OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 10 November 2022

Session 6

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SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE
29th Meeting 2022, Session 6

CONVENER

*Natalie Don (Renfrewshire North and West) (SNP)

DEPUTY CONVENER

*Emma Roddick (Highlands and Islands) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Miles Briggs (Lothian) (Con)
*Foysol Choudhury (Lothian) (Lab)
*James Dornan (Glasgow Cathcart) (SNP)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Paul McLennan (East Lothian) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sara Cowan (Scottish Women's Budget Group)
Sarah Latto (Volunteer Scotland)
Suzanne Munday (Minority Ethnic Carers of People Project)
Dr Pauline Nolan (Inclusion Scotland)
Adam Stachura (Age Scotland)
Cara Stevenson (GMB Scotland)
Paul Traynor (Carers Trust Scotland)
Alison White (Social Work Scotland)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 10 November 2022

[The Deputy Convener opened the meeting at 08:00]

Interests

The Deputy Convener (Natalie Don): Good morning, and welcome to the 29th meeting of the Social Justice and Social Security Committee in 2022. Our convener, Elena Whitham, was appointed Minister for Community Safety last Wednesday and has therefore resigned from the convenership. We wish Elena all the best in her new post and thank her for all the work that she has done for the committee.

As deputy convener, I welcome James Dornan MSP to the committee. James Dornan will replace Elena Whitham as a committee member. Before we turn to the appointment of our new convener, I invite James Dornan to declare any relevant interests.

James Dornan (Glasgow Cathcart) (SNP): I have no relevant interests to declare.

Convener and Deputy Convener

08:01

The Deputy Convener: We move to the appointment of our new convener. On 15 June 2021, the Parliament agreed by motion S6M-00393 that members of the Scottish National Party are eligible to be chosen as convener and deputy convener of this committee. I ask members for nominations for our new convener.

Emma Roddick (Highlands and Islands) (SNP): I nominate you, convener.

The Deputy Convener: Are we agreed?

Natalie Don was chosen as convener.

The Convener (Natalie Don): Thank you very much to all the committee. I am looking forward to my new role and the important work ahead. However, the deputy convener post is now vacant. I nominate Emma Roddick for the role. Are we agreed?

Emma Roddick was chosen as deputy convener.

The Convener: I welcome Emma Roddick as the deputy convener. We will suspend very briefly to change seats.

08:01

Meeting suspended.

08:02

On resuming—

Decision on Taking Business in Private

The Convener: Our next item of business is a decision on whether to take items 6 and 7 in private. Do members agree to do so?

Members *indicated agreement.*

Subordinate Legislation

Scottish Child Payment (Saving Provisions) Regulations 2022 (SSI 2022/302)

08:02

The Convener: Item 4 is consideration of a negative statutory instrument, the Scottish Child Payment (Saving Provisions) Regulations 2022. The regulations make saving provisions in connection with the amendments made by the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (SSI 2022/336) to the Scottish Child Payment Regulations 2020 (SSI 2020/351). They come into force on 14 November 2022.

The saving provisions are required to come into force on the same day as the amending regulations, to ensure that the higher weekly rate of £25 applies only to periods of entitlement that fall on or after 14 November 2022 and that an individual’s entitlement to a double payment of Scottish child payment when a child dies does not apply where the child in question dies before 14 November 2022.

The committee considered the amending regulations at its meeting on 27 October 2022. In advance of today’s consideration, the committee received a letter from the Minister for Social Security and Local Government explaining why the Scottish Government laid a standalone savings instrument under section 95 of the Social Security (Scotland) Act 2018.

Are members content to note the instrument?

Members *indicated agreement.*

National Care Service (Scotland) Bill: Stage 1

08:04

The Convener: We come to our main item of business. We will hear evidence from two panels of witnesses on the National Care Service (Scotland) Bill. I welcome to the meeting our first panel. Adam Stachura, head of policy and communications at Age Scotland is with us in the room. Joining us remotely are Dr Pauline Nolan, head of leadership and civic partnership at Inclusion Scotland; Suzanne Munday, Gypsy/Traveller service lead at the Minority Ethnic Carers of People Project; and Paul Traynor, head of external affairs at Carers Trust Scotland.

I will make a few points about the format of the meeting before we begin. I ask that virtual witnesses and members please wait until I or the members asking the questions say your name before speaking. Virtual witnesses, please allow our broadcasting colleagues a few seconds to turn on your microphone before you start to speak. Indicate with an R in the dialogue box in BlueJeans, or simply with a show of your hand, if you wish to come in on a question. Please do not feel that you all have to answer every single question. If you have nothing new to add to what has been said by others, that is absolutely fine because we have a lot to cover. I ask everyone to keep questions, answers and any follow-up questions tight.

Colleagues in the room should indicate to me or the clerk if they wish to come in and ask a supplementary question. Committee members online should use the chat box or WhatsApp. We are tight for time, but I will try to give all members an opportunity for questioning. I will move straight to members’ questions.

Jeremy Balfour (Lothian) (Con): Good morning, panel. Thank you all for coming along when it is still dark outside. I will ask an opening question; whoever wants to go first should feel free to jump in. The bill is very much a framework bill and a lot of the detail will come when regulations and guidance are made. With such limited information in the bill, are you satisfied that the principles can work or would you prefer to see more of how the service should work in practice set out in the bill, rather than wait for regulations and guidance?

Adam Stachura (Age Scotland): Thanks for the question, Mr Balfour. I think the bill is unique in that, for such a big proposal, we are not seeing much of the detail early enough on. From Age Scotland’s point of view, there is a lot to be welcomed in the broad principles of the bill, which fit quite well with the aspirations and direction the Feeley review. You are right, however: there is not a lot to dig into, is there? We are relying on the Scottish Government, in the end, to do it right. If you look at the politics of it, the Government will have the votes in the Parliament to get through what it requires.

The co-production is an important process and it will take a long time, but the question almost needs put back to MSPs: how comfortable are you with not knowing enough?

Age Scotland will not be highly technical experts in every element of the bill, nor will the bill be the panacea that will fix and reform social care. A lot of it will be about what happens after the bill has gained royal assent and a national care service is up and running. The lack of finer detail is a nuisance in trying to work out where we think there could be changes to the legislation. When it comes to secondary legislation it may be much harder to have your views or new idea adopted or heard, because at that point we will have had a lot of co-production but it might be very difficult to work out exactly what is necessary and where the flaws will be.

I think that it makes your job as legislators pretty difficult, and that is why so many committees are undertaking inquiries on the bill.

Paul Traynor (Carers Trust Scotland): I fully agree. When we responded to the bill consultation, it was difficult at times to articulate an informed response to parts of it because of the lack of detail. There is much to be welcomed in the bill but it is a framework bill. Once we get to the next stage, one of our concerns is that the policy intent gets diluted, because there is no real detail in the bill and there are some complications about what things really mean, what they will mean at the next stage and whether there will be the same opportunity to scrutinise it or have input. Although co-design is very much embodied throughout the bill and in the intent of the bill, it is difficult to see what the proposals will look like once the bill gets to the next stage.

Dr Pauline Nolan (Inclusion Scotland): I am speaking on behalf of both Inclusion Scotland and the people-led policy panel that we facilitate to co-produce adult social care reform.

We are quite supportive of the principles of the bill and we recognise that it takes a human rights approach, which is great. We think that there needs to be more detail about the human rights approach and which human rights will be included. There is concern that the right to independent living will not necessarily be reflected in the bill and there is a right to choice of control and dignity and respect. There are concerns that supported people will not necessarily be included in decision making going forward. There are some top-line principles that could have been included in the bill that go to co-design, such as co-production. I can go into more detail, but we support the principles, although there could have been a bit more detail in the bill.

However, people are concerned that the idea of co-design may be lost. There is a delay to the design school and everything is now coming with an announced £70 million cut. That is a real worry for those of us with experience who are inputting to this, who have committed to this and have been saying the same things for years about what needs to change.

Jeremy Balfour: Thank you, Dr Nolan. You talked about looking for a human rights-based approach and you unpacked that a wee bit. Can you unpack it a bit more? What other human rights could be in the bill? Also—this question is for anyone on the panel—is there concern that this approach will lose local good practice by making everything national, or can we keep the local and the national in balance in future?

Dr Nolan: Those are big questions. Thank you. In terms of a human rights approach, the participation, accountability, non-discrimination and equality, empowerment and legality—PANEL—approach needs to be at every level of decision making.

Local and national is a huge question. The supported people who we have been speaking to feel that the local system is broken and that it has not been working for a long time. The reasons for that can be contested, as we know, but the lived experience is that there is collective trauma among supported people who have been through so many challenges; and there is a lack of trust. There are real concerns out there, especially after Covid-19 when a lot of people's social care support was stopped overnight and some people's human rights were completely gone. Some people were left unable to get out of bed. One person said that they had to sleep in a wheelchair. We are talking about human rights, but we are also talking about the other side, that of human rights not being met. There need to be national things, such as a record of unmet need that will enable planning to progressively meet everybody's human rights. That is just one example.

Jeremy Balfour: Thank you. Does anyone else want to give their views on that and on local delivery?

Suzanne Munday (Minority Ethnic Carers of People Project): I want to make a couple of points. I concur with my fellow panellists, but we are concerned that, although previous legislation included equalities provisions, we are still seeing individuals from minority ethnic communities not being able to access the support that they need. While we welcome the commitment in the bill to a human rights approach and the intent to eliminate discrimination and promote race equality, we think that that needs to be further developed.

08:15

Going to the local and national question, we think that there is scope for more national direction on this. Practice differs so much across Scotland depending on where you live and that exacerbates problems for minority ethnic people. There is room in the national care service for much more national direction on how to eliminate discrimination and promote equality of opportunity.

Adam Stachura: I will make a point about the local and national question. Part of the issue is that social care needs reform in Scotland. For a long time, it has not been working as well as possible for people who require it. Reform is not just about people today or people in the past, but in the future as well. As the Feeley review indicated, we see wide local variances on access to services, funding arrangements, being able to understand what your rights are, extraordinarily long waiting times to have an assessment in the first place and then to receive social care packages. Delayed discharge figures are now at the highest level since they started recording them in this way, in 2016. Then there is the question of funding for all this.

Care boards will be pretty local, or they could be. They could be very local. The ambiguity in a lot of this is about whether they will be regional, like health boards, or beyond that, but still have local parts. If you look back one step at who is using social care and who needs it, to what degree do we need hyper-local decisions about that person's need whether they are in Dumfries or in Kirkwall? They might have very similar needs, but they are not getting what they require.

There is a lack of national standards at times. The people who call our helpline at Age Scotland are trying to find out, "What on earth do I do next? My loved one or I need some kind of extra care; where do I go? I am battling with the council; I am battling social work; I am not accessing these things." There is more to this reform and the question whether it is local or national can sometimes miss the point about whether we are delivering the best possible care. Rather than thinking about silos and where the power might lie and where the pots of money are and whether that resource could be better spent, it is about making sure that wherever people go, in particular if they move local authority areas—which they are perfectly entitled to do and could do throughout their life; they are not just stuck in one place—that their package goes with them and that they do not have to do battle again with a new authority for a new funding arrangement.

The Convener: I will turn to questions from Pam Duncan-Glancy on theme 1.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning to the panel. Thanks very much for your answers so far and also for the information that you submitted in advance, which was very helpful.

I want to talk a little bit about co-production, and I will refer to the submission from Inclusion Scotland. Dr Nolan, I remember that, around the time when health and social care partnerships were developed, a large number of disabled people's organisations convened what we called a war cabinet to talk about concerns with co-production and getting disabled people and service users a vote on boards to make decisions. Can you say a little bit about the importance of users having a voice in determining the outcomes for social care, as well as the strategic decisions that are taken about it? You said that a lack of co-ordination and co-production could "defeat success" for the national care service. Could you expand on that and talk to us about how you characterise its development so far?

Dr Nolan: We did have a war cabinet. We had the five asks for health and social care, but generally, as disabled people's organisations, we felt quite disregarded in the process. I think that that reflects the general way that disabled people can be marginalised in these processes.

The point of asking for co-production and co-design of services is not just a nice ask; it is embedded in human rights and also in law. It is embedded in the guidance for planning for the Public Bodies (Joint Working) (Scotland) Act 2014. Point 10 in the 2015 guidance makes the point that localities have to contribute to the commissioning plan and that duties are placed on community planning partnerships to engage and use community planning to co-produce plans by working with people in communities on what those plans would be.

We thought that the advent of that agenda was a rich opportunity for disabled people to get involved, but they were not. We did a project following up on that where we looked specifically at engagement with disabled people in three areas of Scotland and there were very poor experiences of how people were engaged. They were not involved. They felt that there were tick-box exercises as usual, that plans had already been made and that there was certainly no very local involvement.

I am aware that some of this has changed and that there are pockets of good practice in Scotland, but there needs to be consistent co-production and co-design at every stage and at every level of the whole system and the whole service with people with lived experience—I do not think that that includes providers, by the way; they have experience of delivering social care support—and the people who need social care support but who are not getting it. Also, it needs to happen at the care board level. There needs to be more detail in the bill that there will be a commitment to co-producing local planning on care boards.

If there is lack of co-ordination and co-production at every level of the national care service, it will not work. If local people are not involved and disabled people and supported people at a national level are not involved at every level, we revert to having to retrofit services, as we always have done. Co-design is a principle that has been around for ages—the Christie commission recommended it—and these things are in policy. As my fellow panellist said, these things are great, they are in policy already but they are not happening because they are brought in at a time of cuts, and we are in a time of cuts again. Once again, we are looking at more austerity, recession and the cost of living. That impacts everything and I fear that it will impact the delivery of the service.

Pam Duncan-Glancy: Thank you. I appreciate that response and it is clear about the importance of co-production and co-ordination. I will move on.

The Convener: I believe that Suzanne Munday wants to come in on that point.

Suzanne Munday: It is important to remember that not everybody is starting from an equal place in this process. I absolutely agree with Pauline Nolan that co-production is vital to the successful implementation and delivery of the national care service, but there are communities of people that are historically distant and continue to be distant from the whole process. We need to actively consider how we can support and encourage those communities to be involved in the process. Another thing to look at, from an equalities perspective, is intersectionality, because the experience of a black disabled person will be different from that of a white disabled person.

Pam Duncan-Glancy: Thank you. That is very helpful. I have no further questions on this theme.

The Convener: We will turn now to questions from Foysol Choudhury, who is joining us online.

Foysol Choudhury (Lothian) (Lab): Good morning, panel. I have a very small question. Is there anything missing from the bill that would be required to give effect to these principles?

The Convener: Who would you like to direct that question to?

Foysol Choudhury: Anyone from the panel will do, but Suzanne Munday has talked quite a lot about getting involved with ethnic minorities. I have worked with you before, so it is nice seeing you again. My question is quite general: is there anything missing from the bill?

Suzanne Munday: Good morning, Foysol. It is lovely to see you again. I will go back to my original point, which is that we need much more clarity on human rights and equality within the bill. I totally accept it is a framework bill, but we have been in this position before. My colleague Dr Nolan made the point about the PANEL and FAIR approaches and what those mean in practice. That detail would be very helpful.

Foysol Choudhury: Thank you. Does anyone else want to come in? Does anyone feel that there is anything missing from the bill?

Dr Nolan: I mentioned equality and human rights impact assessments that were developed by the Equality and Human Rights Commission and the Scottish Human Rights Commission. Things should not be judged only by a commissioner or a minister in a service area; there could be more focus on a proper impact assessment that takes those approaches.

The definition of independent living that I mentioned before is central to disabled people’s human rights and, particularly with social care support, people should have choice and control, be able to live within their communities and have things like the right to family life and friendship and the right to go to work. Independent living is absolutely crucial. It is one of the collective rights.

There is quite a misunderstanding of what independent living is. I think that there has been a little bit of backing off from it by the Scottish Government, and that people feel that not everybody can have independent living. It is a universal right in the United Nations Convention on the Rights of Persons with Disabilities. It is about putting in place measures to support people to have their independent living. It is not about living on your own and doing things for yourself. It is about making sure that people have the support to be in the community and to recognise their civic rights, to enjoy their civic right to participation. I feel that that is missing.

There are also things like data collection and analysis. We need accurate and intersectional, aggregated data and co-designed qualitative responses monitoring the experience of accessing and receiving support. We need not only a commitment to involving people but, as Suzanne Munday hinted at—well, more than hinted at—involving people involves ensuring that the information they get is fully accessible to them and that they have training and development. Resources need to be committed to that. You cannot just commit to involving people in care boards or at a national level without ensuring that they have a level playing field. That involves time and costs some money, let us face it, and that needs to be recognised. Sometimes, those resources are in the community, but they need to be recognised as a need.

The Convener: Thank you very much. As no other witnesses have indicated that they want to come in, I will move on. Before we do, I would be grateful if members could direct their questions to specific members of the panel to ease the flow of the meeting. Thank you. We will move on to theme 2. We have touched on it a little bit, but I will move to questions from Emma Roddick.

08:30

Emma Roddick: I will ask my first question of Dr Nolan. The fact that this is a framework bill leaves a lot of scope for co-design. Is it right to determine the details of the service in partnership with those with lived experience—the folk who know what they are talking about—or would it have been better to invite you to scrutinise a proposal that already had the details agreed?

Dr Nolan: I think your answer is in your question. People with lived experience need to be involved in setting out the detail. We do not start from a blank page, but nor should a proposal come to people as a detailed plan that has everything in it and to which they have made no contribution. People with lived experience of receiving or needing social care support are, absolutely, experts. Some of the people in the panel that we support are more than lived experience experts—they have expertise in things like social work as well. You must remember that different people have completely different levels of expertise. It is important to recognise that and not just assume that people do not have any knowledge and that they need that; some people have a lot of knowledge and experience of being involved in decision making.

If self-directed support is delivered right, it is supposed to be co-produced with the individual. It is supposed to be a choice and control. It has not been delivered that way, and it is being delivered in a system of eligibility criteria. It is getting down to the way in which those things are delivered that needs to change.

The people-led policy panel has been talking about this since 2018. We recognised that there are nine principles for changing the delivery of social care support. All of that was fed into the Feeley review. There was a lot of detail in the Feeley review that the panel agreed with and supported and that we, too, agreed with and supported. There is a real fear of losing control of the contribution of people with lived experience and that the commitments will be diluted further down the line.

Emma Roddick: I completely understand where people are coming from when they say that they are afraid that they will not be listened to, but, when we look at the example of Social Security Scotland, there has been a lot of good feedback from disabled people's organisations and others who were involved in the co-design. Does that offer any reassurance from your point of view?

Dr Nolan: It offers some reassurance. That was a good experience, but it is a different policy area. Social care support is an on-going co-production. It is not just the design; there are a number of principles of co-design and levels to it. I will go to my notes because there is a quote in here that talks about the co-design of services at different levels. I can come back to that.

Emma Roddick: That is a good place to start. Do you agree that it is good that we are here today, having this conversation? I will bring in Paul Traynor as well as Pauline Nolan.

Paul Traynor: It is important that we are having this conversation. At this point, it is important that unpaid carers are seen as experts in their own experience and also in the care of the people they care for. It is important that unpaid carers are involved in every aspect of building a national care service.

Where the bill is unclear—this touches a bit on theme 1—is the lack of detail on care boards and the relationship with integration joint boards. It is interesting that there is not any real detail in the bill about what that means. Does one replace the other? We already know that, within the current system, unpaid carers are disadvantaged because they do not have voting rights in IJBs. If we look at co-design more broadly, it is important that, if care boards come forward, unpaid carers are involved throughout the process of developing what that may look like and are recognised as equal partners throughout that process. That is also about implementation, not only of voting rights but aspects of expenses. How carers are involved in the social care system is currently a postcode lottery, and it is important, when we are building a national care service, that unpaid carers are involved as experts and as equal partners throughout that process. The bill lacks detail and does not specify much about that.

Emma Roddick: Does Pauline Nolan want to come back in?

Dr Nolan: Yes. Sorry, but I have reams of notes here and it is quite hard to get around them, since it is such a massive bill. We point out in our submission that

> "co-designing services … in the planning stages"

is really important, but so is the need to involve people with lived experience in the delivery of service provision. Ross and others in an article called "Co-production in social care: What it is and how to do it" say that co-production involves

> "co-design, including planning of services … co-decision making in the allocation of resources … co-delivery of services ... and co-evaluation of the service."

We also think that people with lived experience need to be involved in designing a framework for monitoring services and the research associated with that. We have resources for that in projects that we have been involved in.

We also need to recognise that disabled people—not everybody—often act as a collective, and they do that via disabled people's organisations and centres for inclusive living. Those organisations and centres need resources to support that work. They need to be able, at a local level, to support disabled people in decision making, whether that is about SDS or being involved on care boards as voting members.

Emma Roddick: Thank you very much for that. My last question is for Paul Traynor. The way that the bill is being planned allows for an evolution of the system over time. Is it right that we ensure that flexibility so that people can tell us something is not working once it is up and running? Could you tell us at this point whether you think that the general principles of the bill and the co-design intentions are right?

Paul Traynor: I think that, overall, the co-design intentions are correct and they are well intended. When we spoke to unpaid carers, we found general support for the national care service and the bill. That is often to do with unpaid carers experiences; the local structures that are in place are just not working for them and reform is required. However, when we start to think about what is missing in the co-design, we must recognise that young carers are also important. The taking out of children's services is a wider discussion, but it is vital that children and young people who care for adults are involved in the co-design process. That is important within the flexibility of the bill. We do not want the bill to be so tight that there is no flexibility; we completely appreciate that.

The intention of co-design is important, but there are key questions such as who will be involved and how they will be involved. Questions about things like voting rights and members are particularly important because those are some of the failings that we hear about already with the current system. There may not be so much that needs to be included in the bill, but there needs to be a clear intention of where the bill is going.

Emma Roddick: Thank you. That is very clear.

Paul McLennan (East Lothian) (SNP): A few of my questions have already been asked, but I will focus on a couple of things. Once we get into the co-design part of the process, how do we measure the effectiveness of that? If we go through the process and we think that we need to change things, how do we measure that and what is the process for that? The second and the most important question is, how are people fully involved? Your organisation is involved. How are the people that you represent also involved in that discussion? How do we measure how effective co-design has been when we get further down the process? I will come to Paul Traynor first and then open the question to others.

Paul Traynor: Thanks very much. How we evaluate whether a co-design has been successful is a big question. There is something about recognising whether there have been opportunities to engage. We recognise that there is now a demand for full engagement. However, our experience was that there was not a huge amount of engagement with carers post-Feeley and during the development of the bill. We highlighted that, although the intent of the bill is to involve carers throughout the process, that did not happen in the planning of the bill at the level at which we hoped. Organisations like ours and many others were feeding in and ensuring that the views of unpaid carers and local carer services were featured throughout the formation and through our influencing work, but ultimately, I think that we will find whether co-design has been successful if those with lived experience feel that their national care service represents them, and if they see a national care service that reflects the intentions of the Feeley review.

We supported the full implementation of the Feeley review, so we are very much supportive of the overarching principles of the bill but, as I said earlier, it will be in the result of the bill and the detail that comes through it where we will see whether the policy intent stays true to those principles.

Paul McLennan: On that point, I know that you are here representing the organisation, but do you have any thoughts on speaking to the people you represent and getting their points of view as we start to co-design the bill?

Paul Traynor: As we start to co-design the bill, we need to break down barriers to ensure that unpaid carers are able to participate in the bill's development. We need to look at multiple flexible options for them to do that and recognise that it is important to go out to unpaid carers, that they often do not have a huge amount of time and resource to be able to fully participate in civic life and have their voices heard. It is about time to recognise the value of unpaid carers' participation and using the time that they have. The best feedback that we will get is unpaid carers recognising that whatever is developed represents their views and what they need, and also that they see themselves represented within the national care service framework.

Paul McLennan: Thank you. I will come to Adam Stachura for the Age Scotland point of view. One of the key points is the view from the organisation itself, and obviously the people you represent, in trying to add in the checks and balances going through the co-design process. Do you want to comment on how you would do that?

Adam Stachura: That is a good question. There are a couple of points that I think are worth raising. One of the principles around this is accountability and thinking where it sits. For the first time, we will see the Government largely being more accountable, at least to the public, on the delivery of social care, which has been missing. Dr Nolan mentioned earlier that, at the start of Covid-19, there was wholesale withdrawal of care packages from people across the country and no one was responsible for that. In IJBs, if people out in the real world are having problems with care, who is responsible? What happens? What is the accountability measure? An important part of the co-design and co-production element is that ministers are ultimately responsible for making sure it is working and making sure that enough resources are going in to ensure that they are getting the right voices and the right participation. In all the debate about the national care service, we sometimes miss the element of who is responsible and who has the urgency, almost, to fix it for a change.

This Parliament does not often talk about social care but, often, the challenges that people are facing are very much linked to it, so this will be very much welcome. In relation to older people, the question is where people interact and how their voices and views can be captured and fed in. That will be very important. That might be through social care itself and having regular feedback about the services.

08:45

I think that data collection is important. I did not answer Foysol Choudhury's question about whether anything else is needed in the bill, but our submission calls for much better data collection to understand what on earth is going on. We will regularly send freedom of information requests to local authorities about waiting times. It is hard to find out how long people wait for assessments of care packages. If it is hard to get an FOI response to that, it means, in my view, that either the local authorities or the health and social care partnerships do not have the information to hand. It is important for feedback to look at metrics and measurements.

Digital exclusion is also an issue. Just sticking something on a website somewhere does not mean that people have had their voices heard. Half a million older people in Scotland do not use the internet and 600,000 do not have smartphones, so you cannot just QR code something and they go away and fill in a survey. Ethnic minority older people have challenges with different languages and people with disabilities need to be able to access the process. We cannot just assume that because something is stuck away on a website or there has been an email sent around or whatever it means that folks have had their voices heard. The challenge, as Suzanne Munday mentioned, is going out and finding the people who are missing from this inclusion. That is hard and it needs to be massively resourced. Again, it goes back to the point about IJBs, and the care boards that will replace them, having much more power from real people being on them, so they cannot just decide and walk away and that is that—they will never be challenged. That will be really important. Ultimately, the accountability of ministers hopefully will drive that because the public will see through it otherwise.

Paul McLennan: That is very helpful. Pauline Nolan, I could see you nodding your head when Adam Stachura was talking. Could I ask you about the same question about the effectiveness of the co-design as we go through the process? You represent your organisation, but obviously it is people you represent. How do you ensure that that process is effective? It also touches on a point that Adam Stachura talked about, which is making sure that we are reaching as many people as we possibly can.

Dr Nolan: Yes, absolutely. How do we evaluate co-design throughout? I am nodding my head vigorously because each of the panel members so far has mentioned aspects of the PANEL human rights approach. First is participation. As Adam Stachura mentioned, 71 per cent of adults with long-term physical and mental health conditions use the internet compared to 94 per cent of non-disabled adults. It cannot be one size fits all to ensure participation. Adam Stachura has also gone into accountability. We have all gone into non-discrimination. It is about ensuring intersectionality and ensuring that there is an individual approach as well as a countrywide population level approach. Accountability obviously also involves data collection and ensuring you have the information. I mentioned non-discrimination. Next is empowerment. People need to be empowered at every single level. People need to feel that they own this. People already feel so close to the national health service; they need to feel that they own the national care service as well, that they own their own social care support and that they are in charge of it, whatever option they take from self-directed support. Last is legality. You have an independent complaints system that makes sure that there is redress for people when things go wrong.

All those features of PANEL need to be within the co-design and then go right through to the outcomes and to the approach to delivering social care support for people as well as for workers.

Paul McLennan: Does Suzanne Munday have anything to add on that?

The Convener: I believe she does.

Suzanne Munday: I am going back to co-production and the involvement of people. I would cast the net wider from a minority ethnic point of view and also other communities of carers such as LGBTI carers, because not all of those communities are linked into support organisations or carers organisations, and the infrastructure that works for those communities across parts of Scotland is not as well developed. When we are seeking the views of the population, it is important to be more creative and look beyond the infrastructure of carer organisations, DPOs and so on. A lot of the people who we work with for various reasons are not able to engage with those organisations, and they may look to smaller community organisations or BME-specific organisations, because that is where they know that they can get their needs met.

You asked how we will know something is working. It will be a process and we welcome the flexibility in the bill for the care service to evolve. However, going back to data gathering, if we can strengthen equalities monitoring, which is already a requirement, I think that, as the bill and the service progress, being able to capture that data will give us a good indication of what is working and what is not across a whole range of different population groups.

The last thing that I want to say about co-production and involvement is that there should be something specific requiring care boards to say how they are engaging with different equality groups in the process. There needs to be a very specific focus on that.

The Convener: We will now move on to questions on theme 3, charter advocacy and complaints. I will move first to Foysol Choudhury for his question.

Foysol Choudhury: Again, I have a general question. Will the charter have a particular effect, or is it more of a public relations exercise? I will ask Paul Traynor.

Paul Traynor: That is an interesting question, because the charter is quite important as an information resource. It is valuable for unpaid carers and wider society to have and be aware of a charter as an accessible resource. However, there are charters under other legislation, such as the Carers (Scotland) Act 2016, that are not spoken about particularly much. That is almost a forgotten document that has been developed and signed. It is not so much about the fact that there could be areas of concern with the charter itself; it is more about how the charter is used and what its purpose will be. Its longer-term vision and implementation are quite important. As I said, we have seen from other legislation that, sometimes, these things can get lost in the bigger picture.

The principle of the charter is important. It is also a place for people to go, particularly with the complexity of what the national care service will bring. The charter may be something that people can go through and, in a more condensed way, understand what the national care service is and what their rights are within it, which is vitally important. Ultimately, it is down to how it is implemented.

Suzanne Munday: I agree with Paul Traynor, but I think the key thing is what lies behind the charter. Rights are only meaningful if you are able to realise those rights and entitlement. If there is nothing sitting behind those rights—for example, you may have a right to a service but, if that service is not there for a variety of reasons, you are not able to realise that right. That is the key thing for me.

Adam Stachura: Without wanting to go over what everyone else has said, I will say that the charter could be important, but the really important part of a charter is who understands it. The person who is receiving care can take the whole of it and demand their rights. We must ensure that the language is accessible and that there is lack of ambiguity, so that, when it is challenged, someone does not say, "We do not really mean this, we mean that."

For those who are delivering care in the national care service, local authorities or care boards, or wherever, the charter must be at the top of their training list and something that they will refer to. Paul Traynor's point was about charters being lost and forgotten, especially when there is a big turnover of staff in different sectors. Has the charter been embedded with them? Does the service provider or the care board or whoever look at it and say, "We are not meeting our obligation here."

Earlier this year, the *Times* journalist Helen Puttick unveiled figures on waiting times for social care. In some local authorities, people are waiting years to receive social care. At what point does the local authority say, "We had better fix this, because we are not meeting this person's right"? It might be difficult if a charter or something else says, "This must be done," but such waiting times are wholly unfair and absolutely scandalous. Things might be hard in the delivery of social care, but, if someone is waiting 800 days to receive a social care package or for the first part of one to start, their life is ruined. I know that these things are difficult and it is more complex than looking at just one case.

Charters can be important for the person who is the service user, for carers, for family members and, in our circumstance, for older people who can go to the charter and look at it and understand what they should expect and get, who will help to provide that and who will be accountable. They could be PR exercises, as Foysol Choudhury perhaps suggested, but they could be an important part of the service. That is very much about culture and understanding who you are trying to help—the individual—and that this is very important. Rather than "The computer says no," "We could not possibly do it, because it is too hard, too difficult," or, "We do not have any money," the response could be, "We are going to make this happen because the charter says that," and that is why it has to be important.

Dr Nolan: Our members and supported people are regularly excluded from decisions about their needs, and there are often differences of opinion between what professionals and people with lived experience feel constitutes a full life. We have some concerns that a charter might just be a piece of paper that is not used. If it is not legally binding or if it has loopholes, then at whatever level, whether it is a minister who does not back it or it is not delivered at the local level, it will be toothless.

Assuming that the charter has rights and specific things such as how to complain and what redress you might get—currently there is no complaints system. You complain to the provider that you are complaining about and you risk losing what you have got—panel members feel that what is in the charter needs to be enshrined in law to offer them protection and ensure that things in it are upheld. That comes back to accountability. They are concerned that, if the charter is not upheld, they want that to be fully publicly acknowledged and an explanation as to why that is the case to be given.

There are lots of things that people think should be in the charter; I suppose that that comes into the co-design. Dr Jim Elder-Woodward has coined the phrase "a right to need satisfaction" that was first developed by Lough and Doyal. We feel that that idea should be in the charter, because it offers six ways of ensuring that need is met. They are simple things that I have mentioned already, such as recording all unmet need at a national, local and personal level, ensuring that the person is involved at every level, and progressively delivering human rights and ensuring that the person's needs are met.

Pam Duncan-Glancy: Dr Nolan, I would like to pick up where you finished and talk about Dr Jim Elder-Woodward's submission. As always, I am very impressed with the work that he has done on this area—I had a look at it when I saw that you referenced it in your submission. He says that the right to need satisfaction is underpinned by sub-rights, including someone's right to know what information means for them; to have advocacy before, during and after the process; to be present when decisions are made; to have an independent appeals mechanism; and to have any unmet need recorded. Have you had any discussions with the Government on that, and do you think that it is moving towards that? I note your earlier comment about feeling that there is some back-pedalling on independent living, and I have serious concerns about that.

09:00

Dr Nolan: Jim Elder-Woodward has sent his paper several times, and we want the opportunity to discuss it with the people and policy panel as well, but we keep having to jump through various hoops such as consultation processes—we have mentioned it in all the consultations. I think that the Government has expressed an interest in it, but, for civil servants anyway, this is a massive undertaking and there are many challenges to look at in relation to many different groups. Again, that is why the situation is different to the situation around social security. There are different groups involved there, but not quite as many and it is not as complex an undertaking.

To be fair on the civil servants, they are working hard on many different things, but they have not fully considered the right to need satisfaction that is described in that paper. It is quite an academic paper—Jim Elder-Woodward is an academic and a brilliant man—but it is quite a simple concept. As you said, it involves really simple things that you have to ensure that you have met in order to deliver the individual's and population's right to need satisfaction.

Pam Duncan-Glancy: Do you think that the bill gets anywhere close to that? You mentioned the definition of independent living. Do you think that the bill could be strengthened to have that, or do you think that we need to do something else to address that, whether we call it the right to need satisfaction or something else? The things that have been set out in that paper are the sorts of things that people who use social care services need. Do you think that the bill could be strengthened?

Dr Nolan: I think that the bill could be strengthened, but that issue also needs to set out in, for example, the processes of assessing people for social care support. It cannot just be mentioned in the bill.

In self-directed support, disabled people's organisations worked hard to ensure that independent living was addressed in the bill, but that has not been delivered to disabled people, supported people and unpaid carers. That is not the reality of the delivery of self-directed support. There are pockets of good practice, but, in terms of the right to independent living and the right to need satisfaction, there must be a national approach to things such as advocacy to ensure that there is consistency. You also need appropriate and different kinds of advocacy for different groups of people so that it is accessible. You need peer advocacy, you need to ensure that the collective voices are heard and that those voices are inclusive of all groups of disabled people—intersectional groups, as Suzanne Munday mentioned—and you need information that is accessible in different languages, including British Sign Language, and in whatever accessible version people need.

There are many ways to make sure that you get the approach right, but it all needs to be well resourced. Independent advocacy needs to be well resourced across the country. It is all very well having a national service, but, if people do not understand, for example, the rural context and the local community that someone lives in and the challenges that they face, they cannot get a full picture of that and have empathy with that, because they do not know what it is like to live on an island or in a remote rural place, so that advocacy will not be appropriate.

Similarly, the advocacy that you need for families with children is different from what you need for young adults, and the advocacy that you need for young adults is different from what you need for older disabled adults or disabled adults who are carers themselves.

Pam Duncan-Glancy: Thank you. I have one final question in this area, which is for Adam Stachura.

On rights, you have already spoken about accountability, and that issue was raised in some of what we have just heard from Dr Nolan and other panellists around making sure that people can be held to account. You mentioned data and unmet needs. What else do you think needs to be done so that, if people find themselves waiting 800 days for social care—which is entirely unacceptable—there is somewhere that they can go?

Adam Stachura: All the questions here are excellent, because there is a lot in the bill that is not included at all. There does not seem to be any particular steer on what things will look like. That is why the principles of accountability in this bill are important—because, ultimately, as members of the Scottish Parliament, you hold ministers to account, and, quite frankly, your constituents are waiting beyond the periods that are set out in the guidelines. A few years ago, we published a report called "Waiting for Care" that showed that 40 per cent of older adults receiving social care were waiting longer than the national guidelines to get it, but what happens at the end of this? The point about the right to need satisfaction is important.

I think that there needs to be a mechanism with teeth so that people can make complaints that are anonymous and can have their voice heard. One of the things that we hear a lot through our helpline when people have complaints with, say, care homes or their social care packages, is that they are worried about speaking up publicly or even making a proper complaint through the current routes for fear of recrimination. We have heard—this is slightly anecdotal—of people who have made complaints about their care home finding themselves a few weeks later essentially being handed a notice of eviction and being asked to leave because the place can no longer meet their care needs. Where does someone in that situation go? In our submission, we say that there should be strengthening of the arrangements around how much notice people get when they are asked to leave such places. At the moment, it is less than you would get in some tenancies, for instance, but the actual need is much more severe, as there is a lack of places.

To be a bit more specific to your point, having a strong independent body that can properly scrutinise complaints and take action is important. With the national care service bill, we need to know what people's alternatives are. If your complaint is, "The type of care I'm getting is not meeting my needs," and if whoever is delivering the care says that they have no other options, something else that meets that person's need must be found. At the moment, people say that their care package will be removed or they will be downgraded, or that they will be reassessed in the dark, in the sense that they are no longer involved in that process and do not know who to go to.

Our helpline, advocacy organisations, charities and third sector organisations hear about those challenges around where people can go. I think that it will be incredibly important that folks can have that satisfaction, as Dr Nolan outlined, but also that who implements that has teeth and that providers, care boards or whatever take notice of that and that that is recorded, so that we have an idea of the number of complaints, the nature of the complaints and where they are occurring, as that information is important.

It is important to have more data. Having a digital society involves what sits behind services, not just how people interact with them. We should be able to record data properly and understand it and ensure that the people using it can make decisions that are based on good data that enables them to have an insight into what is happening and look for solutions.

We cannot sit around with people not getting the care that they need, because, every day that they go without it, their condition will get worse and their needs will become more severe. That is why what we do will be incredibly important.

Pam Duncan-Glancy: Thank you. I appreciate that. I have no further questions.

The Convener: I see that Dr Nolan wants to come in on that point.

Dr Nolan: I have a lot to say about all of this. As Adam Stachura was saying, it is important to ensure that people get that redress. Also, on a small but important point that somebody mentioned, a complaints system needs to be independent but a people-led policy panel member said that it also needs to be solely for complaints and not just general feedback. She said that, when she phoned to complain to the NHS about access to a service, she was told that she was being far too negative. She phoned to make a complaint; she did not phone to give them general feedback. If people want to offer feedback, there is another way to do that, but complaints are complaints. They should be handled as complaints, there should be some redress and people should feel that their complaints are being taken seriously.

Adam Stachura talked about fear. That goes wider than care homes. People fear that they will lose any support that they get now if they make a complaint, because the complaint goes to exactly the person who made the decision in the first place. The complaints system needs to be independent of decision makers.

Also, there is no legal precedent for social care support decisions. If people make a legal challenge, councils will wait until the last minute, so that people are waiting for months and months, and they will then settle out of court in order to ensure that there is no legal precedent. At the moment, there is no sense of justice whatsoever at any level for supported people.

Jeremy Balfour: I am conscious of the time, so let me ask a yes/no question, which might save us a bit of time. When we were debating the social security charter a number of years ago, one of the things that we debated was whether it should have a legal basis and be able to be challenged or reviewed in court. The Scottish Government came to the view that that should not be the case and it did not happen. Should the new charter have a legal status that would allow people to seek, if appropriate, legal judicial review?

Adam Stachura: Yes.

Jeremy Balfour: Anyone else? You can say that you do not know if that is the case.

Paul Traynor: Yes.

Dr Nolan: Yes. I have already said why.

Suzanne Munday: Yes.

Jeremy Balfour: If you have the time, you can write to us more fully, but, as far as I can see, the new charter does not give new rights. Are there any particular new rights that you think should be in the charter to give the legal basis that Adam Stachura and others have spoken about, in relation to issues that people are facing day in, day out? Should there be anything more specific that is not there at the moment?

Adam Stachura: I do not think that there is enough detail in it now to have a great view on what that would be.

Dr Nolan: I have already mentioned that the charter needs to state which rights and conventions apply. The Scottish Government is planning to bring the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child and other conventions into Scots law. Therefore, the charter needs to be legally binding and contain those rights. That includes articulating disabled people's rights to independent living and articulating the right to need satisfaction, which is based on the right to independent living.

Suzanne Munday: The issue of how the charter is viewed is important. Complaints are not necessarily a bad thing, because they drive improvement, and other providers and local authorities can also learn from them. It is important to capture that when we are talking about the rights of the charter being enshrined in law.

The Convener: Thanks. We will turn now to our final theme, which is carers' rights.

Miles Briggs (Lothian) (Con): Good morning to the panel, and thank you for joining us. This week and last week, a few committees have been looking at the bill. I am concerned about Audit Scotland's comment with regard to the Scottish Government significantly understating the cost of delivering the bill. What are your views on that?

Adam Stachura: From listening to a range of committee sessions in the past few weeks, there seems to be a consensus on that. Even the minister recognised it just on Tuesday and said that he will come back with reviewed costs.

We have to expect that it will cost a lot of money, because good things cost money. However, a huge amount of the costs in the financial memorandum seem to be in the bureaucracy and the machine behind the service, and there is not enough discussion about the amount of money that is going into delivering great care. We are not talking enough about the things that underpin that, whether it is the carers and service delivery or the things that people need. The bulk of the financial memorandum seems to be about a mechanism and a structure. We need to have more focus on what we need for real people.

Miles Briggs: Does anyone else want to come in on that point?

Dr Nolan: I agree with Adam Stachura. We have seen this before with the integration of health and social care support through the Public Bodies (Joint Working) (Scotland) Act 2014, where there was a lot of focus on structure and not enough focus on outcomes. It is so important that we get this right from the start and that the intention is set.

There is a concern about dilution of what is in the bill or that the same budget will be provided for the delivery of the bill, or the act, when it comes in. If you bring in more and more groups and more and more health services, once again, the funding for social care support will go down and down. There is no commitment to ensuring the future funding of what will be a bigger and bigger pressure to support people.

09:15

Miles Briggs: If no one else wants to come in on that point, I will move on to look at specific assumptions in the financial memorandum. It is assumed that 10 per cent of adult carers will be able to access short breaks and that an additional 14 per cent will use easy access support. That is less than 25 per cent of people potentially taking the entitlement for a short break. Why do you think such a low level of demand has been predicted?

Paul Traynor: The estimated costings in the financial memorandum are based on historical break uptake figures, and they do not reflect inflation or the estimated increase in the numbers of unpaid carers in Scotland and the need for a break.

There is another whole aspect of the financial memorandum that needs to be considered when we are looking at estimating numbers. As well as the concerns that we have about the financial memorandum in relation to unpaid carers, we have concerns about young carers, for whom no finance has been put aside for replacement care. In work that we did with young carers, and from the Scottish young carers festival, it has been clear to us that they cannot take a break unless replacement care is put in place. Ultimately, that is a larger question.

Another issue is that the number of young carers in Scotland that the Scottish Government recognises is generally understood to be an underestimation.

The estimated costings are based on historical figures of actual uptake based on those who have an adult care support plan or who have access to breaks through other mechanisms and other support services. That does not truly reflect the number of carers in Scotland or the potential number of carers who could be entitled to that right.

Miles Briggs: One of my concerns is that the data covers a pandemic period, when breaks were suspended and were not available. It feels as though the figure is artificially low in predicting potential uptake.

Will a national care service help to standardise the approach so that more carers can access support plans and statements, to ensure that they have the right to a break? We have discussed what is often referred to as a postcode lottery, in which people can access different services depending on where they live. On improvements in standards and consistency, I support clinical standards and think that we should have had them a long time ago in Scotland, although we do not necessarily need the bill to achieve that. Where could standards be improved and, importantly, how should they be included in the bill? There is very little detail.

Paul Traynor: There is a larger question around adult care support plans more generally and wider support for carers. That is not solely a question about the national care service; it is a question about resources being put aside. Additional funding has been put into the implementation of the Carers (Scotland) Act 2016 to ensure that more carers can benefit from adult care support plans. However, in reality, what we are seeing from local carer services is that the funding is not ring fenced and it is unclear where the funding goes.

There is large demand for local carer services and an increased number of carers are coming to those services. During the pandemic, carer services had a 45 per cent increase in the number of carers coming to them. However, they have predominantly had standstill or slight uplifts in their budgets, which does not compare to the increase in demand. The services' ability even to provide adult care support plans for all the carers who are coming to them becomes a challenge for them.

There is a structural barrier here. We want to identify carers, we want them to have support and we want to ensure that the national care service works for them, but we need to put in the money so that the rights are upheld for unpaid carers, so that those rights can be lived and even just so that unpaid carers know that they have a right to adult care support plans or a potential right to a short break.

Miles Briggs: A lot of what is in the bill has come out of the experience of people during the pandemic. For many of us, that was concerning. For example, I do not think that the Government has ever properly explained the measures on the suspension of power of attorney.

I am interested in the Anne's law campaign, which I think all parties have supported. Section 40 in the bill requires care homes to comply with ministerial directions on visiting. That is about visiting, but my concern is that it does not necessarily talk about patient rights and individual rights. Does anyone have specific comments on section 40?

Adam Stachura: Slightly helpfully, just a couple of days ago, I was in a meeting with the Scottish Government about Anne's law and access to care. I have discussed that regularly.

To go back a few steps, Anne's law is absolutely necessary, but it should not have to be necessary. People have their human rights but, as we found with Covid and more recently with virus outbreaks in care homes, for instance, human rights are not just paused but removed. Anne's law is absolutely necessary. Nationally, with Covid, we learned so much so quickly about how to handle things, but that was not applied across care homes as an environment—or, indeed, across some hospitals or medical residential homes, where people are living with dementia. That access was absolutely denied.

One of the complaints is that Anne's law has taken so long to enact. The Government's rationale for that is that the mechanism is through Parliament and this bill. Obviously, once the bill is passed—if it is passed—we will not require a care service to be up and running for Anne's law to come into force, but it is taking a long time. For those who have been campaigning heavily on the issue, their loved ones have either deteriorated greatly in that time or are no longer with us. Is the spirit of what Anne's law was supposed to do being met in the bill or in the guidance and regulations behind it? Actually, it possibly is not, so there is frustration with that.

Across the piece, some care homes are doing things incredibly well and are allowing visiting, or facilitating it, I should say—I suppose that they are not allowing people to have their rights but are making sure that rights are enacted. However, the situation is not consistent. If visiting is not happening, care homes and care providers will have to somehow demonstrate incredibly well why that is the case, and the Government, the Care Inspectorate or others will need to have satisfaction on that—that will be really important. There has been discussion about the fact that the timeframe is so long when people do not have time to lose or to wait.

Miles Briggs: Does anyone else want to come in?

Suzanne Munday: I will return to the slightly earlier question about the projected demand. For us, the figures do not show the people who would also like to access short break provision but who have not been able to do so because those services are not accessible or appropriate to their needs.

On the right to a short break, I have to go back to my earlier point. The overriding concern from an equalities perspective is that a right is only good as far as you are able to realise it. You could have a right to a short break for a minority ethnic carer, but, if that service is not available, it does not mean anything to them.

That was one of the key concerns in the consultation that we undertook with carers. We have examples of carers from different communities having tried to access a short break that was culturally appropriate to them but, because it did not fit within the norm that a local authority is used to, it has been turned down. We have had to go down the legal route to secure what is a culturally appropriate short break for a family.

Across the whole discussion, I keep returning to equalities and how that will be front and centre of the bill. What does it mean for smaller population groups that are not part of the majority population?

The Convener: Dr Nolan, I would appreciate it if you could keep your comments fairly brief, because we are in danger of running slightly over.

Dr Nolan: I have a comment on short breaks. Many carers are disabled people themselves or have acquired new impairments and conditions through Covid during the pandemic. There are data in our response that illustrate that. We need accessible and appropriate short breaks for the supported person so that the carer can have a short break.

The financial memorandum says that there will be cost savings from allowing carers back into employment. I do not think that that appreciates the commitment involved and the time that people spend caring. A short break is just one short break, and that may be needed for leisure time or to care for others in the family and so on, and not necessarily for paid work. There are a lot of things for which people need a short break. You need to be careful in accounting for the savings that will be made.

On Anne's law, I do not see how the proposal in the bill is different from what we have now in that, in an emergency situation, ministers can decide that people cannot access care homes. I do not understand how there is much change. As Carers Scotland has said, where there might be a divergence of views among residents, relatives and the care home itself, you should take a human rights approach and use the FAIR—facts, analyse rights, identify responsibilities, review actions—tool to resolve the issue in a human rights way.

The Convener: I will move to questions from Jeremy Balfour, who will finish off the session.

Jeremy Balfour: You will be glad to hear that all my questions have been covered, so I am happy to rest, convener.

The Convener: Fabulous.

I thank all the witnesses for appearing, particularly given the very early start. I briefly suspend the meeting to allow the witnesses to change over.

09:28

Meeting suspended.

09:35

On resuming—

The Convener: Welcome back, everyone. I welcome our second panel to the meeting: Cara Stevenson, organiser for the women's campaign unit, GMB Scotland; Sarah Latto, policy officer, Volunteer Scotland; and Alison White, convener, Social Work Scotland. They all join us in person. Sara Cowan, co-ordinator of the Scottish Women's Budget Group, joins us remotely.

I have a few points that I will go over again for the benefit of the witnesses. Virtual witnesses and members, please wait until I or the members asking the questions say your name before speaking. Please allow our broadcasting colleagues a few seconds to turn your microphone on before you start to speak. Indicate with an R in the dialogue box in BlueJeans or simply with a show of your hand if you wish to come in on a question.

Please do not feel that you all have to answer every single question. If you have nothing new to add to what has been said by others, that is fine. We have a lot to cover this morning, so I ask everyone to keep questions and answers relatively tight.

Before I move to the questions, I want to bring in Pam Duncan-Glancy for a declaration of interests.

Pam Duncan-Glancy: I should have said in the previous session that, in my entry in the register of members' interests, it is noted that I worked for Inclusion Scotland.

The Convener: Thank you. I will now move to questions from members. I will bring in Paul McLennan first.

Paul McLennan: You caught me unawares there.

This is about the involvement of the workforce in developing proposals for the national care service. There are two things from me. One is about how the workforce has been involved in developing the proposals, including your volunteers, Sarah Latto. How much has the workforce been involved in that and how do you see the on-going process ?

Sarah Latto (Volunteer Scotland): Honestly, I am not sure how much volunteers have been involved so far in the development of the national care service. It will be a complex endeavour to ensure that the voluntary sector and volunteers are included.

Paul McLennan: Is that something that you will develop, or have you not thought about it at this stage?

Sarah Latto: In involving volunteers?

Paul McLennan: Yes.

Sarah Latto: Absolutely, yes. We have not been asked to contribute so far. Volunteer Scotland does not have its own volunteers. We represent organisations that involve volunteers. For our consultation response, we did. We engaged with a number of different organisations and we worked closely with the ALLIANCE to ensure that the interests of volunteers were represented.

Paul McLennan: Thanks.

Cara Stevenson, do you want to come in from the union point of view about where you see the process? How has the workforce been involved at this stage and where do you see it being involved as the process develops? As in my last question, it is almost about assessing how the proposals evolve and where you see yourselves and your members involved in reviewing that process.

Cara Stevenson (GMB Scotland): The workforce has been heavily involved in this, but that is through the trade unions pushing for meetings and representation on working groups. I would not say that it was an open invitation. It has been quite difficult to make sure that the workforce's voice is being heard.

The bill does not achieve the aim of improving the quality and consistency of social work and social care services in Scotland because it is not prescriptive enough yet. What we see is that trying to get the workforce involved in this is difficult, because there is not enough in the bill for people to want to be involved in it. Those workers have just gone through two years of the pandemic—you cannot imagine what their working life has been for two years, working through a pandemic.

I was involved in that. I was a home carer through the pandemic. It is difficult to get people involved in and to support something that is non-prescriptive and all subject to co-design and to ask the workforce to take a leap of faith.

Paul McLennan: You mentioned that it was difficult to get involvement. What would be your ideal solution when it becomes more prescriptive? Have you thought about what that would look like from your point of view or how you would like the union to be represented?

Cara Stevenson: What we would like is more meat on the bones. We want consistency and promises on paper. We do not want it to be rhetorical. These workers are used to be being given warm promises and then nothing happening. We need to have more information. There has to be more information around this and how the Scottish Government sees it in the future for us to try to get the workforce involved and get their ideas and their response to it, because right now they are disengaged. It is as if it is just another empty promise.

Paul McLennan: You would like more engagement in the process but also more details on it.

Cara Stevenson: Yes.

Paul McLennan: Alison White, can I bring you in from the social work point of view?

Alison White (Social Work Scotland): There have been opportunities for us to engage, but most of that has been through the submissions that Social Work Scotland made to the original consultation process and the submission that it has made to the bill. Social Work Scotland has engaged across our membership group to try to get a strong and collective voice around that. The Scottish Association of Social Work has done some of that work for front-line social workers and we have combined on that.

One of the challenges for the consultation is about that engagement and making sure that we get the voice not just of people with lived experience but of those people who assess for and deliver services as part of that. Certainly, Social Work Scotland has been asking for a pause so that we can do the co-design process in a level of detail prior to the bill coming in. We have to think about the current context that we are in. We have just come out of the pandemic and we have staff who are exceptionally tired at this point. We have the cost of living crisis and we have the challenges that we are seeing in the NHS, such as the delays. We are seeing pressures in our workforce with gaps in social work and social care. At times it feels as if we are running to stand still on this. When we look at the consultation process that is planned in the co-design and the 70 separate workstreams, it will be challenging for the workforce to be confident that we can engage in that in a positive and meaningful way.

Therefore, although there have been opportunities and we have been having those conversations, there are challenges for us about how we do that in a meaningful way. Cara Stevenson is right in saying that it can be difficult to get some of the front-line staff involved, because the only bit that there seems to be a level of fixation on is, “Who will my employer be?” There is not enough in the bill now to know what else that might mean for them. It is a bit too vague about that. The anxiety about whether people’s employer will change when they cannot see what the wider benefits might be for them is fairly significant. That level of uncertainty for staff makes it difficult for them to think about engaging in the wider conversations that are so important about how the national care service will improve outcomes in the way we work, because for some of those front-line staff now it is about, “My terms and conditions, where I am going to be working and what will it mean for my pension.”

Paul McLennan: Is there another stage before you move on to the co-design? I am trying to dig deeper on that, because you are saying that there is an interdependency between a lot of issues. Do you want a pause before you get into that, or do you want the consultation process to be a little bit longer?

Alison White: We are suggesting that the bill should be paused. At the moment, the proposal is that there is a bill and then there is a co-design process. Our proposal is that we should probably do the co-design before we do the bill, so that we have a bill that meets what has come out of that co-design process. It is not suggesting that we should not get to the point of a bill and it is not saying that Social Work Scotland is against a national care service. There is just a sense that we should have the conversations about what that looks like and what it means and what the interdependencies are before we have a bill. For us, how we are doing it is putting the cart before the horse. That co-design process will be critical in this, but we need to have it before there is a bill. It is difficult to get behind something when the answer to lots of things is that that will come out of the co-design process. It feels as though we should be having those conversations now rather than after the bill process.

09:45

Paul McLennan: Sara, can I bring you in for your point of view? The other thing to hang out there for other panel members is involving the workforce and what the impact would be of not involving the workforce, so, if you want to come in on that, you could come in after that. Sara, from the Scottish Women’s Budget Group, I know that it is much broader for you, but, in terms of volunteers and, in particular, from a woman’s point of view, do you have any thoughts or comments on the design of this?

Sara Cowan (Scottish Women’s Budget Group): To add to what the others have said, I note that the workforce is highly gendered, with 83 per cent of the social care workforce being women. Their participation and their voices being heard is important because of the long-term undervaluation of care and undervaluation of work that is often seen as just women’s work. That is why bringing in the voices of lived experience—people receiving care, unpaid carers and the paid care workforce—is important throughout the process of design.

I will give some other numbers around that. When you see that 20 per cent of the workforce is not on permanent contracts and 11 per cent is on zero-hours contracts, you see that there are some important workforce issues about how the workforce is contracted and what their terms and conditions are and that changes to that could demonstrate the better valuation of care. Hearing from the experience of paid care workers through the design will be a critical element of ensuring that the improvements that come through the development of a national care service truly deliver across all aspects.

Paul McLennan: Does anybody else have anything to add? If not, that is me.

The Convener: Thank you.

Before we move on, Sara Cowan, can I check how you pronounce your name?

Sara Cowan: It is pronounced “Say-ra”.

The Convener: Thank you. Members, we have a Sara and a Sarah, so can you specify which of them you are directing your questions to?

Miles Briggs: I want to follow the questions that Paul McLennan asked. You made some important points, Alison White, because at the Local Government, Housing and Planning Committee, which Paul McLennan and I are also members of, we heard that two examples of good policy making around co-design have been ending homelessness together and the Promise, where you were brought in at the beginning of the process, not at the end. Specifically, how do you think that the Scottish Government can, given the process that it has decided to use for this, make sure that the national care service is not potentially destabilising for care users, their carers and the wider workforce? Where do you think that that co-design will come in during this process?

Alison White: It goes back to the Social Work Scotland position, which is that we think that co-design should take place prior to the bill to allow that sense of people being involved and engaged and being able to address some of the concerns and issues that are out there. That does not prevent us from addressing some of the key concerns that the national care service wants to deliver. There is nothing to stop greater collaboration and better ways of working, looking at terms and conditions of staff among that and how we do that. There are mechanisms without the bill that would allow some of the key elements of that to take place.

In the workforce now, as we have said, we already have significant vacancies in social work staff, and we are struggling to recruit in social care. There are real challenges that other panel members have mentioned about terms and conditions for social care staff. We see challenges across the country. There are differences between urban areas and rural areas, and the recruitment challenges that we face there are slightly different. There is nothing to prevent us from doing some of those things while we are doing the co-design process.

The challenge with doing the bill and then the co-design process is that we spend a lot of time in that co-design process looking at structures rather than spending it looking at what would make things better for the people we support and for our communities and for our staff in making sure that we get people. It then becomes a structural type of conversation rather than a conversation on where that is.

There is also a challenge for social work in particular. We welcomed the decision that children's services and justice needed further analysis, but there is a challenge in having the national care service designed around adults to begin with, with children and justice coming in at a later stage, rather than making those key decisions and designing a national care service around the totality of what, ultimately, will be in that national care service.

It is about getting the right conversations; otherwise, we make decisions about what should be included in health and social care records, for example, before we make the decision whether children's services are part of the national care service. The type of data that is held in children's services is very different from some of the others. We need to be mindful about those interdependencies and we need to take the right amount of time to have those discussions, rather than feeling constrained within the parameters of a bill.

Miles Briggs: Does anyone else want to come in?

Sarah Latto: It is fairly evident that the bill is quite light on detail, which might reflect the fact that the co-design process has not taken place. Thinking about the voluntary sector, in particular, and how complex that is, it does not feel as though that complexity or the contribution that the voluntary sector makes to care is reflected adequately at the moment.

Following on from what Alison White and other panel members have said, maybe now is not the time. It will be a challenging time to meaningfully do that co-design. As a result of the cost of living crisis, the voluntary sector is facing a perfect storm of surging demand, increasing costs and decreasing budgets.

On capacity, there are the larger voluntary organisations, but there are also all the really small ones that contribute to care at a local level, and it will be extremely challenging for them to have the capacity to contribute to this type of process. There is currently a lot of weight on the secondary legislation for the bill—perhaps there is more weight on that than there needs to be.

Cara Stevenson: On co-design, we welcome the fact that voices of the workforce and voices of people with lived experience and everybody else are being heard and that people want them to be part of the process. However, the process must be organised correctly for it to work. It is great saying that we welcome co-design, but there must be a structure for how the co-design process will work.

I will give an example. A few months ago, as a trade union, when we started to look into the co-design process to make sure that the workforce was involved in it and that the voices of workers were being heard, we counted that there were about 24 working groups that were discussing co-design. That is not going to work. There needs to be co-design, but there must be a structure there.

Our position is that social care is in crisis now and there is no reason why changes cannot start happening now. Regardless of co-design or the discussions about it, we know what issues there are in social care. We cannot recruit or retain staff. That is a big issue for service users and people who rely on the service. We need to be addressing that right this second.

Miles Briggs: My final question is about the financial memorandum. The issue of pensions liabilities and insurance for staff was also raised at the Local Government, Housing and Planning Committee. Given that we are talking about 75,000 people being transferred from all 32 local authorities to a national care service, has there been any discussion about what that will look like from the point of view of the potential cost and liability, which, currently, has not been outlined by the Government?

Cara Stevenson: As far as we are concerned, that is subject to co-design.

Miles Briggs: So, one of the 24 groups might be having a wee look at that.

Jeremy Balfour: Good morning to you all. I will start with a question for Alison White. An area that we have not covered yet is that of children's services and criminal justice, which another working group is looking at. From your perspective as a social worker and someone who represents social workers across Scotland, do you think that criminal justice and children's services should be included in the bill? I appreciate that that is a very big question, but could you give us a high-level overview of that?

Alison White: One of the challenges that we have is that it is difficult to know what we would be in, because some of the other elements of the bill are lacking enough detail to be clear about that. Obviously, the development of the national care service came off the back of the Feeley report, which focused on adults. In our submission, Social Work Scotland said that we welcomed the recognition that more work needed to be done on justice and children's services.

It is worth saying that there is already a mixed model across Scotland when it comes to health and social care partnerships and integration joint boards. Therefore, children's services are included in some places and not in others, and justice services are included in some places and not in others. Some places have both services and some places just have one. There is already a mixed picture on that. Those decisions were taken locally and were to do with other structures. For example, in some areas, children's services are closely aligned with education services, because those areas took the decision that that made most sense for them from the point of view of partnership working.

The key piece of work around children's services is understanding what the risks and challenges of that will be for all areas. However, if a decision is taken collectively for children's services to be in or out of the national care service, that will mean significant change for about half the country. There will be significant change whichever way the decision is taken. It is not as though things will remain the same for children's services.

There is a risk of disaggregating social work. At times, social work already feels like a profession that does not have as strong a voice in this process. If nothing else, the debate about the national care service has shone a spotlight on social work and has given us a welcome opportunity to think about the role that it plays, but there are risks with disaggregating social work.

The chief social work officer role has a key role to play in the governance around protection in relation to the Mental Health (Care and Treatment) (Scotland) Act 2003, the Adults with Incapacity (Scotland) Act 2000 and the child protection legislation. There is a clear route for governance and where that goes. In the bill, it is not clear what will happen on some of those elements of legislation and how we will manage some of that.

We need to recognise that people do not live in silos—they are part of families and part of communities, and they may access all those services at different times. Even if justice services are not included in the bill, we have an ageing population of people who have offended, who may have health and social care needs, and whatever structure emerges in that respect will be important.

It is a question of maintaining that strength in social work and keeping people together, but also of having a good understanding of what it means to be part of the new system. If nothing else, we need to ensure that we continue to drive forward the changes that are taking place in those areas. We need to make sure that we are delivering on the Promise. There is so much work that is going on around that and we need to make sure that the development of the national care service—whatever happens with that—does not take away from that.

There are strong ambitions about how we drive forward change in justice services, too, and we need to make sure that the setting up of the national care service does not have an impact on those areas as well.

I am sorry—that was probably slightly waffly. I did not give you a straight yes or no answer. I am practising to be a politician.

Jeremy Balfour: Yes—one day, you will make a good politician.

My second question is about the good practice that we share across Scotland. We do not want to lose the local, hands-on knowledge. I appreciate that a lot of this will come out of the working groups and the regulations, but do you have concerns that we will lose the good local knowledge that people have in, say, Stornoway, Edinburgh and Dumfries, as a result of it becoming a national service?

Alison White: I think that there is a risk of that. The issue is how the design process plays into that. We are all for people having equitable access and we want there to be common standards and processes, but what will work in communities in parts of the Highlands and Islands will be very different from what might work in a city centre, and we need to retain that.

We have moved significantly on the personalisation agenda and self-directed support. I know that that has not rolled out everywhere in exactly the same way, but there is still time for some of that work to be done. We need to work with individuals on improving outcomes and personalisation. To an extent, we need to retain that level of individualisation for people. We need to keep the choice and control and the rights and responsibilities that are central to the self-directed support legislation.

10:00

The issue is not just about how we are working in communities. Things will work differently in our rural and urban communities, and we need to have some level of structure. To an extent, the NHS has that, because there are still localised developments that meet communities' needs. Whatever structure is in place around a national care service, we need to have local engagement and a sense that we need to develop things in a way that meets the needs of local communities, which will be very different in different areas.

The Convener: Pam Duncan-Glancy has a follow-up question. After that, you can move on to your next questions.

Pam Duncan-Glancy: I will do that seamlessly, convener.

I thank the witnesses for all their comments so far. I also want to put on the record my thanks for all the work that carers did during the pandemic and for the work that they did before it and have done since. As a care user, I understand the importance of social care, and I want to put that on the record.

My question is a follow-up to the previous one for Alison White. As members and others might be aware, I have a proposed member's bill on the transition to adulthood for young disabled people. In your view, would that transition process be affected by the national care service? Is there a danger that provision will become more piecemeal if all the services are not much more co-ordinated as part of that process?

Alison White: There is a risk of that. It is a case of being clear in the co-design process about the need not to lose some of that. We know that part of the reason for your bill is that there are inconsistencies when it comes to those transitions. Getting things right for that age group is key and critical. My career in social work has been predominantly in learning disabilities, which is an area where the transition process can make or break how that is managed. It is so difficult moving from school to adulthood, given the shifts and the changes, and the responsibilities, that come with that.

There are some risks with the National Care Service (Scotland) Bill if we do not get the design process right, because there are so many uncertainties about where children's services sit. The transitions are not only from children's social work to adult social work; they include education. We need to be involved in that wider issue. Housing is often a key issue for people as they transition and move away from home. Those links go wider than the issue of where social work and social care sit; they are part of a broader picture.

The biggest risk is probably of destabilisation while change happens. Once we get to the point of having the national care service, which children's services might or might not be part of, we can rework things, but the change process has the potential to massively destabilise things in the meantime, which is a risk.

Pam Duncan-Glancy: What would you do to not destabilise things?

Alison White: I go back to Social Work Scotland's point about needing to go through the design process before we make significant changes. The danger is that we could destabilise things while we try to work something out, whereas we could make some of the changes that are central to the NCS bill incrementally, without destabilising the whole system in the meantime, and then make the transition. At that point, we would know whether children's services were included in the national care service, and what the relationships would be with the wider education system and the local government sector. As people move in that transition period, it is not only a social work issue; there needs to be a much broader public sector response on how we resolve those issues.

Pam Duncan-Glancy: Thank you. I will move on to my main area of questioning. My questions are for Cara Stevenson and Sara Cowan.

Cara, you mentioned that, in social care, it has been very difficult to recruit and retain staff. Can you tell us about the role of fair work in that and the experience that your members are having on the pay that they are currently living on?

Cara Stevenson: Right now, social care workers are living on poverty pay for doing a lot more work to cover the gaps in recruitment. We are driving the social care workforce into a state of panic and anxiety because workers do not know what they will face the next day. As a social care worker, I know that the main priority is the service users and people who rely on the service.

In addition, we are now in a cost of living crisis. I know from having spoken to them that we have care workers who are going out to their work and having to decide whether to go to the shop and buy their service user a loaf of bread and a pint of milk or whether to take them back to their family. That is a scary place for us to be. We are paying them a pittance for it. What we want is a minimum of £15 an hour for social care workers now, not through a national care service and not through co-design. That must happen now or the crisis will get worse.

Pam Duncan-Glancy: Thank you. The example that you shared about the shopping is grim. I have seen that situation and people in the Glasgow region have told me about it, too. As I hope you are aware, we support the £15 an hour ask. It is beyond overdue. The notion that we need to wait until the national care service is set up is worrying.

Sara Cowan, could you comment on that issue, with particular reference to the impact that it is having on women's inequality and poverty?

Sara Cowan: To build on what Cara Stevenson said, it has long been known that fair work has not been delivered in social care. The Fair Work Convention has highlighted that in the past, well before the pandemic. This is a long-term issue that needs to be resolved as quickly as possible. I know that, today, we are talking about the National Care Service (Scotland) Bill, but I emphasise the point that has been made about steps that can be taken along the way while the bill is going through. A key step is changes for the workforce.

In the financial memorandum, those elements are said to be separate from the bill and on-going. That is why it is crucial that they are acted on with urgency. In the forthcoming budget, we would like funding to be looked at for what the next pay rate would be. Last year, there was the commitment to paying £10.50 an hour. The real living wage, which is at £10.90, has now surpassed that. As Cara Stevenson said, an award of £15 an hour would be a fair wage for social care workers.

We are looking at some numbers around investment in care, and we plan to release research on that in early December. The £15 mark would be about 75 per cent of nurses' wages. That is what the model is like in many Nordic countries, where social care is seen to be of a higher standard. That is the sort of pay differential that exists there, whereas at present we are closer to social care staff receiving about 50 per cent of nurses' wages. As we have heard on the news today, a lot needs to be done on nurses' wages as well. Moving towards a pay rate of £15 an hour is a crucial element while the national care service is being developed.

We have also been doing some research, which I hope will be published next week, on the impact of the cost of living crisis on women on low incomes, which, as Cara Stevenson pointed out, is a category that many social care workers will fall into. People are having to make desperate decisions about whether to feed their children or to heat their house, and women are making choices not to eat meals or to cut back on real essentials. Our fear about the cost of living crisis and its effect on women's equality is that it will be another point when women's equality is pushed back if measures are not taken now to keep equality on the agenda.

The response to the cost of living crisis brings with it key equality issues. With social care staff being such a gendered workforce, it is a key area in which investment needs to be made while the national care service process is on-going.

Pam Duncan-Glancy: Thank you, both, for that.

Jeremy Balfour: Most of my questions have probably been answered. However—and we might be slightly going round in circles on this one—if we continue down this road and do not pause, as you have suggested, what do you think should be in the bill now that cannot wait for the secondary legislation? Again, that is quite a big question, but, if we assume that this is going to go on over the next few months, what would you like to see in the bill that you do not think can wait for regulations and guidance? Perhaps I can start with in-the-room Sarah, if that makes any sense.

Sarah Latto: Sure. I think that a couple of things need to be in the bill, the first of which is recognition that volunteers are a key part of the care workforce. As I have said in my submission, we estimate that around 200,000 volunteers support health and social care. That is roughly equivalent to the paid care workforce, so it is important that their specific needs are met.

Something else that is missing from the detail of the bill is how the care boards will be made up and how the voluntary sector will be meaningfully engaged in that work. Third sector interfaces could play a key role in supporting that; after all, they are involved in integration joint boards in a number of areas. However, it is not clear how the voluntary sector will fit in and how it will be meaningfully engaged in decision making. Those are the two key things that I would want to be included.

Cara Stevenson: I will try to keep this brief, so that everybody gets to lunch in time.

Our key asks with regard to the bill are a £15 per hour minimum rate for social carers and a proportionate increase for all other care staff, and I have just mentioned in my response to Pam Duncan-Glancy why we need that now.

Secondly, we want all professional fees that are owed to the Scottish Social Services Council to be covered for all care workers, as that will relieve some of the financial pressure on social care staff. Training must be paid for by employers and take place on staff's paid time. That, again, would reduce anxieties for staff. We would also like trade union recognition in all social care settings so that we can negotiate pay, terms and conditions and contracts and can also be involved in the national care service at every step along the way.

Alison White: We are looking for more clarity on the national social work agency, as it is not clear from the bill what that will look like, and on the role of the chief social work officer. There are particular concerns about some of the protection legislation—the Mental Health (Care and Treatment) (Scotland) Act 2003 and so on—and there needs to be some clarity on the protection elements, as they are so significant to the social work role.

We also need more clarity on the difference between social work and social care. At times, it feels as though both terms are used interchangeably, which causes a level of confusion. Social workers are not just the gatekeepers for people requiring a social care service; we play a much broader role, and some understanding of that would be helpful.

The fair work issues that have been highlighted are the biggest single thing that would make a difference to the current crisis, and they need to be addressed. We need, as part of that, some more clarity in the financial memorandum about what they will mean. I have been listening to the conversations that the minister and others have been having on the financial memorandum, and I understand that some of the detail should come out of the co-design process, but the fact is that it is quite difficult and challenging to understand what the impacts will be. The issue of pension contributions and everything that goes along with that have already been mentioned, and the lack of understanding in that respect is causing huge concern.

Those are the key issues that we would be looking for in the bill. The challenge for us is that the decision on certain elements of social work is not going to be taken for a while, but we might be through the co-design process prior to that. That is part of the process that we are going through.

Jeremy Balfour: Last but not least, I call online Sara.

10:15

Sara Cowan: On the point about the level of detail in the financial memorandum, the memorandum sets out some justification as to why certain elements were excluded, but the fact is that these are big elements, particularly the terms and conditions for the workforce. If it is not appropriate for that sort of thing to be covered in the financial memorandum, that information will need to be presented transparently as part of this process, given that such issues will be such a huge part of the costs of the national care service. It is hard to scrutinise the financial memorandum without having any clarity on those elements and without being able to know how the Government sees them and how it predicts they will develop.

Another wider point about the bill—and this is not about a specific element but a bit of a pull-back—is that we need real clarity on the outcomes that we want as a result of making this change and delivering this bill, and we need to take a human rights approach to framing the bill within those overarching outcomes to make it clear that the technical changes that are being considered and developed will deliver to them.

Jeremy Balfour: Thank you. Finally, I want to go back to Sarah Latto's comments about the 200,000 unpaid workers. As someone who benefits from unpaid care, I have to ask: how do we ensure that we do not lose the voice of those workers in all of this? I realise that unpaid carers in different parts of Scotland will face different challenges and different issues. You do great work, but how do you ensure that that voice gets fed into the process? After all, we are talking about some of the key people who keep the system going and without whose help we would be in an even more difficult place.

Sarah Latto: First, we need to make a distinction between unpaid carers and volunteers. The figure that I highlighted is not for unpaid carers. We would not class them as volunteers anyway, because quite often unpaid care is not voluntary. Those people do not have a choice in providing the care that they have to provide.

As for how we ensure that the voice of volunteers is heard, it is about having meaningful engagement with the voluntary sector as a conduit to the volunteers who are on the front line. For example, I spoke earlier this week to a representative from a volunteer-involving organisation that is funded by the statutory sector—it was a befriending service—and she said that, even with the staff shortages that she is experiencing, she is still under increasing demands from her funder to take inappropriate referrals of people who really need clinical care.

I come back to the point that we need to ensure that volunteers are not there just to make up for staff shortages. With regard to volunteers' experiences, we think that we are starting to see a decline in participation in volunteering for a number of reasons. Aside from the practical barriers presented by the cost of living crisis, there is a general feeling of apathy and fatigue, a lot of which comes from the fact that, during the pandemic, volunteers were being asked to do things that they were happy to do in the short term. As we all know, though, the pandemic lasted a little bit longer than we were expecting, and they perhaps did not feel that they could give up the additional responsibilities that they had been given.

The challenge is to make sure that the voices of volunteers are heard, because they are so important in the provision of care, particularly in that home-care, person-centred, preventative space. If we start to see a decline in those volunteers, we will struggle to deliver care on an on-going basis.

Jeremy Balfour: As a quick final question, has there been any meaningful engagement on this between the third sector and the Scottish Government, either at ministerial or civil service level?

Sarah Latto: I do not honestly know. Certainly, Volunteer Scotland has not been engaged. Some of the larger organisations such as the ALLIANCE or Chest, Heart and Stroke Scotland might have been more involved in looking at this from a provision of care perspective, but, from a volunteering perspective, we have certainly had no engagement before the consultation process.

The Convener: Before we move on to our next questions, I want to address something that we have not touched on. We have heard that the ethical commissioning strategies must reflect the principles of the national care service. Important in that is including the principle of fair work. To what extent do you feel that those strategies will ensure that fair work is embedded in the national care service? I will go to Cara Stevenson first, because I know that the GMB commented on that.

Cara Stevenson: Fair work accreditation must require employers to adhere to certain standards on union activity, especially enabling unions to be the voice of the workforce within their services prior to full recognition, which includes recognising trade unions as being able to negotiate pay, terms and conditions for the workforce.

Freedom of information legislation must be amended so that the public can see how private firms are spending and profiting from public funds. Sometimes it is overlooked that it is public funding that goes into these places, and employers must be held accountable for that and must report back on what they are doing in relation to the spending of public funds but also how much funding is going to their staff to achieve the fair work principles that they are signing up for.

The Convener: Do you think that the principles need to be stronger?

Cara Stevenson: Yes, they have to be stronger, and there has to be liability as well. If certain employer organisations sign up to fair work accreditation and ethical commissioning, there must be structures in place that enable us to see what happens next if they are not adhering to that.

To give an example, it was a big struggle trying to get private employers to pay their staff the £10.50 minimum social care wage when it came in. They dug their heels in and hid behind a million excuses. We do not want to be in that place again. If people are signing up to these accreditations, there has to be a regulation around it to make sure that they are adhering to that.

The Convener: I see that Alison White wants to come in.

Alison White: At one level, I do not. However, you are right that, as part of the commissioning process, you are looking to ensure that people are being paid that £10.50 an hour. In that commissioning role, it can be hard to formally check that that is happening in relation to every member of staff, because the organisation is not your own. Therefore, it is right that there are regulations that ensure that organisations are adhering to that. We welcome there being clear and robust plans around that.

However, there is already good, strong guidance and advice about ethical commissioning. The biggest challenge at the moment has been the budgetary constraints that are around for commissioning bodies now. The two need to go hand in hand: the financial memorandum and the clarity around what is available for those fair work practices, along with clear guidance in the commissioning processes for the bodies on how to deliver that. Without that, we are either going to have less of something to fully commission at that level or we are not going to be able to commission for what we require at that point. The guidance and the financial memorandum need to go hand in hand to make sure that there is sufficient budget to enable that to be enacted in the way that we would want to see it being enacted.

The Convener: Thank you for your answers.

I am sorry; I have been managing to juggle the hybrid meeting quite well, but I see that Sara Cowan wanted to come in on the last point. If you would still like to come in, I can bring you in now.

Sara Cowan: I just want to support the points that Cara Stevenson made about strengthening the ethical commissioning piece and the need to use those commissioning tools to ensure that fair work is delivered. Cara Stevenson made a good point about private firms and terms and conditions. The Scottish Trades Union Congress has done some research around that, showing that the largest private firms have lower wages, more complaints about care quality and higher levels of rent extraction. It is important that the detail is there within the ethical commissioning.

On Jeremy Balfour's point about ensuring that the voice of unpaid carers can be heard, it is important to make sure that the next stage in the design process is a genuine process and that it reflects the cost of living crisis. Having an appropriate budget for that design process will be crucial to the aim of hearing the voices of everyone, including unpaid carers and those who receive care support. They will need support to attend meetings and to give up time to take part in that design process, and there needs to be an appropriate budget put around how that can be delivered.

Pam Duncan-Glancy: I want to explore the impact of social care on inequality and human rights. I have long considered social care to be an investment and a piece of essential infrastructure to deliver on equality and human rights, but I would be keen to know, from Cara Stevenson first, how you think we can get to a position that social care does that for the people who work in it and for the people who use it, and how we can use this bill as an opportunity to do it.

Cara Stevenson: Our main point, which we have been trying to make for years, concerns the public perception of what social care actually is. When we speak to members of the public, when we are out rallying for care workers, what we tend to hear is that people think that they go into someone's house, make a cup of tea and have a chat with them. That is degrading for the worker and it is degrading for the service user. That is not all that happens. Care is relied on for somebody to live a normal daily life, and that has to be reflected in what we are trying to do here.

Because of inequality, care is predominantly women's work. With regard to equal pay and what men get paid for doing similar jobs, that has to be looked at and taken seriously as well. Again, it has been overlooked in the past. However, public perception is part of the reason why that is overlooked. The issues go hand in hand.

The inequality and human rights slant on that is that there is still the perception that women are more caring and compassionate than men. That is the public perception, and that is what employers jump on the back of with the workforce—they use it. That is a strong word, but it is true: they use somebody's care, compassion and gender to make them do over and above for less money. That is a real inequality and itt is something that we can be changing now.

Pam Duncan-Glancy: A couple of weeks ago, another committee that I sit on it—the Equality, Human Rights and Civil Justice Committee—took evidence about the budget. The Scottish Women's Convention made a similar point to yours about the way that women workers are treated. I am disappointed but not surprised that it is so prevalent. Thank you for putting that on the record.

Sara Cowan, could you talk about your understanding of the role of social care and the social care workforce, and social care as a piece of infrastructure in general, in reducing poverty, inequality and promoting human rights?

Sara Cowan: It is vital that social care is seen as an important piece of infrastructure in this country and that money that is spent on social care is seen as investment. I am emphasising the points that you made in the question.

It was welcome to see details around that in the financial memorandum. There was a recognition of and details provided about what social care is already providing to the economy as well as to the people it is supporting.

10:30

As I mentioned earlier, we are working on some research on investment in social care and what sort of investment is needed to transform social care in this country and to put the investment into it that is needed to make significant changes in terms of the inequality that has been mentioned and the delivery of people's human rights. That research is looking at what funds are needed to ensure that current care needs are met and at which care that is provided in the care service can be expanded. We do not know the detail of unmet care needs in Scotland because there is no consistent way of collecting that information. What we can assume from that is that there will be a need for significantly greater investment to meet those unmet care needs and expand provision of care and, as was mentioned earlier, to cover the funds that are needed to increase paid care workers' wages.

What we will be looking at in that regard, again taken from Nordic examples, is the need to increase the amount of gross domestic product that is invested in care. We are investing just under 2 per cent of GDP at present, and we need to move that up to closer to 3.5 per cent. That chimes with what is happening in Nordic countries, and that would lead to genuine transformation in the care service and expansion of whom it reaches and of the wages that people are receiving. In that way, we can tackle some of the inequalities that exist for women workers and for people who are receiving care and for unpaid carers, the majority of whom are also women. With that kind of investment, unpaid care would also be moving towards—it would not be there yet—being a choice within families rather than what it is now, whereby there is a heavy reliance within our care services on unpaid care. We need to be looking at that investment within the care service and the national care service to transform the inequality and human rights elements.

That will sound like a big jump in investment, but we must remember that social care contributes to the economy. If we increase workers' wages and the number of social care workers, that increases tax returns and it also benefits the wider local economy. There would be money coming back from the system to the economy, and that would help to fund the increase in investment. That is why it is important, as you said, to see social care as an investment in society and people and in the economy.

Pam Duncan-Glancy: Thank you. Alison White, I ask you the same question.

Alison White: If nothing else, one of the benefits of the development of the national care services, over what feels like a very long time, is the ability to discuss what social work and social care are—what they mean and what they do. That has been valuable. At their heart, social work and social care have always been about social justice, about addressing inequalities and about promoting human rights. When the service is done well, we really see that.

Last night, I had the privilege of being at the social services awards, where good practice in social work and social care was being recognised. Watching the videos from around Scotland about the work that is going on—our bright sparks, our service delivery—it was heartening to see the volume of work that is going on. Each of the individuals who were nominated displayed that sense of care and a desire to deliver support and ensure that the people they are working with get the right support. We saw people who had previously used services who had become peer support workers and were now in paid employment. There was a sense of pride that they were able to give back in the same way as they had been supported by carers themselves in a previous time.

Therefore, when we are looking at the human rights and inequalities perspective, social work and social care are uniquely placed to drive forward some of that change. Of course, I note the issues that have been highlighted by Cara Stevenson, Sarah Latto and Sara Cowan about having the right workforce and attracting people in. We often get stuck in conversations with people saying, "I could work in Tesco; it's only slightly different," but, for many people, social care is a vocation and a profession and is something that they are super-committed to doing. We are not talking about people just looking for a low-paid, entry-level job; we need to be attracting those bright sparks. They are the future leaders of this profession. The difference that we can make in those areas if we get this design process right, whatever that ends up being, will have a huge and significant impact on human rights and inequalities across Scotland.

Emma Roddick: My first question is for Sara Cowan. You have mentioned the need to keep equality on the agenda, and that is, indeed, the intention behind the committee's scrutiny of the bill from a social justice perspective and in inviting this panel as witnesses. I have found the evidence this morning helpful, and I think that that is because we are discussing a framework bill and everybody giving evidence has such a specific interest in this issue as well as specific ideas for what the end proposals should look like. Have you found it in any way helpful to be asked to give evidence to a parliamentary committee with such a blank slate and to be able to say what you want the national care service to look like?

Sara Cowan: My quick answer to that is yes. It is really good that the committee is scrutinising the bill, given the important social justice and inequality implications that we have been talking about. With regard to the bill's ambitions, the creation of a national care service is being talked about publicly as the biggest change in public services since the creation of the national health service itself, and that, in turn, is creating a lot of expectation about what will be delivered. That could be a good thing, and it provides a lot of opportunity to address issues of equality and of having an accessible and free-at-the-point-of-use social care system that has fair work at its heart, that pays a good wage to its workforce and that reduces the need for or does not rely on unpaid care as the current system does. That is what we are imagining and what we are hoping to see from the national care service.

The risk, however, is that all of this becomes a technical process that is about changing structures and systems, while the care that people receive and experience, workforce conditions and so on do not necessarily change. It is vital that, in getting the detail right, the committees and the MSPs scrutinising the bill—and, indeed, the Scottish Government as it builds all this—also keep at the forefront of their minds the bill's overarching ambitions and how care is experienced by and changes for people to ensure not only that more people can access such services but that, where services need to be improved, that improvement happens for those who experience them. It is also vital that the workforce elements that we have discussed a lot are brought in. As we have made clear, there are changes that can be made across the board with regard to the workforce as the national care service is developed.

As the Scottish Women's Budget Group, we look at investment, and what we are hoping to see in the budget is not only what will be set aside for developing the national care service but an on-going increase in social care funding that will be delivered immediately. After all, we have already heard about some of the challenges that are being faced.

Emma Roddick: Thank you very much. You have given us a lot to think about there, and I think that having flexibility to make further changes down the line is definitely something that I would like to keep an eye on.

I want to go back to a point that Alison White made in answer to Pam Duncan-Glancy. The financial memorandum outlines the potential benefits that a national care service could have for Scotland's wider economy and in tackling inequalities, not just for those working in or receiving care. Do you think that a national care service will bring those wider benefits by tackling poverty and inequalities? That question is for Sara Cowan and Cara Stevenson.

Sara Cowan: I think that everything about the national care service and whether it delivers the benefits that we want with regard to tackling poverty and inequality will hang on how much is invested in it. There is already a commitment to increasing funding over this parliamentary session, but we would actually like a much more significant increase over the parliamentary session than was committed to in the resource spending review. However, as we know, money is being shifted out of social care as a result of the emergency budget review.

The structure of the service and how it is developed will be crucial, but if, after all the co-design work, the investment does not follow, people who have invested so much time and hope into what is coming next might end up feeling that the process itself is not worth their while.

Cara Stevenson: GMB Scotland does not oppose the creation of a national care service, but it has to be done right, it has to be funded properly and the co-design work has to include those with lived experience—that is, the workforce and those who will be affected. As I have said, things have to change now. That is the bottom line.

As you have said, it has been interesting to listen to the evidence, but I think that what we are missing here is that passion for care when the national care service is being talked about. When you hear people talking about a national care service, you can see that they are angry, you can hear their great ideas and you can hear what they say about co-design; however, there is no passion behind their talk about care. That is quite worrying. When you talk to care workers about their job, they will tell you what is wrong in it; however, when you start talking to them about their service users, they get filled with that passion for care. They will tell you, for example, about how they sat and held somebody's hand as they died. They are so passionate about it, and, for a national care service to work, the people implementing all this have to show that same passion to the people who use and who work in the service.

Emma Roddick: I am sorry—what do you think is missing? I listened to everything that you said, but I am not sure what part you are referring to.

Cara Stevenson: Honestly, I am referring to all of it. With regard to co-design, because there is not much in the bill itself, the workforce does not think much will change; they think that there is no understanding of and no care for the work that they actually do. We have suggested at meetings about the national care service that we would welcome MSPs as well as the minister Kevin Stewart and his team coming out into the workforce and working with us for a day so that they can understand what care is, what care workers do, what service the service users receive and how all of that can be incorporated into a national care service to ensure that changes are made for the better for everyone involved.

The Convener: Thank you all for your really useful evidence today. I appreciate that the bill is being scrutinised by a number of parliamentary committees, but, as many of you have mentioned, it is essential that we look at it from a social justice perspective. Your evidence will be key to that scrutiny, so I once again thank you all for coming along and giving evidence.

That concludes our public business for today. Next week, we will continue to take evidence on the National Care Service (Scotland) Bill.

10:44

Meeting continued in private until 11:11.

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