



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 2 February 2016

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HEALTH AND SPORT COMMITTEE

8th Meeting 2016, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

*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)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jamie Hepburn (Minister for Sport, Health Improvement and Mental Health)

Brian Nisbet (Scottish Government)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Health and Sport Committee

Tuesday 2 February 2016

[The Convener opened the meeting at 09:47]

Decision on Taking Business in Private

The Convener (Duncan McNeil): Good morning and welcome to the eighth meeting in 2016 of the Health and Sport Committee. As usual, I ask everyone to switch off mobile phones, as they can interrupt the committee's proceedings and interfere with the sound system. I point out, though, that some of us are using tablet devices instead of hard copies of our papers.

Moving to agenda item 1, does the committee agree to take in private item 5, which is consideration of the committee's approach to its legacy paper, and to take consideration of the legacy paper in private at future meetings?

Members indicated agreement.

Subordinate Legislation

Scottish Public Services Ombudsman Act 2002 Amendment Order 2016 [Draft]

09:48

The Convener: Agenda item 2 is consideration of an affirmative instrument. As is usual with affirmative instruments, we will have an evidence-taking session with the minister and his officials. After all our questions have been answered, we will move to the formal debate.

I welcome to the meeting Jamie Hepburn, the Minister for Sport, Health Improvement and Mental Health, and the following Scottish Government officials: Brian Nisbet, senior policy officer, health and social care integration directorate; and Clare McKinlay, solicitor, legal directorate.

I believe that the minister wishes to make a prepared statement.

The Minister for Sport, Health Improvement and Mental Health (Jamie Hepburn): It will be a short statement, convener.

Thank you for the opportunity to say a few words about the draft order, which amends the Scottish Public Services Ombudsman Act 2002 to add integration joint boards, which have been established under the Public Bodies (Joint Working) (Scotland) Act 2014, to schedule 2 to the 2002 act. That will have the effect of including integration joint boards as listed authorities for the purposes of the 2002 act, which means that any complaints raised against integration joint boards can be dealt with by the ombudsman.

In addition, the complaints procedures used by IJBs must comply with the principles set out by the ombudsman. That will help to ensure that as we approach 1 April 2016, by which time all integration joint boards will have taken on their responsibilities, we will have robust complaints-handling procedures in place for all of those boards.

The right to seek redress from an external and independent ombudsman is, we believe, an important right for the public and by proposing this amendment to the 2002 act to include integration joint boards, we are seeking to make that possible in relation to the planning of integrated services. Committee members will wish to note that the order does not take forward any new policy, as it is needed simply as a result of wider legislative changes with regard to the integration of health and social care.

I am happy to take questions from committee members.

The Convener: Thank you, minister. We move to questions from members.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): People are interested in the accountability arrangements for integration joint boards. Before anyone had recourse to the ombudsman, they would have to exhaust the complaints procedure. Is the complaints procedure for IJBs completely contained within and restricted to the IJB—presumably in connection with the lead officer—or will the national health service board and local authorities have any role in that respect?

Jamie Hepburn: We need to be distinct about what we are talking about. As the exercise of functions on the ground and front-line services are already covered by existing complaints procedures for health boards and local government, they will, as we are all aware, already be dealt with by the SPSO. Indeed, I am sure that we have all had constituents contact us at various times about such matters.

If we are talking about the planning of functions through the IJBs, yes, the boards will have their own complaints procedure. Indeed, we have issued guidance to that effect, making it clear that the procedure has to be compliant with the wider SPSO complaints principles. All bodies that have such responsibilities must have a complaints procedure and adhere to it; now that the order adds IJBs as a distinct kind of body corporate to the list of bodies that the SPSO has oversight of, people can complain to the SPSO, too.

Malcolm Chisholm: Most people are more likely to make a complaint about the delivery of a service rather than the way in which it has been planned. Are you saying that, as far as the delivery of services is concerned, there would not be an issue with complaints going to the IJB instead of going simply to the local authority or the health board?

Jamie Hepburn: In essence, those arrangements are already in place. The order relates more to how the planning of integrated functions is delivered.

Malcolm Chisholm: That is quite an interesting answer, but I think that it will probably add to people's confusion about the accountability arrangements. At a meeting that I had yesterday with a particular body, the question of who is ultimately accountable was precisely the one that was raised. Are you saying that the health board or the local authority will actually be accountable for the services that, as far as I had understood it, will be delivered through the IJB? I thought that we were trying to get beyond those distinctions when it came to integrated services.

Jamie Hepburn: That is about the delivery of the actual function. If there is an issue around the

planning of integrated services, the integration joint board will be accountable and have responsibility for that, and I hope that people will understand that. I ask Brian Nisbet to comment further on the matter.

Brian Nisbet (Scottish Government): That is the case in relation to the planning and strategic commissioning for which the IJBs are responsible. Adding them to the 2002 act will allow complaints to be made about the commissioning and planning function; however, the issue of service delivery in relation to the NHS and social work services will still rest with the local authority and NHS complaints procedures.

Malcolm Chisholm: That is interesting. Thank you.

Nanette Milne (North East Scotland) (Con): What about services provided by, for example, the third or voluntary sectors? How would complaints against them work?

Jamie Hepburn: Again, I suspect that that will come down to who has commissioned the services and who has ultimate responsibility for them. The commissioning body would be the body to which a person would complain, and it is incumbent on each body to act appropriately. Indeed, we have issued guidance on that matter.

Integration joint boards are subject to that process, and health boards and local authorities are already responsible in relation to their functions; they come up with their own complaints procedures that comply with the broad principles to which the SPSO operates, and they would need to take account of any external body that they have commissioned to deliver services as part of that process.

The Convener: We are simple souls here, so I do not think that we expected any controversy on this issue. However, it would be helpful if Brian Nisbet, Clare McKinlay or you, minister—it does not matter who—could give me an example about what the change adds to the existing process. What would the process look like if someone made a complaint about the planning of a service rather than its delivery? I am genuinely struggling to understand what will be added to the process.

Jamie Hepburn: Like you, convener, I do not view this as a controversial matter. In fact, it is quite straightforward, given that through the Public Bodies (Joint Working) (Scotland) Act 2014 we have established integration joint boards across the country as bodies corporate. Those bodies exist in law and exercise a public function. All we are seeking to do with the order is to ensure that a person who wishes to make a complaint about how those boards have exercised that function has a right of redress. They have a right to complain to those bodies in the first instance, and

if they are dissatisfied with how the complaint has been handled, they can go the ombudsman to seek further redress.

You are asking me to speculate about what the process might look like, convener. Obviously it is hard for me to say, as it is a theoretical matter. I suppose—without wanting to be specific about it; I do not want to invite complaints—that if a person were to feel that an integration joint board had not followed the processes that it should have in planning and co-ordinating integrated functions, the individual in question might use that as the basis for complaining to an integrated joint board. What that might be about could be different to different people. Ultimately, the matter would be subject to the complaints procedure and for the ombudsman to look at. The ombudsman could uphold the complaint or dismiss it on the grounds that the integrated joint board had followed the proper process.

Rhoda Grant (Highlands and Islands) (Lab): I, too, seek some clarity. If a person had a complaint about a function carried out by the joint board on behalf of, say, local government—it could be about the care someone had been provided with at home—would they complain through the integration joint board or to local government, the statutory provider of the service? Would they have to complain to both before they went to the ombudsman?

Jamie Hepburn: I do not believe that they would have to complain to both. Obviously, the situation is a hypothetical one, but I suspect that you are referring to front-line service delivery. I make it clear that, in the example that you have given, that would be the responsibility of local government. Equally, however, it could be the responsibility of the health board.

Rhoda Grant: It would not be the joint board's responsibility.

Jamie Hepburn: Not unless the complaint was about the planning or commissioning of services. Brian Nisbet can clarify the position, if needs be. Do you have anything to add, Brian?

Brian Nisbet: Rhoda Grant makes an interesting point. The central point is that any complaint, whether it be about service delivery or planning, must be dealt with appropriately. If it is a service delivery matter and the complaint is made to the local authority member of staff, that person should pick it up. However, if the complaint is about a planning matter, the complaint should be made to the integration joint board.

Rhoda Grant: So the complaint would go through the employer. It might not be about a member of staff; it might be about the way in which a service is provided. In that case, it would go through whoever employs the workforce.

10:00

Jamie Hepburn: Putting it in the simplest way, Ms Grant, I think that if you sought to assist a constituent with a complaint that might ultimately go to the ombudsman and which relates to the functions about which you are talking, you would find that the process would not be dramatically different from the one that you would go through just now.

Rhoda Grant: But who would I write to?

The Convener: Mike MacKenzie wants to ask a question.

Mike MacKenzie (Highlands and Islands) (SNP): I want to tease out a bit of clarification in an effort to be helpful. Am I correct in assuming that if I, acting on a constituent's behalf, were to write to a local authority or health board on a matter that actually related to the integration joint board, the local authority or the health board would write back to me saying, "Dear Mr MacKenzie, we cannot properly address this complaint so we suggest that you take it to the integration joint board" and vice versa? Therefore, there would be no real problem here, aside from the cost of a stamp or sending an email, or confusion about the right agency that people should take their complaints to.

Jamie Hepburn: You are being helpful, Mr MacKenzie; indeed, if I can say so, you always try to be helpful. In essence, what you say is the case.

We have issued guidance on this matter. The various bodies involved have to be clear about their particular roles. I might be giving a hostage to fortune here, but I suspect that most complaints will continue to pertain to front-line delivery. The processes already exist for such complaints to be addressed, as they are already covered by the Scottish Public Services Ombudsman.

However, now that we have created integration joint boards, it is possible that people will want to complain about the way in which they discharge their functions, which are about the planning and commissioning of services, and we have to give people the right to make a complaint first to the body directly and ultimately, if need be, to the Scottish Public Services Ombudsman. My expectation and that of the Scottish Government in general is that any process that involved a body getting back to a complainant to say that they should contact another body instead would be expedited to ensure that any complaint could be taken up with the relevant agency and, I hope, resolved satisfactorily and quickly thereafter.

The Convener: We do not want things to be complicated, but I think that they might be getting that way.

Malcolm Chisholm: This has been a really interesting discussion but to be honest, minister, I am surprised by what you have said. My understanding was that we were getting beyond the distinction between health and local government in a range of services, and I had assumed that if I or a constituent had a problem about the delivery of social care, I would write to the chief officer of the integration joint board. To say that the joint board is responsible for planning and that it is then up to the separate bodies to deliver the service dilutes the concept of integration. I put it to you that it would be more appropriate if the integration joint board also dealt with complaints about the delivery of the services for which it is responsible.

Jamie Hepburn: We are talking about two separate things: on the one hand, you are talking about delivery while, on the other, we are talking about a complaints function. Our hope and our aspiration are that complaints will be few and far between, but we are all aware from our constituency postbags that complaints come up now and again and have to be dealt with.

You are right to say that the delivery of functions should be increasingly integrated, but we are not getting rid of health boards and local authorities as a result of integration. Those bodies are still entities in their own right; they continue to exist and to be involved in the delivery of the services. If a complaint is about a particular element of the service and a function that they should properly have exercised, it is right that, in the first instance, they be responsible for responding to the complaint. The approach of bringing the two worlds of health and social care closer together will, by its nature, lead to better service delivery and, I hope, to fewer complaints on that basis.

Malcolm Chisholm: That is interesting, because your approach throws a new light on the whole issue of accountability. It is almost as if you will still be able to market whatever is delivered by this body as the responsibility of health or local government for the purposes of complaints. I presume that that relates closely to the issue of accountability. However, although I find the whole conversation interesting, I have to say that I am no wiser about accountability than I was at the beginning.

Jamie Hepburn: With the best will in the world, I think that one could be less clear about this. You could justifiably say to me that, if we were not doing what we are doing today, accountability would be a lot less clear, because we would have created an entity that ultimately had no proper complaints procedure and would not be subject to oversight by the Scottish Public Services Ombudsman. What we are doing today enhances accountability.

Malcolm Chisholm: My point is that I thought that it would be accountable for the delivery of services as well as the planning of services.

The Convener: That reminds me that we should also point to the targeted consultation and the ombudsman's favourable comments about the order before us. Is that correct, minister?

Jamie Hepburn: My understanding is that everyone who responded to the consultation, including the Scottish Public Services Ombudsman, was in favour of what we are taking forward. Indeed, the Delegated Powers and Law Reform Committee has no concerns about the order.

The Convener: As members have no other questions, we move to agenda item 3, which is the formal debate on the Scottish statutory instrument that we have just taken evidence on. As usual, I point out that members should not put questions to the minister during the formal debate and that officials cannot speak in it.

Motion moved,

That the Health and Sport Committee recommends that the Scottish Public Services Ombudsman Act 2002 Amendment Order 2016 [draft] be approved.—[*Jamie Hepburn.*]

The Convener: No member has indicated that they wish to speak in the debate, and I presume that the minister does not want to say anything further.

Jamie Hepburn: No, convener. I think that we have covered the matter in what has been a very useful discussion.

The Convener: The question is, that motion S4M-15254 be agreed to.

Motion agreed to.

The Convener: I suspend the meeting briefly to allow the witnesses to leave.

10:07

Meeting suspended.

10:09

On resuming—

Petition

Respite Services (Young Disabled Adults) (PE1499)

The Convener: The fourth item on the agenda today is consideration of PE1499 by Robert Watson on creating suitable respite facilities to support younger disabled adults with life-shortening conditions. Members can see from paper HS/S4/16/8/3 that the committee has considered the petition as part of its palliative care inquiry. We have also considered respite care provision for people who are transitioning from children's to adults' hospice and respite services.

Those issues were discussed at last week's evidence session with the Cabinet Secretary for Health, Wellbeing and Sport. Members will recall that the cabinet secretary highlighted the work that is being done by the Children's Hospice Association Scotland on determining how young adults are supported, and the respite care pilot work that is being undertaken at Leuchie house.

Given that it appears that action is under way to address the petitioner's concerns, I am minded to suggest that we close the petition. Of course, it would remain open to the petitioner to lodge another petition if, in the fullness of time, it transpires that the work that is currently under way does not improve services. I seek members' views.

Rhoda Grant: Can we ask for the petitioner's opinion on what has been suggested and on the on-going work? We are obviously coming to the end of the parliamentary session, so at some point we will have to close the petition. It will be for the petitioner to come back with another petition in the new session of Parliament if they still have concerns. This might be a good opportunity to get the petitioner's views and to feed them in to the Government as work progresses, given that there will be a bit of a gap.

The Convener: Are you suggesting that we get the petitioner's views now about the pilot programme?

Rhoda Grant: Yes—and about what he thinks might need to be added to it. I know that respite for young people—rather than for children, I think—is a real issue not only in respect of palliative care but more widely.

The Convener: We can do that. We have written to the petitioner to outline our position. What response did we get?

Jane Williams (Clerk): The committee has just told the petitioner that the committee's work is under way.

Rhoda Grant: It would be good to get the petitioner's views, feed them in and then close the petition, or close the petition, get his views and feed them in, if that is appropriate. I know that we have to close the petition at some point.

The Convener: If the committee feels that we should, we can tell the petitioner what we are likely to do and ask whether he has any views on the pilot. We can then bring the petition back before the committee.

Dennis Robertson (Aberdeenshire West) (SNP): The work that is under way now should be given time to bed in and to resolve the situation. If the petitioner wishes to monitor the progress of that work, he can lodge another petition if he is not satisfied that work that he feels is required is being done. However, I think that such a petition would look different from the current one, because I am pretty sure that the work that is being undertaken by CHAS will resolve many of the petitioner's concerns.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): If I recall correctly what was said, last week when I asked the cabinet secretary and her officials about the on-going work that the Government is doing with Leuchie house and Marie Curie in Glasgow, we were given timescales for reporting back on that work. Perhaps in closing the petition, it might be useful for us to send that reference to the petitioner.

Malcolm Chisholm: I am interested in the petitioner's comment that

"The danger may be that 'respite care' is lost in this focus—and that is the primary objective of my petition."

I am not entirely clear about this, because I have not been a member of the committee during all the time in which the petition has been dealt with, but the petitioner seems to be expressing concern that we have focused only on palliative care, whereas I presume that respite care could apply to a much wider range of people.

In NHS Lothian at the moment there is an issue in that respite care has been taken away from people who used to use a unit called the Lanfine unit; I have a constituent who has lost his respite care at that unit. NHS Lothian would argue that it has remodelled the service, but the fact of the matter is that some people have lost out. That is the kind of concern that is coming to me at the moment.

10:15

Although I have not been closely involved with the petition, I think that there is probably no option

but to close it, at this stage. However, it may be that we have not quite captured the breadth of the concern of the petitioner by having focused on palliative care rather than on the broader respite issue that is being raised.

Fiona McLeod: My recollection of the evidence that we heard from the cabinet secretary and officials last week is that it was also about respite care, and they gave us timescales for reporting on respite care pilots.

Rhoda Grant: I want to make the point that children's hospice care is very different from adult hospice care. Children's hospice care is about respite, and the fact is that young people are growing up in the children's hospice movement, often from birth until adulthood, when they leave it. Respite support is very important to them, not just so that their families have respite, but for the young people socially, so that they can do what they want to do without being dependent on their families.

Those young people come out into an adult system that is totally different. Palliative care is very much for the end of life rather than for life-limiting conditions.

There are concerns. I would not like to be seen to be just ticking the boxes and saying that that is it sorted. There will be on-going issues, which is why I am keen to get the petitioner's views and to feed them into the process.

The Convener: We agreed that we would deal with this petition as we took evidence on palliative and end-of-life care, Rhoda, but you seem to be suggesting something different at this point. Although the focus has been on palliative care, Marie Curie and CHAS are directly involved. That was the process that we were following.

The issue is what a committee is expected to do with a petition. As a committee, we agreed that we would deal with this petition in our general evidence on palliative care. We suggested that to the petitioner and let him know that we would do that. The issues that were raised in the petition were raised directly with the cabinet secretary. CHAS is directly involved; Marie Curie is directly involved.

I am not objecting to Rhoda Grant's proposal, but I would not want to give the petitioner a false expectation that we are going to take another route. Our approach has been as consistent as possible. We informed the petitioner of what we were going to do and that our work would focus on palliative care. The people who are directly involved are able to deal through the pilot with the issues that are being raised now.

Other than departing from the parameters that we have been following, I do not know what we

can do. Rhoda Grant is suggesting that the issue is not just palliative care but lifelong conditions, but that has not been our approach. We could ask for the indulgence perhaps to leave the petition lying for a couple of weeks, but we need to know what we will discuss in the next couple of weeks and how the petitioner will respond to what we do with the petition. I just do not know where we are going.

Rhoda Grant: The issue is not lifelong conditions; it is life-limiting conditions. We have, because of advances in medicine, children with conditions that would not, in the past, have allowed them to reach adulthood, but who are now living beyond childhood. That is great, but there is a gap in that the support that they had in their youth they will not have going forward.

I know that we cannot keep the petition open, and we have agreed to deal with it as we have discussed. I know that the Government is trying to do something about the situation. I am simply suggesting that we seek the petitioner's view and feed it in to the Government—that is important when something is being piloted—rather than keeping the petition open.

Nanette Milne: I agree with Rhoda Grant. I first heard about the on-going situation with CHAS at the cross-party group on muscular dystrophy, which was attended by people from Action Duchenne. People with Duchenne muscular dystrophy are now surviving into adulthood, and it is exactly right to highlight—as Rhoda Grant has—that such people may need respite care. Ultimately, they may need palliative care too, but respite was quite a significant element of what was discussed with Action Duchenne at the cross-party group. If I remember rightly, the petition arose from one of those people.

The Convener: The petition has come to us and we have progressed it. We have communicated with the petitioner and let them know what we are doing. I am focusing on how we have dealt with the petition, and I am struggling to see what more we can do.

One of the recommendations in the committee's report states:

"The Committee welcomes the joint work that the Scottish Government and CHAS are currently undertaking to look at how respite services for young adults can be improved and increased."

CHAS commented on the importance of respite in its report. The petitioners' concerns have been addressed by the committee in its report and recommendations, and in its evidence taking. I do not know what more we can do. We have had a response from the cabinet secretary and there is work going on, with pilots taking place. The issue

is under consideration, and people can make representations to the Government on the matter.

Mike MacKenzie: I agree absolutely with what you are saying, convener, and I was greatly reassured by what the cabinet secretary said. I wonder whether it would help, given that we will discuss our legacy paper later in the meeting, to agree to let the petitioner know that the committee is looking forward to the outcome of the work that is taking place on the issue in general, including respite. We can ask our successor committee to revisit or monitor the issue at an appropriate point in the future. That may reassure Rhoda Grant and Nanette Milne, and the petitioner.

The Convener: The committee has done a good job on this.

Nanette Milne: We should close the petition. There is no point in keeping it open, because we have done everything that was asked of us. I quite like Mike MacKenzie's suggestion that we put a small paragraph on the matter in our legacy paper.

Richard Lyle (Central Scotland) (SNP): Agreed.

The Convener: Does that help?

Rhoda Grant: Yes. If the petitioner wants to submit comments to the Scottish Government, they can do so.

The Convener: Or to the committee.

As was agreed at our previous meeting, we now move into private session.

10:23

Meeting continued in private until 11:23.

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