The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 23 June 2015

Session 4

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HEALTH AND SPORT COMMITTEE
21st Meeting 2015, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)
*Colin Keir (Edinburgh Western) (SNP)
*Richard Lyle (Central Scotland) (SNP)
*Mike MacKenzie (Highlands and Islands) (SNP)
*Nanette Milne (North East Scotland) (Con)
*Dennis Robertson (Aberdeenshire West) (SNP)
*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stephen Fricker (Scottish Parliament)
Ailsa Garland (Scottish Government)
Jamie Hepburn (Minister for Sport, Health Improvement and Mental Health)
Jim Hume (South Scotland) (LD)
Fiona McQueen (Scottish Government)
Moira Oliphant (Scottish Government)
Marc Seale (Health and Care Professions Council)
Dave Watson (Unison)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Health and Sport Committee

Tuesday 23 June 2015

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Scottish Public Services Ombudsman Act 2002 Amendment Order 2015 [Draft]

The Convener (Duncan McNeil): Good morning and welcome to the 21st meeting in 2015 of the Health and Sport Committee. As I usually do at this point, I ask people to switch off mobile phones and other electronic devices, as they can interfere with the sound system. As you can see, many people around the table are using tablet devices instead of hard copies of our papers.

Agenda item 1 is subordinate legislation. The committee will consider an affirmative instrument. As usual with such instruments, we will have an evidence-taking session with the minister and his officials. Once all our questions have been answered, we will have a formal debate on the motion. The instrument that is before us is the draft Scottish Public Services Ombudsman Act 2002 Amendment Order 2015.

I welcome to the committee the Minister for Sport, Health Improvement and Mental Health, Jamie Hepburn; Susie Braham, who is head of independent living fund Scotland implementation in the care, support and rights division of the Scottish Government; and Victoria MacDonald, who is senior principal legal officer in the directorate for legal services in the Scottish Government.

I believe that the minister wishes to make a brief opening statement.

The Minister for Sport, Health Improvement and Mental Health (Jamie Hepburn): Indeed, convener. I shall be very brief.

As members are undoubtedly aware, the United Kingdom Government is closing the independent living fund on 30 June 2015. The fund is already closed to new applicants and has been for some time—since 2010. In Scotland, we have announced our commitment to a new national Scottish ILF to safeguard the interests of the 2,831 existing Scottish users and to ensure the fund's long-term future. We have also announced our commitment to open the fund to new users for the first time since 2010, with funding of £5 million for 2015-16 being made available to do that.

The ILF provides discretionary cash payments to disabled people to enable them to purchase care or support from an agency or to pay the wages of a privately employed personal assistant. Payments offer people the flexibility that they may not otherwise have to live in their own home, to take up employment or education, or to socialise like other members of society.

We have established a new organisation—ILF Scotland—to administer ILF awards. It will be fully operational by 1 July 2015 and all existing Scottish ILF users will transfer to it from that date.

The purpose of the order in council is to add ILF Scotland to the jurisdiction of the Scottish Public Services Ombudsman. That will allow complaints about ILF Scotland to be dealt with by the ombudsman and will help to ensure an effective and robust complaints-handling procedure. The policy is that, once the internal ILF Scotland complaints-handling processes have been exhausted, a complainant should have the right to an external tier of redress via the ombudsman, as is already the case for many public bodies across Scotland. The ability to complain to an independent ombudsman is an important right. The order will ensure that ILF Scotland operates in line with similar service providers in Scotland.

I am happy to answer any questions that members may have.

The Convener: Thank you, minister. Do members have any questions?

Rhoda Grant (Highlands and Islands) (Lab): I have a very quick question. There is a period of time—it is a matter of days—in which the scheme will not be covered. What will happen if an issue arises then? I assume that, given the short time period, there would be the opportunity to take up the complaint after that.

Jamie Hepburn: Yes, you are right. That period of time will be very short. The order should go before the Privy Council on 15 July and come into effect immediately thereafter, so we are talking about a period of two weeks.

We can only estimate the number of complaints that there will be, of course, as we never know how many people will ultimately complain. Ideally, we would like no one to complain, but people should have the right to do so. We estimate that only around three complaints could end up with the ombudsman in any given year in the first instance. The likelihood of there being any complaints in that intervening period is pretty low, but nonetheless it is a possibility.

During the interim period, if complaints arise where there could be the need for external redress, they would be dealt with by the sole director of ILF Scotland, who is the deputy director

of care, support and rights in the Scottish Government. That role is consistent with the other interim responsibilities of the sole director, who is carrying out the role until the new ILF Scotland chair and board of directors are appointed.

We have an interim measure, but the likelihood of its being utilised is pretty low. Those may be famous last words, of course.

The Convener: Members have nothing further to say, so I do not expect that the minister will want to say any more.

Jamie Hepburn: Not particularly, convener—not unless you are desperate for me to do so.

The Convener: Agenda item 2 is the formal debate on the affirmative instrument. I invite the minister to move the motion.

Motion moved,

That the Health and Sport Committee recommends that the Scottish Public Services Ombudsman Act 2002 Amendment Order 2015 [draft] be approved.—*[Jamie Hepburn.]*

The Convener: As no members want to contribute, I do not expect that the minister will want to sum up, given the absence of debate.

Jamie Hepburn: You are correct, convener.

Motion agreed to.

The Convener: I thank the officials for attending. I suspend the meeting to allow a changeover of officials.

09:06

Meeting suspended.

09:07

On resuming—

Carers (Scotland) Bill: Stage 1

The Convener: Agenda item 3 is our final evidence session on the Carers (Scotland) Bill at stage 1. The Minister for Sport, Health Improvement and Mental Health has been joined by a new set of officials, who support him in this policy area. They are Dr Maureen Bruce, deputy director, and Moira Oliphant, team leader, care, support and rights division, population health improvement directorate; and Ruth Lunny, principal legal officer. Welcome to you all.

Before we begin, I express the committee's thanks to a group of young carers who spent time with us last Thursday, to share their experiences of their caring roles and their views on the bill. Their experience has allowed us to reflect on the reality of caring as a young person. That experience was quite varied, and the evidence was very good.

If the minister does not mind, I ask Bob Doris whether he wants to say anything about that session.

Bob Doris (Glasgow) (SNP): I will be very brief. I am sure that the minister will be interested to know how much the young carers value the support of the Princess Royal Trust for Carers centre in Falkirk. Many of them had a complete lack of information about the support that is available for young carers until they found that vital resource.

I will mention two issues that the young carers raised that are relevant to the bill. They are absolutely convinced that short breaks are vital in supporting them to be not just carers, but normal young people getting on with their lives, separate from their caring responsibilities. They also want greater status in relation to the healthcare system in order that they can deal with situations such as the cared-for person being taken into hospital unexpectedly. I am sure that those matters will be teased out, but given that that is what the young people told us, it is nice to mention them at the start of the session. Thank you for giving me the opportunity to do that, convener.

The Convener: Thank you. The session may come up later. Minister, you wish to give an opening statement.

Jamie Hepburn: Thank you for the opportunity to say a few words about the Carers (Scotland) Bill and why I believe it is important.

Both adult and young carers are integral to our society. They provide vital care and support to their families, friends and neighbours. I thank the

committee for its scrutiny of the bill; it was very positive to hear about the committee's productive session with young carers, and I know that there have been other evidence sessions as well. I thank the committee for the work that it has undertaken so far.

We have seen much progress in supporting carers. I hear directly from carers about how their lives have changed for the better and the personal outcomes that they have achieved as a result of the support that they receive. The Scottish Government has invested over £114 million between 2007 and 2015 on a range of programmes and initiatives to support carers, and it is investing further in this financial year. However, some carers are not being supported and that can have a adverse impact on their physical, emotional and financial wellbeing. That is a concern for us all. Another concern is that carers can experience very challenging circumstances, including economic and social disadvantage. Sometimes young carers do not have the best childhood.

A crucial role for the bill is to complement important policies and drivers such as the integration of health and social care and the roll-out of self-directed support. Integration of health and social care with the progressive roll-out of integrated joint boards is vital in providing seamless services and empowering local communities to take charge of their own health and wellbeing in innovative ways.

There is a key role for new legislation to accelerate and sustain the progress that has already been made to bring about a step change in the way that services support carers and to inspire renewed ambition about supporting carers. This is within a wider context, which is really important. As we all know, Scotland has a growing population of older people who are successfully living longer, but often doing so with a range of complex and multiple physical and mental healthcare needs. There are more children with complex health needs or disabilities.

We need to support Scotland's carers so that they in turn can support the many people with illnesses and disabilities or who are frail, many with dementia. Of those carers, 47 per cent live in the most deprived areas, caring for 35 hours a week or more. It is striking that that is almost double the level found in the least deprived areas. We need to support carers who experience considerable disadvantage, especially if the impact of caring is taking its toll. Therefore, our wider work to tackle health inequalities within the even wider context of tackling economic disadvantage is crucial.

The Carers (Scotland) Bill is a fundamental part of delivering the wider strategy to tackle inequalities and the work that we are doing to deliver the Scottish Government's vision for carers. Our vision is that carers, whatever their circumstances, should enjoy the same opportunities in life as people without caring responsibilities. It is my intention that Scotland's carers should be better supported on a more consistent basis, so that they can continue to care, if they so wish, in good health and to have a life alongside caring.

The objective of the bill is to make real that ambition by furthering the rights of both adult and young carers. The bill is designed to deliver on fundamentals such as carer involvement and participation, comprehensive yet person-centred support planning, preventive and community-based approaches to supporting carers, a strategic overview, and development through the local carer strategies. I believe that the bill strikes the right balance between making the necessary requirements on local authorities and health boards to deliver support for carers and providing the flexibility to ensure a personalised approach to support.

In reviewing the evidence from a wide range of interests, it is clear that there is broad support for the bill's principles. We have listened carefully to carers and carer organisations in developing the bill's provisions, and I hope that carers will be able to recognise their voices in the bill as it stands. As I said in Rhoda Grant's members' business debate on carers in the Parliament on 10 June, I welcome any suggestions that seek to improve the bill and the lives of carers and young carers across Scotland.

We are engaging with important stakeholder interests to consider their views further, and we will give full consideration to all good suggestions as we take the legislation forward. I hope that we have been able to demonstrate that willingness with the Mental Health (Scotland) Bill, which will be debated at stage 3 tomorrow. It is my intention to proceed on that basis with this bill, too.

I look forward to the committee's continued consideration of the Carers (Scotland) Bill and the contribution that scrutiny and consideration can make to the bill's improvement. I also look forward to the discussion that we are about to have, and to any questions that members may have.

The Convener: Thank you, minister. The first question is from Dennis Robertson.

09:15

Dennis Robertson (Aberdeenshire West) (SNP): Minister, you will be aware that we have taken evidence from a number of carers and carers organisations, and one issue that has been raised concerns the criteria for eligibility. Local

authorities state that it is necessary for them to set the criteria so that they can reflect local need, but carers and carers organisations would like some certainty and stability. If those criteria are set by local authorities, there is a concern that many carers may not meet them, and that would not reflect your aim of ensuring that carers have a life outwith their caring role. How will you reassure carers and carers organisations that have raised those concerns?

Jamie Hepburn: Thank you for that question. We need a balance between ensuring a more consistent approach and recognising that each local authority is a body corporate in its own right and has democratic accountability, given that councils are ultimately accountable to their electorate. The intention behind the bill is to ensure better support for carers across the board. The bill also contains a duty for each local authority to publish the local eligibility criteria that are to apply in its area, and those must be reviewed every three years. We decided that the criteria should be set locally to ensure local decision making, but that is overlaid by national guidance. In that regard, the bill refers to

"such matters as the Scottish Ministers may by regulations specify."

When each local authority sets its local eligibility criteria, it must have regard to that national direction, and we will consult on those regulations.

That is essentially a balance between the bill's intention to ensure a better, more consistent level of support for carers and recognising that local authorities are ultimately democratically elected bodies.

Dennis Robertson: If you feel that the criteria have been set such that many carers will not be eligible for support, will you intervene?

Jamie Hepburn: We will monitor the implementation of the bill, as Parliament would expect, and we will pay particular attention to the efficacy of the provision and how it is being rolled out on the ground. We have retained the ability to set national criteria in regulations, should that be determined necessary. My clear preference is for us not to get to that stage, and to have the national direction as set out in the bill. As I have said, the local eligibility criteria will be overlaid by national guidance. That is my preferred approach, but should it be necessary at some point down the line, we could introduce national eligibility criteria.

Dennis Robertson: So if individual carers or organisations feel that the eligibility criteria for support have been set too low, if you like, they can approach the local authority. If they do not get a satisfactory outcome, they could come back to the Government and say, "We are not being treated fairly. The provision is not meeting the objectives and outcomes set by the Government in order to give people a life outside of caring", and you would intervene.

Jamie Hepburn: Even if I wanted to say to national carers organisations, "You can't raise this issue with me as the minister responsible", they would raise it with me anyway. We are in regular contact with national carers organisations on a range of issues, not least the bill. If people have concerns, I expect them to raise them with me.

We want to get this right at the outset. Under the bill, it is necessary for carers and carers organisations to be involved in local carer strategies. They should also be involved in drafting what the application of local eligibility criteria should mean. It is about empowering carers. They must be involved in the process.

Dennis Robertson: However, you can understand some of the concerns. If a family moved from one local authority area to another, the eligibility criteria might be different, so they might drop out of support.

Jamie Hepburn: I can understand that perspective. The key point for me is that the eligibility criteria in a local authority area have to be clear to people in that area. If, by their nature, the criteria are local, there might be differences from one local authority area to another but, as I said, any local eligibility criteria have to be informed by the matters that we set out in regulations.

The bill also includes a more general power to support carers who do not meet eligibility criteria. The bill is writ through with an approach that is designed to support carers.

Dennis Robertson: There is general support for the integration of health and social care in all sections of society, but there will be a greater emphasis on local authorities meeting need as we move people from acute services to primary care services. Therefore, local authorities suggest that there will be a greater burden on them. Does that not mean that care and support for carers could be diluted to an extent, because authorities will prioritise people who move from acute services to primary care services?

Jamie Hepburn: No, I do not think that there is evidence to suggest that that will be the case. We are all supportive of the integration agenda, which is about trying to ensure a more seamless interaction between the health service and social care. I cannot envisage the particular challenge that you refer to. It is true that we want to get more folk out of acute care and into primary care and community settings. The bill could be a significant advance in achieving that, because one of the barriers might be that carers do not feel

particularly well supported in their caring role, which could cause delays in that transfer.

Dennis Robertson: Surely the challenge is a resource one.

Jamie Hepburn: We have set out a significant resource in the financial memorandum over the lifetime of the forecast. We will resource the bill's provisions.

The Convener: I am a wee bit surprised by you saying that you were not aware of any concerns. Dennis Robertson was referring to evidence to the committee that indicates that, although many people—including many members—support the bill, there will be challenges in delivering on increased expectations. Those challenges have been well rehearsed by the Convention of Scottish Local Authorities.

Various professional organisations told us that if we go beyond the regular and substantial test to a universal position, the numbers will be greater than the estimate in the financial memorandum. That relates to the producer side of the story, if you like—the people who are paid to deliver the support.

However, we heard the same from the other side of the story in a couple of the evidence-taking sessions with carers. We found ourselves explaining the position and why it would be a good idea to extend support and to identify carers at an earlier stage. The carers had their own experiences of difficulties in being assessed appropriately and in getting appropriate help. Young carers asked us last week about the impact on them, and the older carers we met in Glasgow said that things were difficult enough already. They were concerned that, if we broadened the measures out and increased expectations, they might lose out.

Does Nanette Milne want to supplement that point?

Nanette Milne (North East Scotland) (Con): I wanted to raise a slightly different topic—I can wait.

The Convener: I will let the minister answer the point first, then.

Jamie Hepburn: Of course I recognise that, in any demand-led process, which is ultimately what we are instituting, there are forecasting difficulties. We are confident that our forecast is appropriate, although I know that COSLA has expressed concerns about it and that the matter was explored with the Finance Committee recently.

The removal of the regular and substantial test is a positive step. It is sensible to broaden out the scope of the bill to cover carers who should be eligible for assessment and, potentially, for support. I think that the removal of the test will not in itself result in a large increase in the number of carers requesting an adult carer support plan, because, as we know, the majority of councils do not use that test just now. Indeed, we have supportive quotations from councils about removing that barrier to assessment. Aberdeenshire Council, for example, says that it will "improve equity and consistency".

Those who decline a carer's assessment now might not want the new adult carer support plan—perhaps those who feel that the current assessment is stigmatising. Others might decline the assessment because they are content to be involved with the community care assessment of the cared-for person, because they do not feel that they are a carer—that is an issue in itself that we might touch on—or because they feel supported already. We know that about carers who do not come forward for support quickly—again, this is an issue in itself for carers as a group. The carers allowance is a case in point.

We are dealing with a low baseline, and the forecast for demand is not unreasonable. I accept that it is difficult to come up with an absolute or certain figure when we are dealing with a demand-led process.

The Convener: Yes. I am not arguing over the principle; I am trying to articulate the concerns of carers who have told us in evidence that there can sometimes be a long wait for assessment and for a package to be put in place. If people with a low level of need are going to be assessed, what will that do to carers who need assessment quickly? Carers say that resources are scarce when it comes to getting access to social workers and having on-going and changing needs addressed. In practice, we are searching for assurances that what is a worthwhile measure will not impact on those who are in more urgent need of care, and that regular, on-going care will be provided.

Jamie Hepburn: Of course, it will be for each local authority to manage the case load. It will be a question of how authorities handle the cases that they deem more urgent. Some of that could be determined by the processes that are set out locally.

In the financial memorandum, we have set out substantial additional resource. By the financial year 2021-22, there will be more than £63 million for support for carers, which I think we would all agree is a considerable sum. We are proposing to resource the recognition that, over time, a rising number of people will come forward. I hope that that takes care of people's concerns. We are going to resource the measures properly.

The Convener: COSLA said that another issue will arise over time. It made the case that making

the support available would result not just in a greater number of people coming forward but in people being likely to take up support. There are examples from England of where such processes have not been as slow as people thought they would be. COSLA argued that in England there was take-up in the short term, over a three-year period, rather than a slow build-up in demand. It said that there was a surge at the beginning. I do not know whether that has been taken care of.

09:30

Jamie Hepburn: We will assess any evidence that is available; in fact, we have done that as part of the process. A comparison has been made with free personal care, on which the take-up rate has been higher. I do not necessarily think that that is comparing apples with apples. We would expect the take-up rate for free personal care to be higher, because most of the people who are entitled to it are already known to local authorities. We will take on board any evidence that is available, but there is plenty of evidence to suggest that the take-up rate will rise steadily on an incremental basis.

The Convener: If there is a short-term surge, how will the Scottish Government cope with that? What would your reaction be if there was a surge in the early weeks and months of implementation? We are dealing with vulnerable people, and we cannot necessarily deal with them retrospectively. What contingencies are in place to ensure that, if there is a surge, you can respond to it?

Jamie Hepburn: We are in dialogue with COSLA. We have set up a finance group to look at the issue in further detail. You alluded to the concerns that have been expressed by COSLA about the resourcing of the bill. We have made an offer to look at any different forecasts based on COSLA's evidence. Thus far, it has provided no such evidence. We have set up a finance group to look at such matters in greater detail, and COSLA will be represented on that group. We will continue to explore those matters in detail with COSLA.

You mentioned that there has been a surge in England, but I am not convinced that there has been anything that could be described as a surge per se. Officials are in dialogue with colleagues down south, and they are not talking of a surge per se. Of course, we will continue to—

The Convener: Has there not been a significant increase in demand in England?

Jamie Hepburn: Perhaps I can invite—

The Convener: Maybe my use of language is poor—maybe it cannot be described as a surge. What can we learn from the experience in England? Has it affected your thinking?

Jamie Hepburn: I have no doubt that there has been increased demand in England, and we are forecasting an increase in demand as a result of the Carers (Scotland) Bill. Maybe it comes down to a matter of language; I would not necessarily describe that as a surge.

The Convener: I accept that it is recognised that the bill will result in increased demand over time. I used the word "surge"—you can choose any word you like.

Jamie Hepburn: Well, I would describe it as increased demand.

The Convener: The experience in England is that that has happened in the shorter term rather than the longer term. Does that give you any cause for concern?

Jamie Hepburn: I invite Moira Oliphant to say a bit more about the contact that she has had with colleagues down south. I think that the use of the term "surge" is probably unhelpful.

The Convener: I am not here to argue over words. A point has been made about an increase in demand in the shorter term. I ask Ms Oliphant to tell us about the experience in England and whether it should give us concern. If it should not give us concern, I will have my answer—that is fine.

Moira Oliphant (Scottish Government): The experience in England is that there has not been a surge in demand in the first few months of operation of the Care Act 2014 down south.

The Convener: There has not been a surge, so COSLA is wrong.

Moira Oliphant: We have spoken to officials down south and they have said that the demand that they might have anticipated has not emerged, but the act has been in operation for only a few months, so we will have to look at the situation again.

The Convener: So COSLA is wrong to use that as part of its argument. The committee can discount that.

Jamie Hepburn: Ultimately, the committee will have to come to its own position. I suggest that the use of the word "surge" does not reflect reality. We are confident in the figures that we have set out.

The Convener: What is your view of the evidence that has been put to the committee by COSLA, which represents the people you will be putting in charge of delivering the policy?

We have established—I do not know why it took us 10 minutes to do so—that we should not take into serious consideration COSLA's claim that there will be a surge or unpredicted demand in the early implementation period. We have been told

that we should not worry about that and we can discount that view when we are producing our report.

Jamie Hepburn: If you want to put it that way, that is the way you want to put it. The point that I am making is that we are confident in the figures that we have set out in the financial and policy memorandums. We are confident in our methodology. We invited COSLA to provide us with its methodology, and it has not done so thus far. We will continue to work with COSLA, and that is a reasonable position to take.

The Convener: Good. Thank you.

Bob Doris: I will not explore the idea of a surge any further, but I want to mop up one or two other aspects of the very relevant points that the convener made.

The first was the comparison with free personal care, which I thought was interesting. In Glasgow, for example, there is a time period within which someone who would qualify for free personal care is assessed. Once the person has been assessed, there is a time period that he or she has to wait before the package is delivered. I am not sure whether that is the case for carers who are getting assessments currently across local authorities.

To what extent will the decisions on acceptable waiting periods for assessment and delivery be for the discretion of local authorities? I would feel more comfortable, not with the Government dictating what the time periods should be but perhaps with it giving some guidance on carer's assessments to which local authorities should operate. Some information on that would be helpful.

Jamie Hepburn: That is likely to be the space that we will occupy on that issue. There is a spectrum of people involved in caring responsibilities dealing with a spectrum of different conditions. I accept that there could be some circumstances in which the assessment would need to be done very urgently. I am thinking of those who have caring responsibilities for people who are perhaps near the end of their lives, who might have a greater need than others to be dealt with on an expedited basis. There is nothing in the bill at this point about timescales. We are only at stage 1 and we are open to hearing arguments as to why there should be. The argument for them might be particularly persuasive in the circumstances that I have just set out. That is something that we can deal with as we move forward into stage 2.

Bob Doris: Just to follow up very briefly, because you gave more information than I thought you might—

Jamie Hepburn: I like to be helpful.

Bob Doris: I am not sure how I feel about the information, but it was interesting, because this committee is at the stage of considering what should or should not be in the bill.

What I was considering was not so much prioritised cases but the generic, routine carer's assessments. Any gaps between identifying someone who needs an assessment, getting that assessment done, identifying a package and delivering that package are unfortunate. Gaps happen in other aspects of local authority delivery at the moment. Some guidance from the Government would be helpful—we can deal later with whether that should be in the bill or elsewhere.

You moved on to my second point, which the convener made well, about the carers who are already in the system and getting a reasonable service—not a superb service, but everything is relative—from local authorities. They have concerns that their service might be diminished somehow. I am sure that that will not be the case for them, but what about those new carers coming into the system who should get priority? Will any guidance be given to local authorities to make sure that there is a fast-track process via social work departments or integrated health and social care boards?

To finesse it slightly, there are two issues here. The first is to make sure that there is no gatekeeping or other undue delay in the routine carer's assessments, which will take place universally now. Can that be dealt with in regulations? Secondly, can regulations deal with the need to prioritise?

You might want to comment further on those points and I wanted to be clear that I saw them as two separate issues.

Jamie Hepburn: That is the point that I was trying to make in response to your initial question, which was about whether this issue will be dealt with in guidance. As I have said, that is the space that we are occupying right now. Of course, that guidance has not been written or bottomed out, and I will be very happy to take on board any perspective that the committee might have on the matter. Equally, if it emerges that this issue should be covered in the bill itself, I am open to hearing that case, too. We are just at the start of the process, and I am not going to be taking an overly prescriptive approach; instead, I want to do whatever is most effective to support carers. I suppose that, in my previous response, I was simply highlighting a particular subset of carers—for example, those providing palliative care to the cared-for person at the end of their life—for whom the process might need to be expedited.

The Convener: There are a number of supplementary questions.

Richard Lyle (Central Scotland) (SNP): Minister, you said that the finance-led group had been established. Who are the members of that group, and when do you expect it to report?

Jamie Hepburn: We have invited a number of organisations to join the group. COSLA has been invited to send two representatives. When I gave evidence to the Finance Committee, I was asked whether COSLA had responded positively to my invitation; at that stage, it had not, but I can now confirm that it will participate.

Other members of the group include, from the Scottish Government, the deputy director for finance, health and wellbeing; the head of internal financial performance; the team leader for local government finance; the deputy director of the care, support and rights division; the team leader for the carers policy; and two representatives from analytical services. There are also the two representatives from COSLA I have just mentioned; a representative from Social Work Scotland; three policy reps from councils; two local authority directors of finance; one representative from a national health service board; and, crucially, two representatives from the national carers organisations.

As for timescale, we want the group to meet and report to me as soon as possible.

Richard Lyle: COSLA continually says that the Scottish Government does not fully fund the legislation that it passes. What if a local authority comes back to you and says, "We have spent more than you have given us?"

Jamie Hepburn: At this stage, we are trying to bottom out any concerns that COSLA might have; indeed, that is—in part—why the group has been established. As I have pointed out to the convener, we invited COSLA to provide an alternative figure and an alternative methodology, but it has not been forthcoming. I am very willing to receive that information from COSLA and to let my officials have a look at it.

Nanette Milne: In his reply to Bob Doris, the minister touched on the issue that I wanted to raise in my substantive question; basically, it was about those who provide what one might describe as terminal care. Clearly, those people need to be identified quickly. For a start, a lot of them do not recognise themselves as carers in the first place, because they are just husbands, wives and so on. They also need to have their care plan reviewed quite quickly and, indeed, quite frequently, given that their circumstances will change regularly and in a fairly significant way as time moves on.

The minister will not be surprised to hear that I have been speaking to Marie Curie Cancer Care about this issue, given that I have raised it before. It feels that a care support plan for these carers should be in place within seven days of their being identified as carers and then, as I have said, reviewed regularly. It also feels that the stipulation in the policy memorandum that

"local authorities must set out their plans for identifying carers within the context of the ... carer strategy"

could be strengthened either in the bill itself or in guidance if general practitioners and primary care were included. After all, an awful lot of these people will come to light via their GPs and the primary care team rather than through local authorities.

The final point in that context is the need for short breaks for respite and for local authorities to be in a position to offer them.

Those issues can be covered either in the bill or in guidance. I would like to have them on the record and hope that consideration will be taken of them.

09:45

Jamie Hepburn: I have touched on that issue with Mr Doris, and I recognise that it is important. We are committed to looking at the provisions in the bill that might relate to those who are caring for people who are at the end of life. The point is well made that, if it is identified that they need a support plan, they will need it pretty quickly, as is the point that the support plan may need to be reviewed fairly regularly—almost on an on-going basis.

We are happy to hear any concerns that may be expressed by Marie Curie or any other organisation about how we can get that right; at the end of the day, that is what I want to do through this bill process. We will continue to look at that issue. We are not a million miles apart on it.

I recognise that carers not self-identifying as carers is a challenge. People may not always think of themselves as such; you made the point that they think of themselves as the parents or the children of the person that they are caring for. We recognise that it is important to encourage carers to come forward to seek assistance, which is why we are trying to widen the scope of people who can be eligible for the assessment process. I am not convinced that it is necessary for us to do anything on a legislative basis to improve carer identification, but I am open to hearing any perspective that should be set out by the committee members as we assess the bill's provisions.

The bill contains three provisions that relate specifically to short breaks. The first is that local authorities,

"in determining which support to provide to a carer ... must consider in particular whether the support should take the form of ... a break from caring."

There is also a duty on local authorities to

"prepare and publish a short breaks services statement."

Another provision is that the adult carer support plan and young carer statement must contain

"information about whether support should be provided in the form of a break from caring".

Breaks from caring are part of the process as it is set out in the bill.

Rhoda Grant: I want to ask a few more questions about costs. In their evidence, the councils raised the costs of preparing the support plan. They said that the amount of money that is given in the financial memorandum as a maximum is what they calculated as being the mid-range of costs for the preparation of a support plan.

There were also concerns about the cost of a short break. It might be useful to put on record what you see a short break as consisting of. You were at the cross-party group meeting at which carers said that it would cost more than £1,000 to replace them for a week to allow them to have a short break for that time. That sum is vastly higher than what the financial memorandum identifies.

Those are two cases in which we have heard specific evidence that the actual costs are not reflected in the financial memorandum.

Jamie Hepburn: I am aware that COSLA has expressed concerns about the unit costs of the adult carer support plan and the young carer statement. The method of establishing the unit cost was very much steered by COSLA, which was concerned about league tables of unit costs appearing. COSLA wanted instead to ask local authorities for the total number of carer assessments carried out in a year and the total costs, and then for Scottish Government officials to work out the unit costs, which it has done.

It was COSLA that wanted the average unit cost worked out, and not the median. That was not a particular problem from our perspective. The £176 unit cost for the adult carer support plan is the average based on questionnaire returns from 14 local authorities, and I think that it compares favourably with the median unit cost of £116 in England. That is a similar picture to the unit cost for the young carer statement.

On the unit cost of support for short breaks, we are taking short breaks seriously. We have included a short breaks enhancement of £2.36 million in the financial memorandum because we recognise the importance of short breaks. We have also committed in the financial memorandum—the spending review permitting—to continue the short breaks fund. We take short breaks seriously and we provide substantial financial resources for them.

Rhoda Grant: Are you saying that short breaks are dependent on the amount of money in the fund rather than on an entitlement for each carer to have short breaks?

Jamie Hepburn: No. I am saying that that is what we are providing towards it. Of course it is to be person centred and based on the assessed needs of the individual carer who comes forward seeking that assistance. However, I am making the point that we are providing a substantial amount of resource towards that area.

Rhoda Grant: Carers are telling us that the cost is greater than is allowed for in the financial memorandum. Will that cost fall on councils or will the Scottish Government top up the fund?

Jamie Hepburn: I go back to the finance group that we have established. These are matters that we will continue to discuss with COSLA. Our perspective is that we have set out in the financial memorandum that we will provide a substantial amount towards the support of short breaks. I think that £2.36 million per year could fairly be described as substantial. There is also the short breaks carers fund, which we want to continue as well.

Rhoda Grant: Will the Government fully fund the costs of the bill? I think that that is the question. Financial provisions are being made, but it is not clear whether the cost of the bill will fall on local authorities or whether it will be fully funded by the Scottish Government.

Jamie Hepburn: We are funding the provisions of the bill and we have set that out in the financial memorandum.

Rhoda Grant: If there are additional costs that the financial memorandum has got wrong, will you fully fund them as well?

Jamie Hepburn: We will continue to maintain dialogue with local authorities. We have to fund local authorities on an annual basis through the budget settlement, so there will always be that process of dialogue with local authorities as part of setting any Scottish Government budget.

Rhoda Grant: So you are not going to guarantee fully funding the costs of the bill.

Jamie Hepburn: When we have that annual dialogue and discussion with local government about each budget settlement, that is us committing to funding any provisions that we legislate for.

Rhoda Grant: I think that that is where councils are concerned, because they feel that the costs of the bill will be greater than the Scottish Government has estimated. If that comes out of their existing resources, which are declining, it means that the services that they provide to other people—including, indeed, cared-for people—may be put on hold because they are obliged to fund the carer support primarily.

Jamie Hepburn: I have made the point a couple of times now, Ms Grant, that if COSLA wants to make an alternative estimate and bring forward its methodology for how it came to that estimate, we will receive that and analyse it. We have not received that.

Rhoda Grant: Would you fund it? That is the question.

Jamie Hepburn: The first point is that we would like to receive it and see what it is. We have not seen it thus far.

The Convener: I realise that Dennis Robertson is still waiting to ask his supplementary, but as Bob Doris is seeking further clarity on the short breaks issue, I will bring him in first.

Bob Doris: I will really try to be brief, convener.

As I was listening to the dialogue between Ms Grant and Mr Hepburn, I sensed a disconnect in what was being discussed, which brings us back to the need to define what a short break is for the individual, for the local authority and under national criteria. For some of the people whom I and other committee members spoke to, a short break might be an evening off to go to the cinema with friends so that they can continue to be a young adult and do what young adults do. For others, it might mean a week away. Some local authorities will invest significantly in short breaks while, in other local authorities, what looks like a short break might be a little bit different.

I am not sure how any group can resource short breaks fully, given that the process is based on individual circumstances, on each local authority's individual strategy or, indeed, on what is defined as a short break under this bill, which I hope will soon be an act. The disconnect relates to how we can ever cost short breaks, and I must repeat the minister's view in that respect. Is this more about local authorities having strategies for extending short breaks to those most in need, which would be based on individual circumstances? The definition of a short break is quite important.

The Convener: To see if we can get some clarity here, I will come in at this point with a question that brings us back to Rhoda Grant's comment. The minister mentioned a number of duties that will be placed on local authorities to consider and whatever, but the carers organisations have expressed disappointment at the absence in the bill of a right or an entitlement to a short break, which is something that you have fallen short of providing. Is it the case that the bill places no duty on local authorities to provide a short break?

Jamie Hepburn: That is correct, convener. At this stage, the bill includes no such duty; it is not the case that local authorities have to provide a short break. I can go over the details again if you want, but in any assessment of an individual carer's needs, authorities must ensure that they assess whether a short break should be part of the package of support. That gets to the heart of Mr Doris's point. It has become very difficult for us to be overly prescriptive and definitive about what constitutes a short break, because it can mean very different things to different individuals.

As a result, I think that the approach should be led by the assessment process. We should remember that we are removing the "regular and substantial" test, which means that someone who provides one or two hours of care a week could be entitled to an assessment—and rightly so, in my opinion. Now that those carers are encompassed by the assessment process, there is even more of a need for the decision on whether short breaks should be part of the package of support to be assessment-led.

That said, convener, I have already made the point that we are at the start of this process and that if a compelling case can be made for a statutory right of all carers to a short break and if that is something that we can accommodate, we will of course look to do that. The national carers organisations have told my officials that they believe that they have come up with some mechanism and have undertaken to provide us with information on that. I do not think that they have done so thus far, but when they do, we will of course take their submission seriously.

The Convener: We appreciate that answer.

Dennis Robertson's supplementary might take us back a wee bit, but it is only a one-off. We will then move on.

Dennis Robertson: I will try to be very brief, convener. My point goes back to Mr Doris's questions. We have established that we can prioritise for end of life, and I suspect that, for end of life, the referral route to provide support for the carer will come from the health profession. I am trying to understand how we prioritise who gets the assessments and who carries them out, given that we cannot establish priority until the assessment has been carried out. A fundamental issue about the provision of care is that the care plan can be established only after we have gone in and carried out an assessment. How do we

prioritise who gets the assessments in the first place, and how do we decide who carries them out?

Jamie Hepburn: With the removal of the "regular and substantial" test, someone who is a carer is now entitled to seek an assessment. I recognise that there is also an issue about how quickly that assessment should be undertaken, but I think that Mr Doris's point was about how quickly the package of support can be put in place after the assessment is carried out. I merely observed that there might be particular circumstances in which that could be felt to be particularly urgent. I recognise that any carer who comes forward for assistance, who is assessed and whose assessment leads to their being entitled to a certain amount of support will want that support to be put in place as quickly as possible.

10:00

Dennis Robertson: I think that you are missing my point altogether, minister.

Jamie Hepburn: Okay. Why do you not explain your point to me, Mr Robertson, and let us see whether or not I can get it?

Dennis Robertson: I shall endeavour to do my best, minister.

My point is that the amount of care that a person requires cannot be established until an assessment has been carried out, which means that a difficulty for providers is prioritising who requires assessment. How do we enable providers to prioritise? It could be about the referral and whether it is the carer or whoever who makes the referral, but someone needs to be able to establish where the priority lies. The end-of-life example is a fairly easy one, but in general terms, I am simply saying to you that what is required to meet need cannot be established until the assessment has been carried out.

Jamie Hepburn: I accept that. My point was that anyone who meets the broad criteria for being a carer will be entitled to that assessment. Obviously, we need a system that is finessed to deal with how they are prioritised; we are at the start of this process, and I am open to suggestions about how we can do that most effectively. The point that I was making was that we want to ensure that the process is as seamless and expedited as possible for everyone who goes through the system. Indeed, that is my ambition. However, I recognise that there are particular groups of carers—I have offered one example, and I am willing to hear others—who should be expedited further.

I hope that I have understood Dennis Robertson's point.

The Convener: The issue of priority that has been raised could be another layer or barrier in addition to the contentious issue of whether people have actually been assessed properly that we continually get in our case work and, indeed, hear about in evidence. When the person gets their assessment is another process that has to be gone through. It is all very challenging.

The broader question is: has there been any discussion with other professional bodies about a standard assessment process across local authorities? We could easily make a presumption in respect of a person who is near death or has cancer—although cancers are progressive and can build up, which leads to an urgent need at the end—but we can also take a preventative approach to support carers dealing with someone who, although not at the end of their life, might nevertheless be in an urgent situation. If the carer collapses, that will leave two people in hospital. How can we deal with the whole issue of prioritisation with limited resources? Surely it is not going to be left to politicians.

Jamie Hepburn: No. Not to put too fine a point on it, I hope that a degree of common sense will kick in. If someone is in the circumstances that you have set out—if they have collapsed and are in hospital, and the carer needs an urgent assessment—that situation can be taken care of. My point to Mr Robertson is that we have not necessarily been overly prescriptive about the issue of prioritisation at this stage, and I am open to hearing other suggestions.

Nanette Milne mentioned Marie Curie Cancer Care's particular concerns. We have heard those concerns, and we are committed to looking at the particular case that the organisation is making. If it becomes clear that other subsets of carers need to be prioritised, we will be happy to look at such matters as we progress the bill.

The Convener: I presume that your officials and organisations are discussing what a prioritisation model would look like. Was your comment about end-of-life care a casual one? Is that an obvious area for priority?

Jamie Hepburn: No, my comment was not casual. I was simply observing that those dealing with end of life present themselves as an obvious group.

The Convener: And that view is not based on any work that you have carried out.

Jamie Hepburn: It is based on our awareness of groups that have raised particular issues, which we will respond to. I will bring in Moira Oliphant at this point.

Moira Oliphant: Given that we are meeting the national carers organisations soon, we will be able

to discuss the issue further with them. I note that looking at the impact of caring is important in helping with prioritisation, once a carer has received an adult carer support plan, but we will certainly pursue the matter.

The Convener: The fact is that carers are worried. If there is a universal right to a carer's assessment for non-urgent matters, it raises questions about the diversion of resources, and people want to be reassured that if an assessment is urgently required, it will, as the minister has said, be put in place. Common sense will prevail in 90 per cent of cases, but it is important that we reflect some of the questions that have been put to us in the evidence that we have received.

Jamie Hepburn: That is the virtue of this process: questions are raised with you, you gather the evidence and we respond to that evidence. You have my commitment that we will do so.

Rhoda Grant: I want to ask about carers' right to refuse to care. Carers' assessments are always carried out on the basis that the carer will care, and assistance is then put in place to allow them to do that. A number of carers have told me that it is assumed that they will care. That is particularly the case for couples in which one partner is caring for the other. If the relationship should end, there is no way out of that for the carer—they cannot walk away. When a relationship is at an end and someone wants to make a new life elsewhere, it is still assumed that their caring role will continue. Should there be in the bill a right for the carer to decide whether they will care and for how long?

Jamie Hepburn: First, the words in the bill are "able and willing" to care, so people's willingness to care is part of the process. The impact on young carers' lives could be particularly acute. Part of the young carer statement process will deal with whether it is appropriate for the young person to undertake caring responsibilities and whether they want to continue caring.

We would not want to compel people to undertake caring responsibilities: people must want to continue that caring responsibility. The bill is designed to support those who want to do that, but who also want to have a life beyond that caring responsibility.

Rhoda Grant: A carer could, for example, say that they are, as part of their carer support plan, willing to care between the hours of six and midnight, but that they need a night's sleep because they need to go out to work. Their local authority must then provide the care outwith that.

Jamie Hepburn: The ambition is to have a person-centred focus in which it would be incumbent on the local authority to respond to and to take seriously points that are made about an individual carer's circumstances. If the carer has other commitments or needs that must be met, that has to be part of the assessment process.

The bottom line is that we cannot compel people to care for people. We would not want to do that.

Rhoda Grant: I think that that happens at the moment; in fact, I know that it does. A constituent of mine was sent home in the middle of the night with someone who could no longer walk or talk, and all they had been given was a Post-it note with the name and phone number of a person who might have been able to help. It turned out that that person could not help, but the assumption on discharge was that the person in question would give up their own life to care for someone without any support or assessment.

That brings me on to discharge planning—

Jamie Hepburn: I am happy to talk about discharge planning, but I have to say that it is hard for me to talk about the particular case that you have just highlighted. If you want to contact me about it, I will be happy to respond. On the face of it, however, I think that that case speaks to the need for the bill; after all, it sounds from what you are saying as though the person in question had not had any form of assessment.

Rhoda Grant: As I said, that case leads me on to discharge planning, because the individual was discharged from hospital in the middle of the night without any reference having been made to support that might be available. Should the bill contain a right for carers to be consulted, on discharge, about the support that they might need, before the person to be cared for is discharged from hospital? It did not happen in the case that I highlighted, and has not happened for many other carers to whom I have spoken.

Jamie Hepburn: I start by making the general point that I have already made a few times to the convener, which is that we are happy to take on board any amendments to the bill that might be suggested. I know that some organisations that have provided evidence to the committee have stated that they would like the bill to include specific provisions on the role of carers, and on admission and—crucially—subsequent discharge of the people for whom they are caring. My commitment is that I will take seriously any suggestion that might be made as we move into stage 2.

Richard Lyle: It has already been mentioned that COSLA has said that it is not going to get enough money for this. I note that a number of concerns have been raised about the bill, and I have to say that I am particularly concerned about the waiving of charges. At present, regulations state that a local authority must waive charges for support services that are provided to carers under section 3 of the Social Care (Self-directed

Support) (Scotland) Act 2013. I was a member of the committee during the passage of that bill. However, the bill will repeal that section, which means that the services that will be provided to carers under the bill could be charged for, unless ministers regulate otherwise. Why do we need to do this? A number of years ago, we made a promise to carers, which we seem—from looking at that provision—to be going back on. Some organisations have expressed concern that it will mean that the commitment to waive charges will be reneged on. Surely we are not going to do that.

Jamie Hepburn: That is correct; there are no plans to renege on any commitment that has been made.

Richard Lyle: In that case, can you explain to me why the bill will repeal section 3 of the 2013 act, thereby making services that are provided to carers subject to charges, unless ministers regulate otherwise? Are you going to take that provision out of the bill? If you were to do that, it would assure me and others that what you have just said is the case.

Jamie Hepburn: What I have said is the case. I am not quite clear what part of the bill you are referring to, Mr Lyle, but I can tell you that we are working with local government colleagues on the waiving of charges. Our commitment is as it has been set out, and we have no plans to move away from it.

Richard Lyle: There will be no charges at all.

Jamie Hepburn: That is our commitment.

Richard Lyle: That is good enough for me, minister.

Jamie Hepburn: I am glad to hear that.

10:15

Bob Doris: This might be a slight fly in the ointment, minister, or it might be that I have not understood the situation, in which case please accept my apologies in advance.

A local authority might wish to provide a subsidised service for carers or cared-for people outwith the assessed needs that are being met in a package. For example, a local authority might decide that it wants to provide subsidised day trips that are separate from any short-break commitment, care package or whatever; and it might say that carers and so on can have the subsidised activity for £5, otherwise it will not exist. Would such provision be allowed under the bill? I think that it is allowed at the moment.

Again, maybe I am just floating something that I do not fully understand. I have just heard chat at local authority level about providing additional opportunities at subsidised rates, so I want to make sure that waiving of charges would not prevent that.

Jamie Hepburn: I need you to write to me on that specific example, about which I am not sure. However, we certainly do not want to do anything that would curb any available activities and support.

Bob Doris: I appreciate that. Thank you.

The Convener: You have no other comments on that point just now, minister, but you might want to respond on it at a later point.

Jamie Hepburn: If we try to discuss it without knowing the specific circumstances, we would just end up talking ourselves into a guddle. I would much rather know the circumstances and how they interact with waived charges, and respond in writing on that.

Bob Doris: On reflection, perhaps I should have written to you about the matter because I am not sure about the specific example. I had heard of it and thought that I would take the opportunity to raise it with you. However, I will write to you about it.

Jamie Hepburn: That would be helpful.

The Convener: Dennis Robertson, very quickly.

Dennis Robertson: I have a quick question on young carers, whom we mentioned at the beginning. How do we identify our young carers? What process can we put in place? Is putting information in schools being considered? Young carers have suggested to the committee that there could be posters or whatever in school nurses' rooms or their libraries. We need a process to help young carers to identify themselves and/or to be identified by teachers and so on. What can you do to help in that?

Jamie Hepburn: I accept that identification of young carers is important, but we do not necessarily need to legislate for it. It strikes me as being something that we should probably just get on with.

Dennis Robertson: The bill has provision for information services and so on.

Jamie Hepburn: Indeed. Those information services will exist, but the point is that carers need to self-identify. We know from carers' own experiences that there is a problem in respect of people not identifying themselves as carers, which we already touched on. I suppose that people would have to be at the stage of self-identifying before they would access information services.

In terms of how we support carer identification better, that is something that we just need to get on with. A variety of national policy initiatives support identification of carers by professionals.

There are other initiatives that support it: for example, there is the Scottish Government's funding of NHS Education for Scotland, the Scottish Social Services Council and the college development network for workforce development. However, if there are good ideas that we can help to roll out by sharing best practice or by providing some other form of assistance, I am willing to listen to them so that we can take them forward.

The Convener: An important point that was made earlier about young carers generally in terms of our engagement with them was that local authorities, rather than independent organisations, could provide advice and information for them, although I realise that that would have challenges. However, it was interesting to note that the young carers who visited Parliament last week said that the information that they get at different points in their caring varies widely. Some of them related their stories about having been carers for two or more years before any help for them kicked in. Sometimes the help came from the school and in other cases it came from a GP. There seems to be a real opportunity to do something in that regard through the bill.

Of course, not all carers want other people to know that they are carers. Unfortunately, they might be stigmatised by other young people because they are caring for people who have addiction or mental health problems. However, there seems to be an opportunity with the bill to have greater co-ordination around identifying and supporting carers in all their interactions.

One place that has not been mentioned is the business workplace, where appropriate support can have a dramatic impact.

Jamie Hepburn: On that last point, the Scottish Government has supported the carer positive kite-mark initiative that is designed to work with businesses to support carers better. A number of businesses and public sector bodies are involved in that. We are committed to working with businesses across Scotland to encourage better take-up of the scheme so that we can identify businesses that are carer friendly and which support carers who work for them.

The convener mentioned the duty on local authorities to provide carer information services, and concern has been expressed about the impact of that duty on existing services. We are implementing a statutory duty on every local authority to provide a carer information service, but they do not necessarily have to provide that service directly or in-house. There are many positive examples of the third sector providing such services; local authorities can work with the third sector to provide local services. Some people have called for the bill to be amended, and we will listen to any arguments that are made. We should seek to amend the bill in a way that reflects the existence of such third sector organisations in parts of the country. I am not convinced that we can include that in the bill, but it is common sense that where a well-established local carers centre already provides carers with information, the local authority could discharge its statutory function through pre-existing services.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Let me follow on from the point that was raised by Dennis Robertson about identifying young carers, which is a major difficulty. May I invite the minister to look at the drug and alcohol information system that is being established, and ensure that young carers are part of the data collection so that it is possible to identify the young carers of people who have drug or alcohol problems? Can we link the system to the named person under the getting it right for every child initiative? The named person is supposed to be responsible for ensuring that children are adequately cared for and so on, so that is another route by which young carers could be clearly identified without massive interference.

Jamie Hepburn: The first question is fair and the point was well made. I will readily commit to considering that. The bill includes a named person for young carers, and that named person must be informed that the young person has a young carer's statement, and about specific provision, so that they can ensure that support is provided. Concerns have been raised about that process, so I am willing to consider how we can finesse it, if need be. I do not want to do anything that would reduce the likelihood of a young carer coming forward for assistance, so if we need to finesse that provision we will. Dr Simpson's point was that there could be a role for a named person if they are aware of a young person who has not yet received a young carers statement, although I suppose the fact that the named person is already involved in the process will make them more aware of such matters. If we need to look at any form of revision or guidance to make that clearer, I commit the Government to doing that.

The Convener: As there are no further questions, I thank the minister and his officials for their attendance this morning and for the evidence that they have provided.

10:25

Meeting suspended.

10:28

On resuming—

Subordinate Legislation

Health and Care Professions Council (Registration and Fees) (Amendment) (No 2) Rules Order of Council 2015 (SI 2015/1337)

The Convener: Agenda item 4 is consideration of a negative statutory instrument, namely the Health and Care Professions Council (Registration and Fees) (Amendment) (No 2) Rules Order of Council 2015 (SI 2015/1337).

The Delegated Powers and Law Reform Committee has not made any comments on the instrument. Dr Richard Simpson has lodged a motion—S4M-13509—asking that the committee annul the instrument. As a consequence, we will hear evidence from the Health and Care Professions Council and from Unison, and then from the Minister for Sport, Health Improvement and Mental Health and his officials. After we have had answers to all our questions, we will have a formal debate on the motion.

I welcome to the committee Marc Seale, chief executive and registrar, Health and Care Professions Council, and Dave Watson, Scottish organiser (bargaining and campaigns), Unison. We will move directly to questions. I invite questions from members.

10:30

Dr Simpson: I appreciate that the rise in fees has been forced on the Health and Care Professions Council because of the Government withdrawing funds from the Professional Standards Authority, with the result that there is a levy on all the subsidiary groups—the General Medical Council, the Nursing and Midwifery Council and the rest, including your organisation.

However, it is my understanding that, given that you have 329,000-odd members, an increase of about £3 would have been necessary to pay for that levy. If that is correct, I fail to understand why, at a time of austerity and pay freeze, you are asking workers to meet an increase in fees of roughly 12 per cent across the board. Would you like to tell us how you came to that conclusion? What were your reasons? Why does that increase follow a 5 per cent increase in the previous year, which I understood was to last for at least two years?

Marc Seale (Health and Care Professions Council): The PSA levy is not the only driver for putting up the fees. We also need to ensure that we deliver our statutory duty to protect the public, and we want to remain an efficient and effective regulator. We are having to make investments and spend money in three areas. First, we are putting a considerable amount of money into our information technology systems to make sure that we remain an effective regulator. Secondly, we need to continue to put increasing resources into the fitness-to-practise process—the disciplinary process. We are dealing with more cases and they are becoming more complex. Thirdly, we have to fund the PSA levy.

As an organisation, we cannot just put up our fees and the money will come in on day 1. We have 16 professions, and we renew them over a two-year period. If we were to put up the fees today, the last fee for the last registrant would increase in one year and 364 days. Therefore, we need to put that money up so that we can pay for the costs of being a regulator.

We have always had the attitude that we should be efficient and effective, wherever possible, and you will see from our submission that, compared with the fees of the other regulators, we remain firmly at the bottom of the table. We think that that is very good. We are acutely aware that many of the professionals whom we regulate have no choice—they have to be on our register—and we are acutely aware that we must be very careful in how we spend money and that we must keep ourselves at the bottom of the costs table compared with the other regulators.

Dr Simpson: I will correct one fact—you are not the body with the lowest fees. The body with the lowest fees is the Scottish body for the registration of social workers—the Scottish Social Services Council. Its fee is not £80 or your proposed fee of £90. Its fee is £30 and, for some, it is £20 or £15. I question the efficiency of the Health and Care Professions Council when it will cost social workers in England three times as much as it costs social workers in Scotland to register.

Why on earth is the HCPC based in London? What possible reason is there for being in the most expensive centre in the United Kingdom? Why is it not based in Birmingham, Newcastle, Leeds, Sheffield or even Edinburgh or Glasgow? I cannot see why such organisations should be based in London. In relation to your statement about efficiency, will you explain why you have not sought to move out of London? I know that you are seeking new premises for your fitness-to-practise process. From reading your submission, I know that you have concerns about your ability to provide proper facilities for your fitness-to-practise hearings, so you are to expand into other premises. Why on earth are you based in London?

Marc Seale: To deal with your first point, I was making a comparison with the nine UK-wide

regulators that are under the auspices of the PSA. We are the lowest-cost regulator of those nine organisations. Other regulators in the rest of the UK—those in Northern Ireland, Wales and Scotland, for example—are not independent; they are arm's-length bodies. The roles of those organisations and the funding of them are entirely different, so it is not reasonable to compare the regulator of social workers in Scotland with UK regulators.

Indeed, the General Social Care Council in England had the same structure as the equivalent body in Scotland, and one of the reasons why it was moved into our organisation was that, if it was funded purely by the registrants, unlike in the Scottish system, the cost of the fees would have been in the region of £200 to £250. That is why the transfer was made to the HCPC. I think that it is reasonable for me to compare us against the other nine UK statutory regulators, some of whose fees are up to £890 per year in comparison with our current £90 fee.

You asked where the organisation should be based. I think that it should be based where it can undertake its function. That could be done anywhere in the UK. However, we are based in Kennington, not central London, and our premises are very modest compared with those of other regulators. As for the amount of money that we will spend on renting accommodation for our fitness-to-practise hearings, we think that it is entirely reasonable in terms of what we do. Many of our employees live in south London, and they are not particularly well paid. It is quite reasonable for us to be based where we are, in Kennington. It would certainly be cheaper to be there than, say, being up in Edinburgh.

Dr Simpson: Do you really feel comfortable about the fact that senior management—including you, Mr Seale—are receiving substantial increases in salaries at a time when those of your registrants have been frozen? Your own salary went up by 17 per cent, or £26,000, in the course of two years. That amount is about the average income of your registrants.

I know that it was not you but the remuneration committee that decided on that—you are not responsible for your own remuneration. The remuneration committee increased the chief executive's salary and the salaries of five senior managers by one band—we do not know how much in that band was increased, but the level certainly went up by a £5,000 band—at a time when registrants are being asked to pay a big increase and their rate of pay has been frozen. Is the system reasonable, fair and just for an organisation such as yours?

Marc Seale: As you said, questions about the rates of pay for organisations such as the HCPC should be addressed to the remuneration committee. It is difficult for me, as a chief executive, to speak on behalf of the remuneration committee. A number of years ago, during the financial crisis, I decided that it would be appropriate to forgo my salary increase. I think that that was appropriate.

I think that, as an organisation, we pay reasonable wages. I do not think that they are out of order in terms of running an organisation. As you pointed out, however, those questions should be addressed to the remuneration committee of the organisation, not to me as the chief executive.

Dr Simpson: We will not get into a debate over pay levels. There are lots of organisations that pay salaries of £175,000, which is well beyond what the Prime Minister or First Minister receives.

The consultation period was very brief, as opposed to being lengthy. Your decision then came out within six days of the consultation ending. Frankly, that does not strike me as a period of either consultation or reflection on those 2,500 responses; that was a pretty good response in a very short period. The decision was made after a very short reflection on the issue.

I appreciate that you want the statutory instrument to be passed and that you want to make the increases from August this year. However, it does not sound to me like effective planning, if you have known about your IT systems and you have seen the increases in the number and complexity of fitness-to-practise cases, which did not happen overnight. I still do not understand why the process was—in my view—extremely rushed.

Marc Seale: We were very disappointed by the incredibly low numbers and the low percentage of people who responded to the consultation. We have more than 330,000 registrants, and hundreds of organisations take a great deal of interest in how we operate as a regulator. The very small number of responses was very disappointing, particularly as we were asking questions, for example, on whether the registrants and professionals whom we regulate will pay on a six-monthly basis. We want to move to a system in which they pay on a monthly basis, thereby spreading the cost.

On how we analyse a consultation, we do not wait until the end, take all the results and start going through them. We have a well-tuned and good system: we start to analyse the first response when it comes in, which could literally be the day after the consultation starts, and we update the analysis and data as information comes in. Therefore, by the time we reach the end of the period for responses, we are in a position rapidly to come to conclusions as a result of the

consultation. That is a good and efficient way to run the analysis, so we have no issue with being able to turn the result around relatively quickly.

The timing of the consultation was driven partly by the three issues that I mentioned. I will have to sign a cheque on 1 August—the first day that the PSA will be funded by the regulators. It will not be spread over two years so, in essence, that cash has to be given to the PSA on day 1. The HCPC has relatively low reserves and, compared with the other eight UK regulators, they are very small. Therefore, the need to get that cash to the PSA is pressing. We expect to make an operating loss of £1 million to £1.5 million in the current financial year because of the PSA levy and because we charge our registrants over a two-year period.

The consultation was not rushed. The analysis was good and, as I said, the small numbers of responses to it were disappointing.

Dr Simpson: The response was required in a brief time—six weeks, not six months—and your previous consultation had only about 600 responses. I accept that the figures were low, but the consultation was run over a time when there were three public holidays. There was also an election on and many of your registrants might have been actively involved in campaigning.

On the immediate payment of the cheque, I do not deny that you have to get the money in eventually, but you had a reserve of £3 million and the cheque to the PSA is, I presume, about £1 million, so paying it now to get it back later while allowing adequate time to consult would not have seemed unreasonable.

I am afraid that I simply do not accept your point.

Marc Seale: On a point of clarification, I do not understand the point that you make about six months. The consultations that we normally run take 12 weeks. We follow Government guidelines on the length of consultations.

The Convener: I am aware that, given that run, Mr Watson has not been able to get in, so I give him the opportunity now.

Dave Watson (Unison): Thank you, convener. I will deal with that batch of issues.

I appreciate that this is not the raciest topic that I have ever come to the committee to talk about but, nonetheless, it is important because it deals with an increase in fees over which our members have no control and, therefore, on which they look to the committee for the appropriate level of scrutiny. As was pointed out, there was a 5 per cent increase, which was significantly above inflation. We were led to believe that that would be it for a couple of years and then we were hit with a 12.5 per cent increase.

As was also pointed out, we felt that the consultation was inadequate. It was open for six weeks instead of 12 weeks during an election purdah. A survey that we did of our members showed a suspicion that the consultation was done when it would be under the radar of at least UK parliamentary scrutiny. The seven days that were taken to consider the responses confirmed people's views. That might be unfortunate but, nonetheless, that is the way that it looks to our members according to the survey.

We understand and have some sympathy with the point about the PSA levy that comes from the UK Government cut, but that accounts for only £3 of a £10 increase. The other costs are not entirely clear to us. There are headings—such as IT systems and accommodation—but there is no detail. Therefore, to the members whom we surveyed, it looked as though the PSA levy was being used as an opportunity to increase costs. According to its 2014 accounts, the HCPC made an operating surplus of £1.3 million and its reserves increased to £3 million.

Moreover, according to our survey, registrants do not believe that all the costs and working practices of this regulator have been fully examined. They are concerned that there might be unnecessary hearing costs, which is a very expensive part of what any regulator does. Indeed, 22 per cent of final hearings have been regarded as not well founded, and there is a question whether better filtering and other deterrents and education measures might reduce those costs.

10:45

There is also a question whether, before whacking an increase in costs on our members, someone could have examined regulatory practice in more detail and taken more of a look at whether some regulators could have been pulled together or whether there could have been some streamlining of costs. Of course, this is an absolute monopoly; as our members have made clear in their responses, they have no option but to pay. Given that UK and Scottish Government pay policy is for pay rises of 1 per cent at best, these increases are way above any pay rises that members might get, and there has really been no consideration of, say, part-time rates—after all, many of the groups involved are part timers—or even a sliding scale based on the ability to pay.

I see the comparison with other groups, but I think that our members in this group are very often not the highest paid, and comparisons with doctors and dentists are not regarded as being particularly fair to operating department practitioners or paramedics. They are not on doctors' or dentists' wages, and such comparisons are regarded—to put it mildly—as unfortunate.

Rhoda Grant: First, I refer members to my entry in the register of members' interests as a member of Unison.

I want to ask about cost savings and, indeed, reviews of such savings. Dave Watson mentioned a number of things such as IT systems and, indeed, unwarranted investigations, which are really expensive. What work have you carried out on such matters to ensure that you are using members' money appropriately?

Marc Seale: I do not agree with the statement that there are unwarranted investigations. We have very clear processes and standards for investigating complaints against registrants, and round about 50 per cent of those cases have to go to tribunal. Tribunals are very expensive, but we have to test the evidence. Often professionals will not engage with us until the tribunal, at which point they explain very carefully what has gone wrong.

I think that we have to do two things. First of all, we have to keep in mind public protection, which is our single objective, but secondly, we have to look after the human rights of registrants in the processes that we run. We are scrutinised by the courts—as you will see, only a very small number of cases are referred there—and by the PSA, which looks at every single fitness-to-practise decision that we make. Moreover, there is an annual report, in which we are measured against our standards; we are audited by the National Audit Office; we have internal auditors; and we have ISO standards to meet. I personally think that it is absolutely important for our organisation to be scrutinised and checked, and I think that that sort of thing is done thoroughly.

With regard to savings, I have to say that I do not really understand the issue. When you run an organisation, you do not have a spare collection of things here or there so that when someone starts asking questions, you can quickly say, "We can save money there." We run an efficient and effective organisation on a daily basis; we do not have a hidden supply of things that we can cut back on. As a result, I do not think that there is anything on which we could make any dramatic savings.

Rhoda Grant: You say that 50 per cent of investigations go to tribunal, but the fact is that 22 per cent of those cases are not well founded, which means that 60 per cent of all the cases that you investigate and spend members' money on go nowhere at all. Surely you could do something—say, work with people at a much earlier stage—to stop such cases becoming formal complaints. Would that not save you a huge amount of money?

Marc Seale: I agree. For a regulator, it is incredibly important that inappropriate complaints are not raised, and we are taking a range of actions to address that matter. For example, we are carrying out research to discover not only why people make complaints but why registrants get things wrong. For example, we are looking for situations where we can go back to the universities and change the education of those professionals to ensure that they realise where things can go wrong.

We are also working with the professional bodies and the information that they supply to their members. Again, most of the complaints and disciplinary processes that we end up dealing with are not about professional competence but about issues such as conduct, behaviour and attitude. As a regulator, we want to minimise the number of complaints that come to us about situations where it would be inappropriate for us to take action. There is a huge amount of work that we can do in attempting to resolve such issues. I absolutely agree with your point.

Dave Watson: There has clearly been an increase in the number of referrals and, in fairness to the HCPC, it is not unique. It is not that bad practice is growing in these or other professions, but a culture of routine referrals is developing in some areas. It could be argued that it is a defensive practice by employers.

The regulators need to filter complaints and deter them a bit more: they need to pick out what really matters. I accept that that is not always possible, particularly when it is a question of an individual's capability or practice. In my department, I see a lot of the cases that go to our professional unit in London, and there is a wide variety: some should be there, whereas I wonder why on earth others are being called to a full hearing.

On costs, I put the figures on surpluses and I am sure that Marc Seale has said that the position might change in the coming years. Not many Scottish public bodies are increasing their reserves or making any surpluses at the moment. We should just ask for the standards that would apply in Scotland to apply to UK bodies when our members are required to register.

Marc Seale: We have the lowest level of reserves of any of the regulators, in relation to not only the amount of the reserves but how long they would last. It is entirely prudent to have roughly about three months of reserves, which is what we have.

We need to make surpluses because we make capital investments. If we make no surplus or profit, we will not have the cash resources to invest in the organisation. The situation is slightly different from that of Government funding, which is done on a monthly basis.

On fitness to practise, my final point would be to emphasise that, as a regulator, we have the smallest percentage of complaints against our registrants. That is a reflection of the high level of professionalism in the groups that we regulate.

The Convener: Three committee members wish to ask questions. We will get the minister back in at 11 o'clock, and we still have the debate to come.

Nanette Milne: I will split this into two issues.

First, you clearly have an obligation to the PSA; then there is other fundraising, for want of a better word. Is there any possibility that you could split that and go ahead with your obligation to pay what is due to the PSA? Are there any other means by which you could fund some of your other desires? Could you get Government funding, for example?

Secondly, if your obligation could be split, would there be merit in going out to further consultation, given that you got a small response the last time? I suspect that you might get a bigger response from your registrants because of what we have heard recently.

It is also my understanding that Westminster has not discussed the issue. What would be the effect if we were to annul the instrument today, with the matter then going to Westminster? What would the process be after that? How would things be affected? I know that it is complicated, but it would be good if you could deal with that issue.

Marc Seale: I will try to answer some of those questions. If I miss any, please come back to me.

I suspect that I am not the best person to advise you on the process. As I understand it, if the committee says no to the instrument, it has to go to the full Parliament for debate.

I believe that this is new territory, and that the Scottish Parliament has not voted against a UK statutory instrument before. In Westminster, the process is called praying. Statutory instruments are prayed against every now and then, and I believe that the process is similar to that in the Scottish Parliament, in that the instrument has to go to a committee, the committee considers it and there is a vote. I do not know what happens beyond that.

In terms of funding, we do not normally make comparisons with other professional bodies such as the General Medical Council. However, we compare ourselves very closely with the Nursing and Midwifery Council. I am sure that others are more familiar with rates of pay, but we believe that the spread for nurses and midwives is similar. The NMC's fee is currently £120, which is 30 per cent higher than ours. In addition, because the NMC got itself into some financial difficulties, the Department of Health has given it grants of about £22 million over the past few years to keep it going. The NMC is a good organisation for us to compare ourselves with.

In practice, the DOH has made grants to other regulators in times of difficulty, so that is a possibility. In terms of our legislation, although the provision has never been used, the Scottish Parliament could give us a grant if it saw fit to do so.

The position is that we must continue to invest in fitness to practise, and we must continue to deliver our statutory duties. We argue that a fee of £90, although we would like to have kept it lower, is what we need to continue to be an efficient and effective regulator.

Did I answer all the questions? Did I miss anything?

Nanette Milne: You more or less answered them. What would be the impact of delaying for further consultation?

Marc Seale: Currently, even with the increase, we are heading towards a £1 million-plus loss. If the proposals are turned down by the parliamentary process, the first thing we would do is go back to the Department of Health and ask for guidance on how we should proceed.

As you said, the instrument has not been debated in Westminster, and I am not sure what the situation would be if the Scottish Parliament said no and Westminster said yes. We would certainly discuss our options with the Department of Health. In the medium term, that might mean another consultation.

Dave Watson: I will not attempt to describe the procedures at Westminster, which are beyond even my legal brain, but I can say that we encouraged an early day motion to be tabled. I am pleased that it has attracted cross-party support from MPs from the Conservative Party, the Scottish National Party and the Labour Party, and, I think, the Liberal Democrats as well. They recognise that they have a role in scrutinising these instruments, because we do not have control over them and are very reliant on parliamentarians for that scrutiny.

I have some sympathy in relation to the PSA. The registrants in our survey were still asking what the function of that overview body is, as it seems to add a whole pile of costs to the exercise but does not do very much—I do not expect Marc Seale to comment on that concern.

There are certainly extra costs, and there is an issue about a wider review of regulation and some of the practices. Do we really need seven or eight different IT systems and everything that goes with them? Is this not an issue where more

streamlining might save everyone a few pounds, which they could well do with at the moment?

The Convener: We will move to the next question.

Bob Doris: I will try to be brief because I know that the minister is to come back to the committee shortly.

I commend Richard Simpson for seeking to annul the instrument. I will not support him in that move, but he is shining a light on something that needs greater scrutiny.

I want Mr Seale to put one or two things on the record. In general, the HCPC's efficiency needs to be scrutinised more by all Parliaments across the British Isles. Would he be content with that?

It is not for me to talk about our committee's workplan, but, rather than going through a "Play it again, Sam" process next year, should the Parliament's committees have an on-going role in scrutinising how effective and efficient the HCPC is as a body?

11:00

Marc Seale: Yes, we should be scrutinised by as many organisations as possible. We have pretty draconian powers—we can remove a job from a professional. As has been pointed out, we are effectively a tax on people, and some of those whom we regulate earn relatively small amounts of money. It would be good if, rather like the Westminster Government does, the committee were to invite us to answer questions or produce a report. That would be absolutely straightforward and a good idea. We are an important organisation, and it would be entirely reasonable to do that.

Bob Doris: Is the poor consultation response on fee increases partly the HCPC's responsibility? Should it engage more with the members of the professions to encourage them to respond? Is that a reasonable thing to say?

Marc Seale: The number of people who respond to our consultations is always disappointing. However, we have always thought it important to meet the people whom we regulate. For the past 15 years, we have been going to various places throughout the UK—we go out up to eight times a year—to meet registrants. We have two sessions—one after lunch and one in the evening—at which we sit down and talk to people. A few weeks ago, we were in Middlesbrough, and in October we will be up in the Highlands for a couple of meetings.

Of great interest to the registrants are not issues such as fees, but issues such as continuing competence or fitness to practise. They are interested in their sometimes difficult working environments, where the demand on their time is a continuous pressure. Those are the issues that they talk to us about.

Bob Doris: I will not support the motion to annul the statutory instrument. That has nothing to do with the HCPC's performance; it is more to do with ensuring that the correct investment is made to improve the fitness-to-practise hearings and IT systems.

I note that the increase of £10 a year is around 3p a day. I do not make light of that small amount. The issue is more about a pattern—a trend—of increases. What assurances can you give the committee that what is required is a realignment and that we are not seeing an on-going trend of further, chunkier increases? Once people get a taste for double-digit increases, they might stick to them.

Marc Seale: I have a couple of points to make in response. Again, please come back to me if I have not answered correctly.

First, if you are going to invite organisations such as the HCPC to the committee, you might also want to consider inviting the PSA, which is the oversight organisation, so that it can give its view on how the regulators are doing. It produces an annual report; it also issues reports on our fitness-to-practise process. It would be a good organisation to give you an oversight of all nine organisations with UK responsibilities.

I am absolutely committed to ensuring that we remain the lowest-cost regulator. We will do everything that we possibly can to ensure that we do not have any more significant increases, and we will try to keep our fees as low as possible.

I do not want to avoid the question, but it is quite difficult to give an absolute commitment and say that we will not put up fees for two years, because I do not know what is coming down the road. However, we will absolutely make our best endeavours to ensure that we do not put up our fees for the next couple of years. Is that a reasonable enough commitment, or do I sound as if I am hedging my bets?

Bob Doris: That commitment will get you far enough this year. However, we will have a very different conversation if I am on the committee next year and some of the semi-reassurances—they are not full reassurances—are not met.

Marc Seale: I will do my utmost to ensure that you do not have to invite me back next year.

Bob Doris: Oh no—I think that you will be invited back.

Dave Watson: We would welcome—I have indicated why—a more in-depth look at regulation

and regulatory costs. I hope that it is clear from our submission and our members' survey that members are, at best, confused about the need for the increases.

When we had the big 5 per cent increase, we were told that there was no plan to review the situation. I accept that things change. The point is that the thing that changed was the £3 out of the £10 increase, which is 30 per cent.

Presumably, things such as IT systems and accommodation were not dreamed up overnight so, frankly, the subsequent increase to 12.5 per cent does not match up with this having been dropped on us in the past five minutes. In the survey of our members that we had time to pull together, they told us that they felt that there was an element of opportunism here, with people saying, "Well, we're doing the increase. Let's get all this stuff under the one heading." That is why we feel that the increases are unreasonable at this time.

The Convener: We are now running behind, but Dennis Robertson has a question.

Dennis Robertson: I will be brief. I note that the Health and Care Professions Council covers 16 professions and has 330,000 members. You give new graduates a 50 per cent reduction for two years, and you say that they can spread the cost of the fees by paying by direct debit every six months. Why can they not spread the cost through a monthly direct debit? That might make it easier for some.

Moreover, why is there a single flat fee? I suspect that the salaries in the 16 different professions will vary a lot, but even though some will be paid less than others, you still have a flat fee. Would you consider looking at differentials in the fees depending on salaries as well as offering the option of monthly direct debit?

Marc Seale: When we consulted on moving to monthly direct debit, the proposal was well received, and we are now starting on a major IT project with the intention of bringing in monthly payments to allow individuals to spread the cost.

As for having differential fees for different professions, we have argued from day 1 that we should have similar processes and similar ways of regulating individuals, whether they are clinical scientists or arts therapists. The cost of the professions changes from year to year—for example, a particular profession might have a large number of complaints one year but not the next—and we think it fairer to have a single cost for all the registrants across all the different professions.

There are examples of regulators across the world that have a different attitude. For example, the Australian regulator is a multiprofession regulator with regard to the registration process; it has different fees for different professions, but what happens is that the very small professions end up with a registration fee that is significantly larger than that for the big professions.

We could try to do something related to the registrant's salary, but I suspect that that would be a huge challenge. What would happen if people changed to part-time working or took time off for long holidays? It would become incredibly complicated. I think that our system and our approach are pretty fair.

Dave Watson: I might be able to help with that point. The trade unions manage to do what has been suggested with our subscriptions; we do it through the salary approach, and I do not think that we are unique in that. The ability to pay is an important principle.

The Convener: Okay. Dr Simpson, you have had five or six questions. Do you need to ask another?

Dr Simpson: I just wanted to ask why no equality impact assessment was done.

Marc Seale: I am sorry—in relation to what?

Dr Simpson: Usually, when someone proposes a Scottish statutory instrument, they carry out an equality impact assessment. We are used to that in this Parliament. In this case, none has been done. A lot of your registrants are women, a lot of whom are part time or are on career breaks. I would have thought that an equality impact assessment would be critical as a matter of fairness, even if in this case it is not a requirement of the Government.

Marc Seale: About 60 per cent of our registrants are female, so we are talking about a significant majority. We would expect the Department of Health to review the legislation, not us.

Dr Simpson: Okay. That is fine.

The Convener: I thank the witnesses for attending this morning and answering our questions. The minister will now rejoin us with his team, but for once we will not pause to allow everyone to get set up. I want to move straight on as we are running a wee bit behind.

I welcome the minister Jamie Hepburn back to the meeting and extend a welcome to the accompanying Scottish Government officials: Fiona McQueen, chief nursing officer, and Ailsa Garland, principal legal officer.

I believe that the minister wishes to make some opening remarks. [*Interruption*.]

Jamie Hepburn: I am sorry, convener—I have just remembered that I need to turn off my BlackBerry.

The Convener: That would be advisable.

Jamie Hepburn: I do not have much to say in advance, convener. I am happy to be here, and I think that it would be better just to move to questions.

The Convener: I appreciate that, minister. Let us proceed.

Dr Simpson: We heard in the previous evidence session that the Scottish system for registering social workers is not the same as that in England and that the regulators' powers, requirements and degree of independence are not the same. Even so, there is still quite a bit of difference in fees, with the system in Scotland costing £30 for social workers and that in England costing £90.

Does the Government subsidise the Scottish system? Is it run at a loss? After all, the costs for, say, child support workers are, at £10 or £15, considerably less; they are really quite low. Can you start by clarifying for the committee the differences in the registration processes for social workers in Scotland and those in England?

Jamie Hepburn: My understanding is that we do not subsidise the registration scheme in Scotland.

Dr Simpson: Is there a difference in function? When this morning we were trying to determine how efficient the HCPC was, we had various answers. In Scotland, we are running our organisation at a third—or in some cases even a fifth—of the cost to registrants. Indeed, differential fees are applied according to individuals' income, which means that child support workers are, I think, now paying only £15. Does the HCPC provide a system of public protection to the country that our process in Scotland does not provide, or vice versa?

Jamie Hepburn: I cannot talk about the efficacy of the provisions for social workers in England per se, because that is obviously a matter outwith our control, but I am glad to hear your perspective on the system that we have for social workers in Scotland.

As for the fees that are set by the HCPC, that is ultimately a matter for it as a body. It determines the fees that it sets.

Dr Simpson: That is not my question. My question is whether, in the Scottish system of registration for social workers, the registration body does something radically different to what the HCPC does. Does our social worker registration process in Scotland protect the public in the same way that the HCPC process does in England? Do they carry out the same functions? I am not criticising the Scottish Government—in fact, I am praising it. The Government in Scotland is through its agency running a registration system that charges a third of the price that similar workers in England pay. The two categories of Scottish worker who would be charged £90 in England would, if they registered under the Scottish registration process, which is a multi-agency system, pay considerably less.

I am simply trying to understand that difference in cost. Why do we run such an efficient organisation? Are we actually protecting the public through our registration process?

Jamie Hepburn: Yes, I believe that we are. The bottom line is that the public should not be concerned about whether they are being protected by our system of registering social workers in Scotland. Incidentally, Dr Simpson, I should say that I am not used to getting your praise, but I take it gladly.

At this point, Fiona McQueen will say a few words about the specifics of your question.

Fiona McQueen (Scottish Government): The regulation of social workers in Scotland is relatively new, while the allied health professions, as they are known, that the HCPC regulates have been regulated for decades. Regulation of the social work workforce, which goes wider than registrants—support workers, too, are regulated for public protection—was a more recent creation in Scotland and, in relative terms, is newer. The Scottish Social Services Council has been looking at fees and the costing of fees, but it clearly believes that the current fees are sufficient for regulation in Scotland.

Dr Simpson: Does the SSSC perform pretty much the same functions as the HCPC?

11:15

Fiona McQueen: The Social Work (Scotland) Act 1968 and the SSSC place requirements on employers with regard to professional registration and the professional conduct of social workers, and there is a requirement on employers to oversee the good character of social workers when they re-register with the SSSC. The HCPC regulates across the UK and regulates many other professions apart from social workers. It therefore does a broader job than the SSSC.

Dr Simpson: I think that that is clear. It sounds as though the bodies perform almost the same functions in respect of these two groups. I know that we are not responsible for social workers in England, but some English social workers might

like to register with our body at considerably less cost.

As I understand it, this decision was approved by the Privy Council. Given that we have representation on that, why did we not insist on an equality impact assessment? Many of the workers who register with the HCPC are women, many of whom will take career breaks. However, re-registration after a career break is expensive, and it is a significant barrier to people whom we need to come back to the profession returning to it. Although the fee for general registration is increasing from £80 to £90, the career-break people face a rise of £25 to £225. No equality impact assessment was undertaken, and I wonder what representations the Scottish Government made when this matter was considered by the Privy Council.

Ailsa Garland (Scottish Government): I am not aware of any representations that might have been made to the Privy Council, but the Department of Health's explanatory memorandum, which can be found in the papers for today's meeting, explains that the changes were considered to be

"outside the scope of better regulation principles",

which meant that an impact assessment was not carried out in the same way that it might have been for a statutory instrument that had been prepared by the Department of Health.

Dr Simpson: I think that I understand that, but it does not alter the fact that there is a differentiation, particularly for career breaks. Because it is mostly women who take career breaks, an equality issue arises when those fees are raised, and I really do not understand why an impact study was not carried out.

I have two other brief questions. Has the Government considered transferring the remaining designated practitioners who are covered by this body to a Scottish body, so that all practitioners in this group in Scotland are registered with the apparently far more efficient Scottish body? My other question, which is subsidiary to that, is whether the Scottish Government has subsidised or has ever considered subsidising the PSA. After all, the UK Government's decision not to subsidise the PSA any more is part of the reason for the increase in costs.

Jamie Hepburn: On Dr Simpson's point about career breaks, I note that we are already helping nurses to return to practice, and we could do the same for HCPC registrants. That is something that we are quite willing to look at, and Dr Simpson has my commitment in that respect.

On the question whether the Government has considered transferring the functions for those other than social workers to a Scottish specific body, we are not able to do that under the Scotland Act 1998, as it is a reserved matter. I would welcome Dr Simpson's support for enhanced powers for this Parliament to allow it to consider such a move, but we cannot do what he has suggested at this time.

The Scottish Government is committed to working with the four Administrations across the UK to ensure that we have the appropriate regulatory framework. However, if we wanted to take a different approach—and I am not saying that we definitely would—my understanding is that that would require an amendment to the Scotland Act 1998.

Dr Simpson: What about my subsidy question?

Jamie Hepburn: Again, that was something that was agreed between the four Administrations. As you will appreciate, the public finances are constrained. We have supported the PSA in the past, but as an independent regulator, it needs to be independent of Government. However, that has helped to provoke the change in circumstances. We are where we are, but this is being led across the UK.

The Convener: As members have no other questions, we now move to agenda item 5, which is the formal debate on the motion to annul. I invite Richard Simpson to move and speak to motion S4M-13509.

Dr Simpson: I thank the committee and the convener for the opportunity to debate this issue. In the 13 years that I have been in Parliament, this is the first time that I have considered moving a motion to annul a statutory instrument, but I feel that, at a time of austerity and when we have zero inflation, two increases in these fees in the space of two years is not desirable. The first increase was 5 per cent, which was a significant inflation-busting increase—although the sums are small, the principle nevertheless remains—and a second increase of 12.5 per cent, only part of which was forced by Government action at Westminster, seems to me to be completely unacceptable.

I have already gone into the issues clearly and I do not want to repeat them all, but I have concerns about an organisation that pays its chief executive an additional £26,000, which is the average salary of the registrants that the organisation looks after and is an increase in two years of 17 per cent. There are far too many huge increases like that at a time when our workers in the NHS and the care professions have had their pay frozen or had an increase of only 1 per cent.

Frankly, that 17 per cent increase is something that sticks in my craw; it and the fact that five senior managers are receiving increases that might be between £1,000 and £5,000 a year show

a general disregard for the current austerity situation. An organisation that has a reserve of £3 million did not need to rush this matter; it could have paid the £1 million up front and then recouped the money later. The organisation made a surplus last year, so if the additional charge had not been made, the loss would have been about £300,000 this year, as we heard from Marc Seale—and it has reserves of £3 million. The additional charge of £1 million could therefore have been met up front.

I am utterly appalled at the fact that there is no equality impact assessment of what is proposed. We have a situation now in which women and men will take career breaks when they have a family—it will particularly be women—and, although it is entirely justifiable for individuals to make that choice, they will be faced with a charge of £200 to come back into a profession where they may well work part time and be paid a very low wage.

I therefore think that the proposed increase is unnecessary and unjustified. It should have been properly consulted on over a proper length of time and not just a six-week period that included three public holidays, which shortened the consultation time further, and was at a time when the Westminster Parliament was in purdah. I very much welcome the fact that some SNP MPs have now signed the early day motion in Westminster against the increase, and I welcome their support.

I move,

That the Health and Sport Committee recommends that the Health and Care Professions Council (Registration and Fees) (Amendment) (No. 2) Rules Order of Council 2015 (SI 2015/1337) be annulled.

The Convener: Thank you. Which members wish to participate in the debate? I see that Mike MacKenzie and Bob Doris do, and so does Nanette Milne.

Mike MacKenzie (Highlands and Islands) (SNP): Thank you, convener. I will try to be brief, but you will probably know that my brevity agenda is not proceeding as quickly as I would like, so if you feel that I am speaking for too long you can perhaps give me a signal. [*Interruption*.] I thank Richard Simpson for that signal, but I was referring to the convener.

I had to do a bit of a double take when I was looking at my committee papers this week. I initially thought that this was a £10 a week rise, but I did a bit of a double take and saw that it was a £10 a year rise. I do not wish to make light of that, because in these difficult times we must all work to keep costs down, especially unanticipated costs, on behalf of everybody across the country. As Mr Doris pointed out, however, the increase equates to a bit less than 3p a day or 20p a week, and that is a cogent point in this debate.

Let me put the issue in perspective. I represent the Highlands and Islands, as does Rhoda Grant, and many of our constituents are forced to use ferries to get to work. On Orkney, Shetland, and Argyll and Bute, local authorities run internal ferries and people often pay £10 a day for a short journey of under 10 minutes. Some of those people think that that is a tax on employment. I know that it has nothing to do with this committee, but it is nevertheless an important point that often is not recognised. Some of those people are on the minimum wage, and we are also in an era of welfare cuts that affect individuals by amounts that make this measure pale into insignificance. I do have sympathy for those affected, but it is tempered by that wider context, and the committee would do well to dwell on that when it considers Dr Simpson's motion.

Some interesting and substantive points have been made during our discussions, and the PSA levy undoubtedly requires further scrutiny. I am sure that Mr Seale cannot have helped but be impressed by how finely the mill of the Scottish Parliament grinds, and I am sure he did not anticipate the detail and level of questioning. In future it might be worth while for the committee to direct questions to the PSA about its levy, on the principle that it behoves all public bodies to operate in an efficient manner that delivers best value.

Dr Simpson raised a point about the chief executive's salary, although that is only tangentially pertinent to this issue. I do not think that a £26,000 rise in these difficult times for any individual, especially one who is already highly paid, is acceptable. Dr Simpson raised a further important point about the equality impact assessment. I am glad that he has lodged his motion as that has allowed us to discuss those important points, but given the overall context I am afraid that I cannot support it this morning.

Bob Doris: I commend Mr MacKenzie on his lack of brevity because I no longer have to make a number of points that I was going to raise during my submission. I am not making light of the burden on employees, but I want to put some perspective around the figure of 3p a day, because that must factor in to whether we annul this statutory instrument. Given that the fitness-to-practise methods and IT systems will be enhanced, I am not minded to annul it today.

I suggest to Mr Seale that the fact that we do not necessarily get the answers we want is not a reason for the committee not to invite him back—indeed, it is a reason to invite him back more frequently. Dr Simpson has done Parliament a service by shining a light on whether or not the HCPC is efficient. I have no idea whether it is efficient, and we must scrutinise it in future. I am

not sure what role the committee can appropriately play regarding pay increases at the top of that organisation, but perhaps we will shine a light on that in future in a way that might not have happened if Dr Simpson had not moved to annul the SI today.

The overarching point is that this is not about a 3p a day increase; it is about the trend and trajectory of potential increases in future. As I said earlier when questioning the witnesses, organisations can get a taste for such increases, and I did not quite get the assurances I was seeking.

Although I commend Dr Simpson for bringing the matter to our attention today and for making a lot of salient points, I will not be supporting the motion to annul, although I suspect that the committee will be considering the matter again not just this time next year but well in advance of that, to ensure that the HCPC actually does some of the things that we would expect it to do.

11:30

Nanette Milne: I find myself torn over the issue. I can see all sides of the argument. I accept that there is an obligation to the PSA, which must be dealt with. I also accept that, in relative terms, the HCPC fee is lower than those of some other regulatory bodies. I respect the HCPC's commitment, as was stated today, that it will try to keep the fees as low as possible, without further projected increases in the foreseeable future.

I would have liked to hear about alternative means of raising money to fund the HCPC's necessary IT systems and to address its accommodation problems. I welcome the fact that the organisation has committed to monthly payments of fees. As Mike MacKenzie has said, the amounts are relatively small in cash terms, although the rise is a big one in percentage terms. I welcome the opportunity to make monthly payments. To my mind, that will need efficient IT systems. That takes me round in a full circle, except to say that the fee should perhaps go up in order to accommodate the investment in infrastructure that is needed.

There is a need to consider efficiencies. I will not be a member of the committee next time round, as I am retiring from Parliament, but I would like the issue to be addressed in future sessions. The HCPC, and indeed other regulatory bodies, should be scrutinised carefully to ensure that they are indeed efficient and good value.

I am probably coming down on the side of not agreeing to annulment of the instrument. I note that Westminster has not yet discussed the order, and I will be interested to hear how its discussion goes. I presume that there will be such a discussion in time to come.

I am sorry to be so torn, but that is the way that I have tried to reason things out.

Rhoda Grant: I speak in support of Richard Simpson's motion. I do not take an awful lot of comfort from the reassurances that were given about there being no further large increases, as we were given such an assurance previously and this increase is even larger than the previous one.

Mike MacKenzie spoke about the costs to people working in rural areas. Mileage and petrol costs are indeed a huge burden on rural workers, and the increased fee just adds to that burden. The increase might appear to be small, but given the costs that other people are bearing—with pay freezes, increased travel and other costs—it just adds to the burden. I will therefore support Richard Simpson's motion.

Jamie Hepburn: I agree with the view that it has been useful to have this debate; it is very sensible for the committee to have done so. This is, of course, a matter for the committee, and far be it from me, as a member of the Government, to say what the committee should do, but I think it is a very sensible suggestion that the committee continues to examine these matters.

The change that we are discussing has been driven by factors beyond the levy to the PSA but, taking that as a starting point, it should be pointed out that this Parliament has already agreed the changes for funding the PSA. I understand that the instrument that set out those changes came before the committee on 23 February.

This discussion goes beyond that particular issue. The HCPC has a need to upgrade its systems and to ensure that they are up to speed so that it can properly regulate the profession for which it has responsibility. I am not unsympathetic to the concerns that have been expressed. How could anyone be? No one wants to have to pay more.

It is important to place the rise in fees in some context, as Mr Doris and Mr MacKenzie have sought to do. I know that there was an exchange about this earlier. In comparison with the other professional regulatory bodies, the HCPC, even with the fee increase, comes in significantly at the bottom of the league. It has by far and away the lowest of any fee among the UK professional regulatory bodies.

The increase has been described as 12.5 per cent; I cannot say that that is incorrect, but I also think it important to put the increase in its proper context. In that light, it turns out to be £10 a year—and less when we take into account the fact that some of it can be recouped through tax payments.

There has also been some discussion about the fee in the other context of pay policy. It is important to recognise that not everyone who is regulated by this body is covered by public sector pay policy; some work in the private sector. However, if you look at Scottish public sector pay policy, you will see that the NHS staff who come under agenda for change and are covered by this body—and to whom, therefore, the increase will apply—are expected to be in at least band 4 or, as is perhaps more likely, band 5. Last year and this year, we have implemented the NHS pay review body recommendations for an uplift to all scale points while maintaining progression, and this year band 4 staff who have still to reach the top of their scale will have received an increase of about 4 per cent ahead of the 1 per cent that has been referred to. That will more than make up for the amount by which the HCPC is increasing the levy.

We have contacted the HCPC as a body, and it has set out its commitment to us as an Administration that, as has been mentioned, it wants to move to a system of monthly payments, which I think will make things easier for those who have to pay the levy. I also point out the commitment not to increase the fees again in the foreseeable future. I hear what has been said about that, but we need to take that commitment at face value; indeed, I do not see how we can operate fairly on any other basis.

The annulment—if the committee were to agree to it, which I sincerely hope will not be the case—would impact on the HCPC's ability to regulate the professions for which it has responsibility. I also presume that it would not be able to upgrade its systems in the way that it wants to, and my understanding is that, without this increase, its funds could quickly end up in deficit. That would impact on public safety, which, after all, is ultimately what regulation is all about. On that basis, I strongly urge the committee not to annul the order.

Dr Simpson: I entirely accept that the amounts involved are small, but this is a matter of principle. The staff involved have had a pay freeze, which I will admit that the Scottish Government, unlike the Westminster Government, has mitigated; they have had their pension contributions significantly increased; and they were told that the 5 per cent increase in fees, which was above inflation, would be the last increase for two years. Some of the individuals concerned have still not paid that fee increase—they have not got through the cycle—and now the HCPC is already back looking for a 12.5 per cent increase.

Given all that, I do not think that the sums involved matter here. That said, however, I note that career break charges have been increased by £25 to £225—which I think is a significant sum for those returning to work, given that many of them will be coming back part time—and that the grandparenting charge has also been significantly increased to £440. Those sorts of sums begin to matter, and mitigating the situation through monthly direct debit, although welcome, is insufficient.

We heard in the evidence-taking session—which I thought was very useful, and I thank colleagues for the questions that they asked—that there has been no attempt to link the fee to income. That is not appropriate, particularly when many of these workers are part-time. It appears that the Scottish body is much more efficient, which makes me wonder what sort of supervision the PSA is carrying out. It should be coming to our Scottish body and saying, "You clearly run a show that the public, the Government and the Parliament have confidence in and which is hugely more efficient than what is happening at a UK level. Why are the costs for the English body three times that proposed for the Scottish body?"

The final thing that made me move this motion was Marc Seale's comment that the HCPC has no off-the-peg efficiency savings that it can make. Every single public body in Scotland has had to make efficiency savings. Those may have gone back to the body concerned and there may have been improvement, but saying that the organisation cannot make efficiency savings—that is how I interpreted what Marc Seale said—was a manifestation of an organisation that needs to be scrutinised much more closely.

I welcome the fact that others will scrutinise those bodies much more closely after I depart from the Parliament next year—I will not be standing again. However, I want to press the annulment because I want the Parliament to send out a message to the 329,000 registrants across the UK and to the UK Parliament that the matter should have been scrutinised far more closely.

The sums involved are not large for the PSA. They should have been paid by the Government until there was adequate consultation time on the issue. That has not been provided in this instance. More time should have been given and more costings should be provided. It should not simply be said that an IT system needs to be improved or that office costs will expand because more room is needed. That is not good enough. The costs were not adequately provided, and I am not prepared to subscribe to an organisation that does not lay out its costs very clearly and in great detail. Therefore, I press the motion.

The Convener: The question is, that motion S4M-13509, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)

Abstentions

Milne, Nanette (North East Scotland) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Motion disagreed to.

The Convener: That concludes parliamentary consideration of the instrument. I thank the minister and his officials for being with us.

We will pause for just a wee bit to get our witnesses in place and move quickly to agenda item 6.

11:42

Meeting suspended.

11:47

On resuming—

Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill: Stage 1

The Convener: Agenda item 6 is our final evidence session at stage 1 of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill. I welcome Jim Hume MSP, who is the member in charge of the bill; Louise Miller, senior solicitor, office of the solicitor to the Scottish Parliament; and Stephen Fricker, assistant clerk, non-Government bills unit.

Jim Hume wishes to make an opening statement.

Jim Hume (South Scotland) (LD): Thank you, convener. Good morning, everyone. I thank the committee for inviting me to give evidence on my bill, which I introduced because I wanted to build on the successes of the Smoking, Health and Social Care (Scotland) Act 2005. The act has been overwhelmingly successful in changing behaviour in Scotland, with the result that we all now benefit from a safer and cleaner environment at work or when we eat out.

The Scottish Government has the stated aim of having a smoke-free country by 2034, and my bill focuses specifically on the protection of children. Recent research has shown that 22 per cent of 13 and 15-year-olds in Scotland are exposed to second-hand smoke more than once a week while in a car.

As the committee has heard during its evidence taking, there is no safe level of exposure to second-hand tobacco smoke, which has been proven to have profound impacts on health. It particularly affects children, because of their immature respiratory systems. Outcomes can include sudden infant death syndrome, coughing, wheezing, asthma, respiratory tract infections such as pneumonia and bronchitis, and, of course, an increased risk of lung cancer. If that were not bad enough, it has been demonstrated that children who are exposed to second-hand smoke are more likely to take up smoking in later life.

The concentration of second-hand smoke found in vehicles that contain smokers is higher than the concentration that would be found in the home or outdoors, because of the very enclosed nature of the space. Opening the windows and air circulation may reduce concentrations to a small degree, but they do not make the environment safe.

Most affected children have no other transport option or are too young to make other arrangements and are not empowered to change the behaviour of adults around them. Therefore, we have a moral duty to protect them from the immediate health impacts of second-hand smoke, give them the best start in life and support them to go on to lead healthy lives themselves.

Nanette Milne: Good morning. You are probably aware that, last week, I raised issues of enforcement. I absolutely agree that it is not desirable for children—for anyone really, but particularly children—to be in an atmosphere of smoke or recent smoke, but supporters of the bill said last week that it is primarily an education issue. We need to educate people about the fact that it is not in the public health interest to smoke around children in an enclosed space.

I am concerned about how the bill can be enforced. As I said last week, I have a tall grandson who is aged 15 and would easily be mistaken for an adult in a car. How would we go about identifying an offence? Do you anticipate that, if there were an accusation that an adult had smoked in a car with children, children who had been in the car would give evidence against, for instance, their mum or dad?

Will you give me a little detail on how you envisage the practicalities of enforcement? That is important.

Jim Hume: On enforcement, we can look at the seat belt laws and the laws on using mobile phones while driving. In 2013-14, Police Scotland detected more than 36,000 seat belt offences and 34,000 mobile phone offences. That is 70,000 overall in one year. Detection of offences under the bill would be similar to those offences. It would involve seeing someone smoking. It is pretty obvious when somebody smokes in a car. If a child is in the car, it is fairly obvious if they are a younger child; obviously, it could be more difficult if the child is 17 but it would not be impossible. Police Scotland said in its evidence last week that it was quite happy with differentiating between a person who is under 18 and a person who is not, as it does daily with juniors buying alcohol.

Nanette Milne: It strikes me that enforcement is probably easier in relation to seat belts and mobile phones. We can see quite clearly whether people are wearing seat belts and, on mobile phones, we could have a record of when a particular call was made or when the phone was in action so that, if someone was accused of an offence, we could find some proof. I am not quite sure how we would prove in retrospect that someone was smoking when the car was stopped. I know that there would be residual particles, but could it be proved whether they had been produced very recently or sometime past?

Jim Hume: It would relate to active smoking. We are not talking about there having been smoking in the car before the child got into it. That would be difficult to enforce. We are talking about the police noticing somebody who is smoking in front of them, which is similar to the situation with a seat belt—we can see whether someone is wearing a seat belt. The police would be able to use their best judgment.

Nanette Milne: Someone put to me, not altogether facetiously, the point that someone might be chewing the end of a pencil or sucking a lollipop, not smoking a cigarette.

Jim Hume: We can trust the professional judgment of the police to tell the difference between sucking a lollipop and smoking a cigarette.

Nanette Milne: Does the bill cover e-cigarettes as well?

Jim Hume: No.

The Convener: The heart of the question is whether we need legislation if it is difficult to enforce. I am sure that you read Police Scotland's evidence from last week. It does not have an appetite to be the only enforcement body. It will not patrol school gates or other places where adults might be smoking in cars. The matter is far down the list of priorities. I concede that most people are law abiding, and there is a strong message in that. However, if the law is not going to be enforced effectively, why do we need legislation?

Jim Hume: We have seen that smoking in cars is still happening. As I said, 22 per cent of 13 and 15-year-olds report being exposed to smoke. We have survey figures that show that 60,000 children are exposed to second-hand smoke in cars every week.

Other countries that have enacted similar legislation have seen a marked difference. After similar legislation was introduced in Canada, there was a 33 per cent reduction in children being exposed to second-hand smoke. We have seen change come through the Smoking, Health and Social Care (Scotland) Act 2005, which had a knock-on effect in people's homes. I expect that the bill would also have a knock-on effect in other areas of life without enforcement. As you say, convener, most people are law abiding. We are talking about changing the norms of behaviour.

The Convener: Have you anything to say in response to Police Scotland's evidence at last week's meeting that it should not just be up to the police to enforce the legislation?

Jim Hume: The police talked about using a partnership approach. My initial thought was that the police would do the enforcement because it is

difficult to see how local authorities could stop moving vehicles. However, I would be open to amendments that would allow the bill to be widened to enable local authorities to enforce the law for people in stationary vehicles.

The Convener: The Police Scotland witnesses talked about the potential consequences of the legislation for a parent or a guardian of a person who is under 18 that, following the detection of an offence, the envisaged outcome would include the raising of a child concern form that would be shared with the named person. The suggestion is that that would support the getting it right for every child principles and the Children and Young People (Scotland) Act 2014. Did you envisage that the named person would become involved and a child concern form would be completed if a parent was smoking in a car with a child?

Jim Hume: The police and the health agencies also said that they did not think that that would be a huge issue. It might be an issue, but it would be the same for any child protection issue. This is about protecting children.

The Convener: I asked the police whether a child concern form would be raised if parents were caught speeding with children in the back of the car. I would have thought that that was also pretty dangerous. It is interesting territory.

Richard Lyle: At the last two evidence sessions, I identified myself as a smoker. I smoke in my car but not when my grandchildren are in the car, and I make sure that the car is well ventilated before I even pick them up.

I have a couple of questions along the same lines that the convener took. The chap from the Freedom Organisation for the Right to Enjoy Smoking Tobacco said that the bill is the thin end of the wedge. He said that you are targeting people who smoke in their cars when there are children in them, but that eventually someone will move on to say that nobody can smoke in their car, even if there are no kids present. What do you say to that?

Jim Hume: The bill is very clear and extremely tight. It is about the protection of children only. If people want to smoke, wherever they want to smoke, that is fine. The bill is purely about protecting children. It cannot be amended in any way that would make it an offence for people to smoke in cars without children. I can see nothing on the horizon that would tweak the bill in that way.

Richard Lyle: We are talking about children in cars. What about the same children who are sitting in their house at night time when their two parents are smoking? Thirty years ago, both my wife and I smoked in the house. I no longer smoke in the house; because of my grandchildren, I smoke outside. I see a lot of people doing that nowadays. What happens to the person who cannot smoke in their car, because their kids are there, but who can smoke in their house? Will we next have a law to say that people cannot smoke in their house?

12:00

Jim Hume: As I said, the bill could not be amended to make it cover what people do in their house. It is purely about what happens in a vehicle, which is a very enclosed space. Children have no option but to go into that car for their trip to wherever—sometimes, bizarrely, the trip is to do sports.

The British Lung Foundation's evidence showed that smoking particles were 11 times thicker in a car than they were in a pub. That is quite a difference. Of course, the ban in cars may make people think twice about smoking at home when the kids are there, which would be great. However, any legislation to stop a person smoking in their house, which is a private space, would be unenforceable.

Richard Lyle: I sincerely hope that you are right that such legislation will not come.

As the convener said, the police said last week that they would be happy to lend a hand if the bill is passed but that they are not too happy about the bill itself. If I remember rightly, reference was made to them taking their eye off terrorism and so on in order to look around for someone smoking in a car. I liked the other comment that was made about tinted windows making it impossible to see whether a child is in a car. I have two child car seats for my grandkids, and you can see if they are in the car.

FOREST said that the police, traffic wardens, community cops and wardens, environmental health officers—if a car was parked in a car park—and the public would be involved in reporting. Indeed, everyone will start reporting people who they see smoking in cars. Is that not a bit over the top?

Jim Hume: My bill initially called for the police alone to enforce it. The Government has said that it would consider lodging an amendment on the role of local authorities and community wardens and so on. Therefore, it would be up to the Government to justify that. I would be quite happy for more people to be involved in enforcing the legislation.

Every week, 60,000 children are exposed to second-hand smoke in cars. We know the long-term effects of that. We know that young children will smoke in later life if they are exposed to second-hand smoke in cars. We know the socioeconomic and health inequalities that that

causes. We must act. Last week, Police Scotland and the Law Society of Scotland said that the legislation is necessary.

The amount of enforcement needed would not be drastic. As has been shown in other countries, once legislation is in place, huge differences in people's behaviour have been noticed. In South Australia, following legislation, around 88 per cent of cars are smoke free. In Canada, as I have said, there was an almost immediate 33 per cent reduction once the legislation was introduced.

Dennis Robertson: Good afternoon, Mr Hume. I support the whole idea of ensuring that children are not exposed to second-hand smoke. However, I have a problem about an aspect of enforcement, which Nanette Milne mentioned. Say someone is having a cigarette while they are parked up waiting to collect their child from school. That child will be exposed to second-hand smoke once they get into the car even after that person has finished smoking. We know that, even if you dissipate the smoke by ventilation, the chemicals will be there for quite some time. The legislation will not protect those children at all. Would it not be better to raise the education and awareness of the harms of exposing children to smoke, rather than imposing legislation that—at the moment, anyway—would appear to be unenforceable?

Jim Hume: As we have seen from other countries, a ban has been enforceable, so I would dispute that. What we have seen is that legislation has acted as a deterrent and behaviour has changed, which is what we all want. We do not want loads of people to be criminalised. Legislation is there as a deterrent and we know that it changes behaviour. We have all the evidence in front of us that legislation in other countries has changed behaviour.

You are quite right that, if someone has just been smoking in a car, the toxins will still be there. Just because smoke cannot be seen does not mean that the toxins are not there. There are about 50 toxins in tobacco smoke, some of which are carcinogenic, and they cause such damage. Physically seeing whether someone is smoking in a car is fairly easy and, even with tinted glass, a young child in the back is obvious too. We know from the evidence provided by the University of Aberdeen that there are 60,000 journeys every week in which a child is exposed to smoke, which is a phenomenal amount. After the 2005 act, there was a significant drop in smoking, but over the past years that has levelled out so the evidence for legislation is very strong.

Dennis Robertson: You have said that the bill will impact on people's behaviour, which is a good thing. However, you have also said several times today that the bill is very tight. Given the restrictions in your bill, I find it difficult to see how we are going to achieve the outcomes that you are looking for through legislation. Are you hopeful, therefore, that there will be an education programme under the guidance? The bill is somewhat flawed, because the issue is really about education and awareness rather than enforcement.

Jim Hume: In the financial memorandum, we have costed an education programme, related to the Scottish Government's take it right outside programme. The fact that the bill has gained so much media attention will already have changed people's attitudes.

We know that preventing smoking in cars requires education, but that has been going on for decades. The dangers of second-hand smoke have also been known for decades, but still we have 60,000 children every single week in Scotland being exposed to second-hand smoke. We know the dangers that that poses to their health. They have no choice over whether to go in that car; they cannot decide to hop on the bus, get a taxi or take the train or the tram to school. They have to go in that car.

We know from Dr Rowa-Dewar from the University of Edinburgh, who gave evidence to my consultation three years ago, that smoking in cars also causes great stress for children. Children are in the back of a car, being exposed to smoke. They cannot hold their breath for 10 minutes. They know the dangers of being exposed to that smoke, and the stress that that gives them is marked.

Dennis Robertson: You are continuing to cite the evidence, and I appreciate all the evidence that is there and certainly that from the University of Aberdeen and the British Lung Foundation. I understand all that and the impact that second-hand smoke has on children and their behaviour later in life. The issue is about education and awareness and I am trying to tease out whether legislation is absolutely necessary. You say that you do not want to criminalise people. Is it not the case that legislation is not appropriate to take this message forward?

Jim Hume: The Law Society thought that legislation was necessary. Police Scotland stated to the committee that legislation is necessary. We have not seen a reduction in smoking with kids in cars to any significant extent. It is still very prevalent.

People still believe that opening the window makes a difference, but we know that it makes no real difference. Dr Sean Semple, who is seen as the leading expert in this area, at least in the UK, said in conversation that the highest reading of density of smoke particles in a car that he had recorded was taken when the window was ajar.

The current system is not working, so we need the back-up of legislation to make progress.

Mike MacKenzie: I support the general principles of the bill, but I have some concerns about enforcement, which are similar to those that Nanette Milne raised. I understand that the system that the bill proposes will operate on the basis of a fixed penalty. From my questioning of Police Scotland last week, I was not reassured that it would not feel under some pressure to produce a set of enforcement statistics—I know that some of your colleagues are on record as complaining about the target-driven culture in Police Scotland. That could give rise to some injustices.

Given that we are talking about fixed penalties, which are a form of summary justice that many people would not challenge in court, and given that I understand—although I could be wrong—that a penalty in the order of £100 is being considered, do you accept that it is inevitable that there will be some injustices? Do you accept that such a penalty would have a disproportionate impact on people of slender means, such as pensioners? Given that you have just described that the bill's biggest effect will be in changing the culture, do you not think that that supports the case for having a fixed penalty of £10 or £20?

Jim Hume: My initial consultation included a figure of £60, which is the same level as a spot fine for not wearing a seat belt or for using a mobile phone while driving—that was the rationale for making the fine £60. During the consultation process, the figure was changed to £100, which is the level of fixed penalty that the bill provides for.

You mentioned socioeconomic factors and health inequalities. We know that poor health and smoking are much larger issues in some socioeconomic groups. I reiterate that the bill is about protecting children from second-hand smoke damage at a very vulnerable age, which, as well as causing immediate problems, can lead to problems in the future.

Mike MacKenzie: I am a bit disappointed that you are not more concerned about potential injustices, but I will move on.

When it gave evidence last week, the Law Society of Scotland seemed to suggest that the liable person should be the driver. I am not quite clear whether it would be the smoker or the driver who would be liable, so perhaps you can clarify that. I was a bit concerned about the idea that it would be the driver, because if I gave Richard Lyle a lift in my car and he lit up a cigarette while we were on a motorway, where I could not stop or kick him out the door—

Richard Lyle: You would never do that.

Mike MacKenzie: No, I would not; I am just dramatising to make my point. I am concerned that, if an eagle-eyed policeman happened to spot that, I as the driver would be liable. Again, I feel that that would give rise to an injustice. Will you clarify the situation? Do you think that the driver ought to be liable, or should the smoker and the driver be liable?

Jim Hume: I can clarify that it is the adult who is smoking who will be liable. This is a health issue. Under the bill, it is only the adult who is smoking who will be liable. If that adult is the driver, that is fine, but if they are a passenger, they would still be liable. I think that the driver has enough to do in driving his car; it should not be down to him to stop other adults smoking in his car. The bill makes it clear that the adult who is smoking will be liable.

Other people have talked about other issues. I know that the situation is different south of the border, where the driver is liable—it is a motoring offence. The offence that I am proposing is a health offence. It is the health of children that we are trying to look after. The adult who is smoking will be liable, whether they are a passenger or the driver.

Mike MacKenzie: Thank you.

The Convener: Nanette Milne has a supplementary question.

Nanette Milne: Something has just come into my head. Everyone is talking about children in terms of small children in car seats and so on, and the responsibility of the driver or passengers. Correct me if I am wrong; I know that it is illegal for those under 18 to buy cigarettes but I am not sure that it is illegal for someone under the age of 18 to smoke. Suppose a 17-year-old passenger in a car was smoking and he was the only one in the car who was under 18. Would he be committing a criminal offence? It is the upper age limit that is bothering me.

12:15

Jim Hume: We had a lot of debate about that very point. My initial proposal was for 16 years of age in that regard, so it would have applied to those aged 15 or under. However, it came out in the consultation process that it is illegal, as you correctly pointed out, for those aged 17 or under to buy cigarettes. The Law Society considered anyone aged 18 to be an adult and someone aged 17 to be a junior. The decision was to have the provision in the bill coincide with that view of those aged 18 to make it simpler. You are asking whether somebody aged 17 would be liable, but my bill suggests that they would not. I do not want to criminalise children and a 17-year-old is a child.

Nanette Milne: So the driver in such a case would be guilty of allowing a 17-year-old to smoke in his car, but the 17-year-old would not be guilty if they were the only child in the car.

Jim Hume: No, if the driver or any person who was 17 was smoking, they would not be liable, because the provision is for those aged 18 and over.

Nanette Milne: But the driver would be liable.

Jim Hume: Sorry, but can you clarify what age of driver you mean?

Nanette Milne: If a 17-year-old was smoking, he would not be guilty of an offence but the driver would be.

Jim Hume: If the driver were 18 or above.

Nanette Milne: An adult driver.

Jim Hume: The driver would not be committing an offence; only the smoker would be, if they were 18 or older.

Nanette Milne: I am still a bit confused. I will think about that one.

Jim Hume: Quite right.

Richard Lyle: Can I clarify something that you said in reply to Mike MacKenzie, Mr Hume? If the police stopped a car in which the driver was not smoking, his wife in the front with him was smoking, and there were two kids in the back, would we be talking about one ticket and one £100 charge for the driver, or would we be talking about a £100 charge each for the driver and his wife? Who gets charged?

Jim Hume: You suggest that the driver is not smoking and is over 18, that the wife is smoking and is over 18, and that there are two children in the back.

Richard Lyle: Yes.

Jim Hume: Only the wife over 18 would be charged.

Richard Lyle: She would be charged. Thank you.

Rhoda Grant: I will ask about the exemption for vehicles that are used as a home. I am bit concerned about that being a loophole. The bill uses the phrase "human habitation", but that does not necessarily say that the vehicle is a mobile home; the bill's provisions would apply to a vehicle of any kind that is used for

"human habitation for not less than one night".

Would someone sleeping overnight in a car be exempt? Could that not be used as a loophole? How would it be proved that a car had been used for "human habitation"?

Jim Hume: Again, it would be up to the police to interpret. I have it in the bill that it would be

"for not less than one night".

A car that is parked up and has somebody sleeping in it would not be exempt—that is quite tight in the bill. I wanted to be very careful that I was not legislating for what happens in people's homes, which is why I have the exemption for motor homes. As we know, some people use motor homes for their living accommodation or for living in when on holiday. For me, that means that they are exempted from the bill's provisions. Of course, if they were using the motor homes to drive around, as we would drive a normal private motor vehicle, then they would not be exempt. The bill is quite clear in that regard.

Rhoda Grant: Would it not be easier to refer in the bill to a "motor home" rather than to a vehicle used for "human habitation"?

Jim Hume: I would not want to see somebody exempted who was driving their motor home day in, day out. They would be exempted only when they used the motor home for living in and sleeping.

Rhoda Grant: If someone was living in a normal car—

Jim Hume: They would not be exempted. That is quite clear in the bill.

Rhoda Grant: Okay.

Colin Keir (Edinburgh Western) (SNP): Good afternoon, Mr Hume.

Jim Hume: Good afternoon, Colin.

Colin Keir: The terminology surrounding convertible vehicles has had me confused because there are so many different types. It is possible for a convertible vehicle to run with the windows up at the sides, and the air that is coming across what would otherwise be the roof may force any particulate smoke down. How do you determine what is a convertible and exempt vehicle?

Jim Hume: I think that there has been some confusion at the committee on that point. In my bill, there is no exemption for convertible motor vehicles. The Scottish Government has talked about such an exemption and I have discussed the matter with it. It seems quite soft on that, but I completely agree with you that putting the windows up and taking the roof down can still cause quite a lot of issues with second-hand smoke. My bill is clear that there is no exemption for convertible vehicles whatsoever and, to be honest, I will be sticking to that.

Colin Keir: In an earlier answer to one of my colleagues, you mentioned the ability to see

through tinted windows. Usually, it is the rear window that is tinted. Most models of car have clear windows for the driver and the passenger in the front. You seemed to suggest that it is easy to determine who is in the back, but I am not sure that I agree. Since the issue was brought up some time ago, I have been amazed by how often I have looked into vehicles as people have driven past me and found that it is not that easy to determine who is in the back. The enforcement issue comes down to identification, but the police see difficulties and so do the local authorities, in part. How confident are you that what you propose is feasible?

Jim Hume: Just to clarify, I note that the windscreen and the side windows at the front cannot be tinted to any great degree. That is illegal because it causes issues with drivers seeing properly in certain light conditions.

Colin Keir: The same issues exist with looking in at the back.

Jim Hume: As I said, the front windows must be clear, so there is good vision into half of the vehicle. Of course it is more difficult to see through smoky glass and to see what happens in the back of a van, but even with that knowledge the local authorities and Police Scotland realise and have stated that the bill is necessary. Again, the evidence from other countries—you will have a lot of it in your papers—shows that the change in people's behaviour when such legislation comes in is phenomenal. That is what the bill is about.

Stephen Fricker (Scottish Parliament): I think it is important to state that the committee seems to be focusing on vehicles that are in motion. The bill does not apply only to such vehicles; it also applies to stationary vehicles.

Last week, Police Scotland mentioned that it will focus on its principal duties of road safety. Part of those duties might involve, in the interests of road safety, looking out for potential offences. Officers could pull a motorist over, for example, in relation to one offence, and when the motorist has pulled over it may become clear to the officers that there are young children, or under-18s, in the back and that an adult is smoking. There is nothing in the bill to say that the police officer or the enforcement officer cannot draw the adult's attention to the fact that they were smoking and potentially committing an offence, or that they cannot go through the process of issuing a fixed-penalty notice. The system works in the United States. Under a lot of legislation there, smoking in cars has been put forward as a secondary offence.

If a vehicle is stationary and an officer can determine that an offence is being committed, they will be able to issue a ticket.

Colin Keir: I am not disagreeing that it could become a secondary offence; I am just thinking about people's ability to look inside vehicles clearly and see that that is happening. I understand that there is the driving element as well—I take on board what you are saying about stationary vehicles and secondary offences, but I do not think that that was the argument that was being faced.

Jim Hume: I hate to repeat things, but I will repeat myself. In 2013-14, 36,000 breaches of the seat belt law were detected, and those seat belts would equally have been in the back and in the front. It will be more difficult to see inside a car if it has dark, smoked glass, but that does not mean that it will be impossible. As I have said several times before, we know that the legislation that has been introduced in other countries has changed behaviour, and the bill is all about the protection of children.

The Convener: That is what the police said. They will enforce seat belt law for traffic safety and so on—that is their remit. However, they told us that they are not empowered to deal with a health matter. That was a basic plea, was it not?

Jim Hume: Yes. Road traffic is an immediate health matter, because it can result in people being hurt, whereas the bill deals with a longer-term health matter whereby hurt is done over many years.

The Convener: The issue is enforcement, though.

Jim Hume: Nobody would expect the police—as some media have reported—to move their resources from dealing with a serious criminal offence to stopping people smoking. The evidence that I got from the police is that they would enforce the legislation as part of their normal duties.

The Convener: The evidence that we can go with is what was put on the record last week. You can familiarise yourself with that.

Bob Doris will ask the last question before we move to our next item of business, which will be discussed in private.

Bob Doris: Mr Hume, I want to give you the opportunity to respond on the record to another aspect of the written evidence that we have received. Some of the written submissions have suggested that the bill could extend to those who are over 18 but who could be determined to be vulnerable adults, whether because of learning disabilities or because of whatever groups they belong to. When we draft our stage 1 report, we will consider all the submissions that we have received, so I give you the opportunity to put on record how you feel about that proposal.

Jim Hume: It is absolutely wrong that any vulnerable adult should be exposed to second-hand smoke in cars. They are very similar to children in that they probably do not have the option to go on public transport and so on. It is something that we considered in great depth before we started this journey, and our concern was about how the police could identify someone as a vulnerable adult. It can be quite a bit more obvious that someone is a child than that they are a vulnerable adult, so we decided to leave that group out of the bill in order to give it a better chance of being passed. I hope that people will take the message on board and not smoke when there are vulnerable adults present in their car, but that is not part of the bill. If someone wants to lodge an amendment on the issue that would strengthen the bill, I will be happy to look at that.

Bob Doris: Thank you. I just wanted to get that on the record.

The Convener: We do not have any more questions. I thank you all for your attendance and for giving us your evidence.

Jim Hume: Thank you.

The Convener: We previously agreed to take our next item of business, item 7, in private.

12:29

Meeting continued in private until 12:49.

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