scottish children’s commissioner to comment on and to affect.

**Kaukab Stewart:** You are here in front of this committee. Would the Education Committee at Westminster be a route to get to ministers, who obviously are the ones who will make the decision?

**Nick Hobbs:** We would be happy to provide evidence to the Education Committee at Westminster. The issue has come before the Parliament down there—as I said, it is not new. The courts and the Children’s Commissioner for England have been lobbying on the issue and advocating for change for some years.

**The Convener:** I am sure that my good friend Robert Halfon would be pleased to hear from you and others.

As no one wants to say anything else, I thank Nick Hobbs and Maria Galli for being with us in person to give that important evidence to the committee. We wish you a very pleasant rest of the day.

11:54

*Meeting continued in private until 12:25.*

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