



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# **Social Justice and Social Security Committee**

**Thursday 17 November 2022**

**Session 6**



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**SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE**  
**30<sup>th</sup> 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)
- \*Foyso Choudhury (Lothian) (Lab)
- \*James Dornan (Glasgow Cathcart) (SNP)
- \*Pam Duncan-Glancy (Glasgow) (Lab)
- \*Paul McLennan (East Lothian) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

- Sheena Arthur (Glasgow Council for the Voluntary Sector)
- Rachel Cackett (Coalition of Care and Support Providers in Scotland)
- Andrew Ewen (Leonard Cheshire)
- Chris Gehrke (L'Arche Highland)
- Frank McKillop (ENABLE Scotland)
- Beth Reid (Crisis)
- Kevin Stewart (Minister for Mental Wellbeing and Social Care)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Social Justice and Social Security Committee

Thursday 17 November 2022

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

### Decision on Taking Business in Private

**The Convener (Natalie Don):** Good morning, and welcome to the 30th meeting in 2022 of the Social Justice and Social Security Committee. Under agenda item 1, do we agree to take item 3 in private?

**Members** *indicated agreement.*

## National Care Service (Scotland) Bill: Stage 1

08:00

**The Convener:** In our main item of business today, we will take evidence from two panels on the National Care Service (Scotland) Bill. This is our second evidence session on the bill.

I welcome our first panel. With us in the room are Frank McKillop, head of policy and research, Enable Scotland; Rachel Cackett, chief executive officer, Coalition of Care and Support Providers in Scotland; Beth Reid, senior policy officer, Crisis; Chris Gehrke, community leader/director, L'Arche Highland; and Andrew Ewen, chief of staff, Leonard Cheshire. Joining us remotely is Sheena Arthur, partnership manager for health and social care, Glasgow Council for the Voluntary Sector.

Before we start, I will make a few points about the format of the meeting. I ask Sheena Arthur and committee members who are attending remotely to wait for me or the member who is asking the question to say their name before they speak. Sheena, please allow our broadcasting colleagues a few seconds to turn on your microphone before you start to speak. You can indicate that you wish to respond to a question by typing the letter R in the dialogue box in BlueJeans, or simply by showing your hand.

I say to all our witnesses that you should not feel that you have to answer every question. If you have nothing new to add to what others have said, that is fine. We have a big panel and we have a lot to cover, so I ask everyone to keep questions, answers and any follow-up questions tight, please.

Colleagues who are in the room should indicate to me or the clerk that they wish to ask a supplementary question. I ask all members to direct their questions to a specific member of the panel. Committee members who are online should use the chat box or WhatsApp. We are quite tight for time, but I will try to give all members opportunities for questioning.

We move straight to questions.

**Paul McLennan (East Lothian) (SNP):** Good morning. The policy memorandum to the bill says:

“Phasing of the transfer of functions from 2025-26 will need to be based on delivery readiness assessments. Clear, transparent local transition plans will be developed with partners so that everyone affected is comfortable with what is happening, where and when.”

How can it best be ensured that process reform does not destabilise your services? I put that question to Andrew Ewen first.

**Andrew Ewen (Leonard Cheshire):** The key thing is that, because of the sequencing of the bill—because it is an enabling piece of legislation—it runs a risk in that the co-design process will have to happen from the get-go. We have to ensure that people with lived experience will be able to feed in, because the structures have to be right in order to facilitate co-design.

A key consideration for the Scottish Government is that it will need to build systems while building the confidence that will allow providers and people who are supported in social care to have clarity about entitlements and clarity that there are not going to be any gaps in service provision.

One of the problems with the bill as it stands is that we need to better understand from the Government how the broad principles can be fulfilled by individuals. Individuals need clarity about how they can realise their rights and about the right to redress. That links with the principles of the bill but also with the charter of patients' rights and responsibilities. All those issues are intertwined—indeed, they are inextricably linked.

The key point is that we need a bit more clarity on that from the Government. We owe it to the people who are in receipt of care and support to provide them with confidence that the system is not going to let them down. I also note that, as a sector or as a field, we are struggling with significant challenges here and now, and the passage of the bill must not exacerbate those challenges. That is a real concern.

**Paul McLennan:** Rachel, will you give your point of view? I will then bring in anyone else who wants to comment.

**Rachel Cackett (Coalition of Care and Support Providers in Scotland):** Thank you for the opportunity to come and speak to you today. CCPS is a member organisation that comprises 91 exclusively third sector providers, some of which are represented around the table this morning. Our members work alongside a quarter of a million people. They employ about 40,000 staff, have 5,000 volunteers working with them and manage income of around £1.5 billion.

I started my answer in that way because it is important to understand the size of the third sector and the need for stability in that sector if we are to get to a point where we have a national care service. The voice of our members is important in the co-design process, which must be front line focused.

Our members are inevitably very interested in the bill. We met a number of them yesterday to talk about next steps for the legislation, and I heard really clearly that reform is needed. You will not hear our providers talking about the need to sort out a system that is, in many places, broken

and unfair. We know that there is a huge amount of unmet need. We still have competitive contracts that do not focus on outcomes for people or on relationships at the front line. There is a total lack of fair work at the moment, self-directed support has not been properly implemented yet, and there is a lack of parity for the third sector. There is sometimes a sense that social care exists to relieve the pressure on our acute sector. That is important, but it is not really the point of social care.

In answer to your question, I note that it is important to have a vision of where we are going. As a membership organisation, we took time when the bill was published to articulate a vision of where we thought the bill should take us, and I have shared our vision for reform with the committee. We are now using that vision to look at the bill and ask whether it contains the right reform to get us there or, if there are gaps or holes in the bill, whether it can be amended to get us there.

The vision is really important. We need to know what we are aiming at if we are asking people to go on a radically different journey, and we must articulate that really clearly. We at CCPS hope that we have made a helpful contribution. We would like the vision to be far more at the front of discussions about the bill, which is a framework bill that focuses largely on structure.

The other issue that was raised was the current situation, which is dire. It is really very hard. Providers have their backs against the wall financially, and there is a recruitment and retention crisis in the sector: we cannot get enough staff. That puts us all in a very difficult position while we are also trying to deal with a vision for big structural reform.

The Auditor General for Scotland was on BBC Scotland this morning talking about the importance of reform if we are going to deal with the situation. He is right, but we must ensure that we have the right reform. That is why we, like all the Parliament committees that are looking at the bill, are taking time during stage 1 to work with our members and partners to check whether the bill can get us to where we think social care should be.

Our focus should be on enabling people to live the lives that they want to lead. In order to do that, and given the size of the third sector, which I outlined, we must ensure that we have a third sector to deliver a national care service. That means that we need a twin-track approach, and one of those tracks is about ensuring that we have stability right now. CCPS worked with our members to put out a winter manifesto called "Urgent Action for Urgent Times", which is on our website. In keeping with our model of change, we are trying to focus as much as we can on solutions and to offer options to ensure that we have the

stability now that will allow us to envision and make change for the future.

**Paul McLennan:** You mentioned the issue of contracts. The bill would allow contracts to be reserved to voluntary and third sector organisations. What are your views on that approach? Do you see advantages or disadvantages in it? I will open that question up and allow others to comment on contracts as well as the broader question that I asked.

**Rachel Cackett:** The bill contains provisions on ethical commissioning and provisions on reserved contracts, which are interlinked. The detail on ethical commissioning is very thin. If the bill continues, we would like that to be strengthened considerably, because ethical commissioning should be at the heart of a radically reformed service. Competitive tendering is not a good way forward.

We have two concerns about the provisions on reserved contracts. The first is whether they go far enough. Do they just rewrite European Union regulation into Scots law? Are they as radical as they could be? Reserving contracts in certain circumstances could be a really positive way of changing the way in which we procure services at present.

Our other concern about the provisions on reserved contracts is that there is no commitment to ever use them. We might put things into law, but that does not mean that they will actually make a change. We need to see that commitment. If that is going to be one of the ways of changing how we procure social care in Scotland, we need a commitment that it will be used.

**Paul McLennan:** Thank you. I will bring in Frank McKillop. Frank, I put to you the same question about ensuring that reform does not destabilise your services, but perhaps you could comment on the contracts issue as well.

**Frank McKillop (ENABLE Scotland):** On the first point, there is no doubt that reform is required, which is why we have welcomed the introduction of the bill. I echo the points that Rachel Cackett and Andrew Ewen have made, especially on the crisis that the social care sector faces at the moment. We need immediate action as well as broader and longer-term structural reforms. Some immediate structural reform is perhaps required as well, to be honest, because we are already seeing challenges. If things were working as they stand, we would not be in the situation that we are in with social care. As far as we are concerned, that is sufficient evidence of the need for reform.

Even in the immediate term, as we try to tackle the challenges that the social care sector currently faces, we are seeing frustration, at times, that there is perhaps a reluctance to embrace some of

the more innovative ideas and measures that might be taken to relieve pressures on the sector. The most obvious of those ideas is that developments on fair work will mean proposals for improved terms and conditions and enhanced pay for front-line social care staff. We have to take that seriously. Unfortunately, however, cuts have been required to the health and social care budget in order to fund a national health service pay rise. In the current financial year, we do not see where funding would come from for a pay rise for social care workers.

Those are the challenges. We prioritise what is important to us, but where is the prioritisation of the social care workforce? Without that, we will build up problems for our society and for the NHS. Finding extra funding for an NHS pay rise will not be of much use if that service is on its knees because social care has not been built up to the capacity that is required. We are concerned about that. Of course, there is a need for long-term reform, but we also need more immediate reforms—perhaps outside the proposed legislation, but at local level and across Scotland—to ensure that we are doing more there.

We welcome the discussion about contracts. There is a bigger philosophical and political discussion about the delivery of care and the models for it, and we have the evidence on that. During the Covid pandemic, we saw the evidence on the performances of the various sectors and methods of care delivery. Even if we keep away from the horrific statistics that emerged from that period, especially in care home settings, we know from the Care Inspectorate that the third sector achieves better grades than the private sector.

We also know that care at home services are more popular—they are more widely chosen by people to provide care in their community. Around 46 per cent of the social care workforce for care at home services is in the voluntary sector, with about 27 per cent in each of the private and public sectors. We therefore know that the voluntary sector has a strong record, particularly on delivering care to people in their own homes and communities. Something in the bill that recognises that would be welcome. As Rachel Cackett said, though, a power to reserve contracts must actually be used.

I think that evidence-based policy making is the right approach. We know that people are choosing the third sector for their care because, as the Care Inspectorate tells us, that sector provides many such services better than others. Basing our policy on evidence and learning from what works and what people are already choosing needs to be a driving force for its development.

**Paul McLennan:** I am conscious of the time, but, if I may, I will put the same questions to Chris

Gehrke. As you will know, Chris, our policy will have to work across Scotland. I ask you to respond to my question about ensuring that reform does not destabilise your services, and to cover the point about contracts.

**Chris Gehrke (L'Arche Highland):** This message has already been made clear, but the sector is not stable at present. The change and reform that we are about to embark on are required.

Only two years ago, I had a colleague who was a Ugandan lady who had come to the United Kingdom to train as a mental health nurse and work over here. At the height of the Covid pandemic she died, leaving two children without a parent. She had been getting what we call the living wage, although it is minimal.

We have tremendous pressures on the system in relation to recruitment and retention. Management and leadership in the sector get criticised, but we have not been given uplifts to allow us to maintain pay differentials, particularly for front-line managers.

08:15

We need to be very careful about how the bill is implemented. I know that there is a debate about whether the co-design should happen first. To be frank, my sense from a third sector perspective and from working on co-design and production with people who receive services is that, if you worked through the outcomes and very fine principles in the bill, I am not sure that you would come to the conclusion that we need a national care service to address those issues. We may well need improved capacity to draw the sector together, but I fear that we may spend hundreds of millions of pounds on creating something that does not deliver the desired outcomes and benefits to end users, which is surely what we are all about.

As Frank McKillop said, third sector involvement delivers value and quality to end users. If the plan is to transfer services into the third sector and they come with significant costs under the Transfer of Undertakings (Protection of Employment) Regulations, we have to consider whether the sector is funded enough. Would we get full cost recovery to enable us to do that? Will small organisations be given support to maintain our position in the ecology of third sector organisations?

To my mind, the creation of a national care service is welcome, but it does not need to be the big bureaucratic behemoth that it might be. It does not need to be a precondition for delivering Anne's law, fair work in the sector, the complaints service and all the other laudable aims in the bill. I urge

caution, because we cannot take any more. The situation is very sick. In NHS Highland, a social care worker starts at band 4, so their starting pay is £4,000 more than we can offer and are funded for. As you know, there is a lead agency model up there, so for the commissioner and provider to pay more is sick, and it needs to stop—it is a question of justice.

**Emma Roddick (Highlands and Islands) (SNP):** L'Arche has recommended that personal assistants be regulated. Why is that needed and what impact could it have?

**Chris Gehrke:** The notion came from the practical experience of working with families with family members or children who have a learning disability. They get to a stage in their lives when they no longer feel comfortable being an employer and attending to all the administration that is required with self-directed support option 1. I find that people who TUPE into the third sector welcome the training opportunities that can be given and the experience of being employed by a larger third sector organisation.

It is important that the national care service considers SDS and how we support people who rightly want to take up SDS option 1 in order to be a good employer and to offer fair work and the training that their employees require. I note that, in the SDS survey this year, 45 per cent of personal assistants said that they had had to fund their own training; only 25 per cent of new personal assistants said that they had received training in the past year; only 40 per cent felt that they had any job security under SDS option 1; 11 per cent were on a zero-hours contract; and 12 per cent did not have a contract at all.

Obviously, there are grave concerns about social justice and fair work in the sector. In no way am I suggesting that the choice and control that lie at the very heart of self-directed support be challenged, but there is a great opportunity here to give personal assistants a better experience, perhaps by adding them to the Scottish Social Services Council register and ensuring some element of support for SDS option 1 employers.

**Emma Roddick:** Thank you. That was helpful.

I am interested in your reference to the SSSC. There has been some concern that having PAs register in that way would push them towards a more clinical qualification and career trajectory. Do you share those concerns? Is there anything that, conversely, you would not want to see in the regulation of PAs?

**Chris Gehrke:** This might seem different from a different perspective, but it strikes me that, in this particular workforce, those at the front line move from personal assistant roles into the third sector, the private sector or the independent sector and

then move around. Therefore, I think that it would be helpful for the sector if it were easy to transfer from role to role and if everyone in the sector were to work to the same code of practice and had the same opportunities for training and qualifications. The SSSC is not supposed to be a stick to beat people with; it is not supposed to lead to a clinical and health-oriented culture in the workforce, and I do not think that it does. As a result, I think that such a move would be an opportunity to create parity and a more professional and flexible workforce.

**Emma Roddick:** As you come from the Highlands, is there anything that you think that the national care service would need to consider in working with third sector providers in different geographical areas?

**Chris Gehrke:** It seems to most of my peers who work in the Highlands that rurality—the reality of living in the Highlands, and, I am sure, other rural parts of Scotland, such as the Borders—is not often understood by people in the central belt, to be frank. I am concerned that assumptions will be made about the ways in which services can be run and configured, the way in which co-design can happen and how, frankly, the funding required for operations in a very rural area—and where people work with fragile communities—could be the same as that required in other areas.

My fear is that, if the secondary legislation is wrong, the national care service might become a top-down bureaucratic entity, that we end up with services that are delivered and funded less well and that, in the transformation from integration joint boards to care boards, local knowledge gets lost. At the moment, I feel secure that those who commission our services know very well the reality of life in the Highlands. In fact, due to the small scale of our communities, we know many of the individuals whom we support. We cannot lose that knowledge—we cannot throw that baby out with the bath water, as it were.

**Emma Roddick:** I want to press further on that, if I may, convener. I appreciate everything that you have just said, Chris. Off the top of your head, is there anything that needs to be included in the co-design process to account for that and which will make you feel more secure and reassured about being listened to?

**Chris Gehrke:** Speaking broadly, I would feel more reassured if the co-design process were to happen at the local, grass-roots level, as it should; if there were funding for service user representatives; if, simply, travel expenses were paid; if resources were made available to enable everybody to have equal access to the co-design process; and if that process were to happen not only in urban centres. After all, Inverness might seem far enough north to you, but what about the

people of Wick, Thurso, the islands and all the rest of it?

It is all about subsidiarity. Decisions should be made at the lowest possible level in our communities so that they are made closest to the end user. I am afraid to tell you that co-design and consultation are expensive if they are to be done well, and they take time, especially with the people with whom we work, who have learning disabilities and autism. It takes a great deal of time and resources to do that sort of thing well, unless it is to be a tokenistic, tick-box exercise, which gets us nowhere.

**The Deputy Convener:** We will now take questions from Pam Duncan-Glancy, to be followed by Jeremy Balfour.

**Pam Duncan-Glancy (Glasgow) (Lab):** Good morning, panel. Thank you for the submissions that you gave us in advance and for answering our questions so far.

We have already touched on this, but I am keen to hear a bit more about the experience of your members just now. What things do they feel need to be addressed today, and what could be looked at for the future in a bill such as this one? Rachel, can you say something about the experience of your coalition's members and what they would want to be done today as opposed to over the longer term?

**Rachel Cackett:** Absolutely—and thank you for the question, because this really is a pressing concern for us.

As I have mentioned, we recently published a piece of work called “Urgent Action for Urgent Times: A winter manifesto”, which sums up what we think is needed. We hope that it is a very practical document.

Because we were meeting the cabinet secretary this week, I asked members at our regular member meeting on Monday about their most pressing concerns, and the answer was—yet again, and as we have heard repeatedly—recruitment and retention. Social care and support is about people; we need the people in order to have these relationships and to provide the consistency that is required at the front line. Our members are really struggling. One of the key points that I would make in that respect is that, although the bill's principles talk about the national care service being “an exemplar” of fair work, we think that that is not strong enough, because we do not know what being an exemplar means in that regard.

We have been talking about fair work in social care for some years now. This year, instead of moving towards it, we are moving ever further away. I have been in post at the CCPS for just four

and a half months, and even in those four months, the tone of the debate around the bill within the sector has changed markedly, for a number of reasons. First, our public sector colleagues have been offered substantial pay awards. I do not begrudge them that at all—anyone who works in health and social care should be paid appropriately—but that has not been met with a similar uplift for social care staff. More than that, we are hardly mentioned in the context of those uplifts.

On top of that, the real living wage announcement, and the urgency to bring that in before May, has also not yet translated into the pay packets of people in social care. Although there was the mid-year uplift, which brought the rate up to a minimum of £10.50 an hour, it is now 40p short of the real living wage. That is a difference of around £800 a year.

Previously, there was a differential between the real living wage and the starting salary in social care. To have that differential now would mean having a rate of £11.55, but we have heard nothing—not a squeak—about how that will be delivered. What we are hearing is that uplifts have been offered—although they have not been accepted so far—but there is no more money. That gives our providers a real problem, because the money to pay for commissioned services comes through contracts, which require that money to be released at a central level.

We hear of providers who are doing everything they can to recognise the fact that their staff are not getting the real living wage, let alone anything near the uplifts. Differentials of £4,000 in the starting salaries of public sector and third sector providers are not uncommon. Some of those providers are having to eat into reserves to make offers, and very difficult negotiations are taking place. It is a very pressured space, given that the levers for paying and delivering these amounts do not lie with our provider members; instead, they sit with Government and local government.

Other practical situations are arising. During Covid, for example, all sorts of immediate actions were taken to recognise the need for providers to focus on the front line. We think that some of those could happen again, such as the suspension of tendering for a period of time over the winter. I note that the SSSC has already been mentioned. Colleagues in the public sector have been offered their SSSC fees, but, for some of our members' employees, finding money for the SSSC fee is the straw that will break the camel's back. We have not been offered equity.

Fair work should lie at the heart of what the national care service should be. It should not matter who is providing the service; we require equal pay for equal work, and contracts that

properly recognise the needs of third sector providers. We could do some of that work now. I appreciate what it will cost, but—and this is not said enough—the cost of not doing it is profound.

**Pam Duncan-Glancy:** It might be self-evident, but are the retention and recruitment issues largely to do with pay and conditions, or are there other factors?

08:30

**Rachel Cackett:** It is a huge part of what we are hearing. There is a supply issue, but the fact is that, when the real living wage of £10.90 was announced, many other employers—supermarkets, for example—immediately put the uplift in place. We have to be aware that the people who work for our providers have to feed their families and pay their bills. The boards and chief executives of our organisations are doing everything that they can to keep them, but, when it comes down to brass tacks, the fact is that people are really struggling right now and pay is right at the front of their minds. It makes it hard to keep the good people that we have; we cannot lose that experience.

Another issue is the way in which some of those uplifts have been applied. It is not always known that the uplift has been applied only to adult social care, not across the entire sector. Because the uplifts have been applied only to a percentage of the workforce, it is really hard, within providers, to keep the differential that one of my colleagues mentioned. As a consequence, it is difficult to keep people in some of the more senior posts. If there is only a minor differential in pay, why would you want to take on all that additional responsibility and not be rewarded appropriately for it?

Not only are we seeing difficulties in the front-line staff, but we are not able to retain staff further up the chain within providers. We would suggest, therefore, that the uplifts—which we certainly hope will happen—be on full contract value, not just a percentage of the contract or on the basis of an average workforce that is not representative of the sector.

**Pam Duncan-Glancy:** Sheena Arthur, could you respond to the same question and tell us about the situation in Glasgow for your members?

**Sheena Arthur (Glasgow Council for the Voluntary Sector):** Thank you for the opportunity.

I would just echo what has already been said. We are seeing a sector in crisis, and we should take immediate action that values the workforce, including our volunteers.

The sector has been through—and is continuing to go through—extremely challenging circumstances. As well as what has been said, we

have an issue with wellbeing in the workforce, with higher absence rates and the issue of recruitment and retention to deal with. There is also an emotional strain on people. We have organisations wondering whether they can heat their services and pay the core costs to keep going while trying not to destabilise the confidence and wellbeing of the people whom they support. As has been said, organisations are using their reserves to try to keep their service going in the face of uncertainty about funding decisions that might come in a month's time.

On the point about not destabilising the sector, the fact is that the sector is not stable. It is critical that we do something now, and the best thing that we can do is provide fair work and value what people do. Given that people are working to capacity—at the top of their ability—in extremely challenging circumstances, that sort of support is critical to them. I am concerned about the wellbeing of our workforce; people are really committed, and excellent standards and a person-centred approach are core to our sector, but the fact is that people at all levels are really struggling with the pressure of the demands.

**Pam Duncan-Glancy:** Thank you for that, Sheena. It echoes some of what Rachel Cackett said and paints a pretty grim picture of what is going on.

I want to ask Frank McKillop and Andrew Ewen about the experience of their members from a service user point of view as opposed to a provider point of view. Can you both say something about that and about what we need to do now rather than in the longer term?

**Frank McKillop:** We have to remember that, when we talk about a crisis in capacity and recruitment and retention pressures, we are actually talking about individual people not being able to exercise their right to high-quality social care and support. Whenever we talk about those sorts of statistics, we have to remember that they are not about something abstract. What they mean is that thousands of people are not receiving the care and support that they need.

In 2000, the Scottish Government announced the policy intention of ending institutional care for people with learning disabilities, and Lennox Castle hospital was shut in 2002. In 2018, however, the "Coming Home" report that was produced for the Scottish Government found that more than 700 people with learning disabilities and autism from Scotland were still in some form of institutional care, and 79 of them were not even in Scotland but had been moved out of the country. Those are the sorts of issues that have emerged. Earlier this year, Enable's my own front door campaign identified that there could be more than 1,000 people with learning disabilities in hospital

or institutional settings who should be in their own community. We should never forget the impact of that.

The first section of the bill talks about human rights. Although we would absolutely applaud that, it is, again, easy to talk about human rights; what really matters is how we put them into action. As I said earlier, if something is important and a priority for us, we find a way to do it, and I think that that has to be the imperative that drives this. This is not some abstract discussion about structures, systems and things like that; we have to remember that this is all for the purpose of realising and delivering the human right that everyone in Scotland has to high-quality social care and support in their own community.

**Pam Duncan-Glancy:** Do you think that the bill needs to be strengthened in that sense?

**Frank McKillop:** We certainly feel that one thing is strangely absent, although it might be an oversight. As has been pointed out, the bill makes no specific reference to self-directedness, which we find a bit odd. As I have said, though, it is probably an oversight.

In some discussions, the terms "self-directedness" and "person-centred" get used interchangeably, but the fact is that they do not mean the same thing. In a person-centred system, other people design things for that person. It is better—and of course preferable—for a system to be person centred rather than supplier centred or finance centred, but that is not the same thing as self-directedness. If we are to have a truly human rights-driven and self-directed social care and support system in Scotland, self-directedness has to be at the heart of it. The Social Care (Self-directed Support) (Scotland) Act 2013 is almost a decade old now, so self-directedness is not a new concept here. It is a concept that many countries around the world applauded us for, but the reality is that it is not happening enough in practice. We really feel that self-directedness has to be right at the heart of a national care service and of the delivery of care services, even today.

Chris Gehrke outlined the experience with personal assistants, and we recognise the same situation at Enable, because of everything that we are doing. We are delivering 2.5 million hours of social care and support for more than 1,000 people every year. It is all delivered through a PA model; however, the individuals are employed by Enable, because we recognise the challenges that come with self-directed support. As has been outlined, difficulties can arise that mean that, in order to have PAs, people have to start running what amounts to a small business, and many do not like that idea, for obvious reasons. They do not want to have all the pressures, the requirements

and everything else that comes with being an employer.

As a result, we have built a model in which Enable, as an organisation, essentially takes on the functions of the employer. We support the individual to recruit their own team, but ultimately they make the decision. We do all the background stuff for them, but they decide who will be employed, and when that team is brought on board, the individual self-directs how their budget is spent and what the PA will do to support them to live the life that they want to live.

Those kinds of models are already out there and working. Indeed, that has been demonstrated by the fact that 88 per cent of our Care Inspectorate wellbeing grades are at 5 or 6—that is, either “very good” or “excellent”—so we know that it works.

Self-directedness has to be at the heart of all this. That is absolutely critical when we talk about human rights, and we need to make sure that the bill reflects that.

**Pam Duncan-Glancy:** Thank you. Do you have anything further—

**The Convener:** I am sorry, Pamela, but I was just going to ask if you could wrap up your questions. All members have only a very specific amount of time this morning.

**Pam Duncan-Glancy:** I do not have another question, convener. I was just hoping that Andrew Ewen might come in on the previous one.

**The Convener:** That is fine.

**Andrew Ewen:** With regard to the conversation about the workforce, the problem with the whole debate about the bill so far is that we keep having to remind ourselves that, in order to deliver person-centred care, we need a workforce that is sustainable and funded for the long term. Funding is, of course, critical to workforce planning. If front-line workers are to build a strong rapport with the people whom they are supporting, we need to understand that such relationships really matter and affect the quality of care—indeed, they are integral to it—so all of the issues about long-term funding are important.

I also echo Frank McKillop’s points. So far, the debate on the national care service has lacked a focus on the key issues. Who is the service for? Whose lives is it intended to improve?

We also need to ensure that everyone has a stake in the co-design of the service. One aspect that could be improved is enabling people with lived experience to shape the strategic plans of the care boards. People at the grass-roots local level need to be able to have input into and clarity on the national care service. Perhaps we need to focus less on structure and more on people.

**Jeremy Balfour (Lothian) (Con):** Good morning, panel. I have two questions on this area. I want to pick up on Chris Gehrke’s comment that, if the national care service is to be properly co-designed it will take time, energy and input. We have come out of the pandemic and are currently facing a difficult time for many reasons. Do you and your members have the energy and time to engage constructively with the co-design process, or are you just running to stand still at the moment, to the extent that this could be the straw that breaks the camel’s back?

**Rachel Cackett:** There is definitely an issue with providers having enough bandwidth for that, at the moment. We have set out some of the issues that they face in working with people who need care and support. There is also real understanding that there is a need to invest in reform. I know that our members are doing everything they can to engage in the debate, but it is tough at the moment because there are so many other pressures on them to keep the wheels going. They need to keep the doors open over the winter, and that is what they are doing. That has to be—and should be—their priority.

The focus on co-design is a positive step, if it is genuinely what is meant. In our consideration of whether the bill’s provisions could be strengthened to get towards our vision for social care, we have been concerned about co-design. We think that the Scottish Government’s approach could be way more radical than what is in the bill. For example, on local care board plans, the way in which the bill is structured involves a traditional consultation-based approach in which someone writes something that they then throw out to others, and a few people provide comments. We have done that before—it is pretty much what is set out in the Public Bodies (Joint Working) (Scotland) Act 2014. The focus being on co-design throughout the entire process matters.

Similarly, co-design has to work right through the system. For us, one of the greatest disappointments is that Derek Feeley’s approach to national governance has been lost, in the bill. We wanted a national care board. Good decisions are made by having diverse voices. In a previous job that involved considering failures in the health service I worked with a very prominent lawyer. One of their conclusions was that when a board is diverse it makes good decisions; if it is not, you get groupthink. The point of having a national care board was that it would be a really important place for co-design, because that is where we would model what we want to see throughout the system. The fact that that has been lost in the bill is huge, and we certainly want to see it put back in.

The time issue definitely needs to be grappled with. Many areas that are linked to the bill will require attention at the same time, which is hard to do. I am aware that the cabinet secretary talked at the weekend about some issues to do with phasing. I am keen to see what that will look like. When the £70 million was taken out of this year's budget for the national care service, a similar comment was made. We are not clear about what phasing will look like, so we are asking how we can ensure that we help our providers to put whatever energy, space and bandwidth they have into the right things, right now.

**Beth Reid (Crisis):** I have a quick comment. We very much welcome the focus on lived experience. We have been talking about the involvement of service users, but we also need to consider those who are not able to access services. They include people who are sometimes labelled as being complex and who might require support from several services, including health, social care, homelessness and criminal justice. They often fall through the gaps because they cannot access services and are deemed to be too difficult. If their voices are not heard in the process, it will not work for them.

08:45

**Andrew Ewen:** Where to begin? One of the things that are at the heart of everything that we are talking about is Rachel Cackett's point about the finances behind the system as it stands. It is right to say that we are running to stand still. Alongside the bill, we can take immediate action to bring about fair work. Remuneration is obviously a part of that. Differentials have been mentioned.

In its own language, the Scottish Government has talked about the need for us, as a society, to rethink how we view social care and working in the sector. During the pandemic, when sectors such as retail and hospitality were impacted by lockdown restrictions, a great many people viewed social care as a change in career or a stopgap job. If, as a society, we really value care, as Derek Feeley said, we need to change the paradigm of what social care is for, so we need to address some of the work on investment.

We cannot run the risk of investment being withdrawn from front-line delivery because there is a need for information technology infrastructure and systems to be put in place. The bill's financial memorandum lacks detail in that regard. The Scottish Government has said that the bill will be a landmark reform—perhaps the most comprehensive public service reform in the Parliament's history—so we need the financial wherewithal to ensure that it is meaningful. That has to start on the front line and must be at the heart of the bill.

**Jeremy Balfour:** I am conscious of time, so I will ask a question and see whether I can get a yes, no or do not know answer.

I do not think that the charter would give any new rights. It would clarify the rights that people have, but would not have any legal authority and could not be challenged by an individual or organisation. Should the charter have legal standing so that judicial review can take place, if that is appropriate?

**Andrew Ewen:** Yes, absolutely.

**Chris Gehrke:** Yes.

**Beth Reid:** I have no comment on that.

**Rachel Cackett:** Yes—the charter needs teeth.

**Frank McKillop:** Yes, and some sort of commissioner or a body like that should have the responsibility to support the charter.

**Sheena Arthur:** Yes, absolutely.

**The Convener:** We will move to Foysoil Choudhury, who joins us online.

**Foysoil Choudhury (Lothian) (Lab):** Good morning, panel. I will be brief and will ask Rachel Cackett a question. What kind of cost might be created for third sector organisations by the provision on monitoring and information sharing?

**Rachel Cackett:** Thank you for the question. It largely depends, I guess: to put a figure on that would be hard because so much of the bill is not clear.

On monitoring, the way in which contracts are designed needs to properly reflect the liabilities and responsibilities of providers beyond their front-line work. If there will be additional requirements, that must be reflected in providers' ability to employ the right people and do the right work to report on new provisions.

One of my colleagues has spoken a bit about IT. There is a lot in the bill that does not include the costs of information sharing, but we must remember that if we are going to develop our IT infrastructure, which we would certainly welcome—at CCPS, we run a digital project with our providers on how to do that well—we must also be aware of the costs of, for example, increasing digital literacy and the on-going costs on providers of new digital technology.

I cannot give you a figure, partly because it is not altogether clear from the bill and the financial memorandum what the cost would be. We commissioned the Fraser of Allander Institute to do an extensive piece of work on the financial memorandum, and it came back with a report that has been widely circulated.

One issue is that inflation is now running at more than 11 per cent, which means that some of the assumptions that were made in the financial memorandum are not correct. That goes back to Andrew Ewen's point: the financial memorandum is based on the structural change in the legislation. That is what a financial memorandum is meant to do—it is meant to say what the bill will cost—but it does not necessarily take in all the other costs, including the cost of actually delivering care, which might be, to pick up on Beth Reid's point, to people whom we are not delivering care to at the moment.

There is a lot in the financial memorandum that we need to think about. The costs of reporting and of developing our IT infrastructure must be accounted for in the contracts that go either to individual providers or to alliances of providers in the future, so that we, as a sector, can do everything that we would want to do.

**The Convener:** Miles Briggs has some questions, before we move on to our next theme.

**Miles Briggs (Lothian) (Con):** I thank the panel members for joining us this morning.

I have a couple of questions about employment. What is your understanding, based on the bill as it stands, of who the employer would actually be?

**Rachel Cackett:** My assumption is that our members will continue to employ the staff whom they employ, which will depend on how services are commissioned and what they are funded to deliver. Some parts of the bill are not clear. The paperwork accompanying the bill suggests a pretty wholesale transfer of social care and social work staff to the national care service. In the past few weeks, we have been grappling with the question whether the national care service is a service delivery organisation or a commissioning organisation. Some comments that we have heard suggest that whether staff will transfer to the national care service can be discussed during co-design, but there will be a fundamental difference in the purpose of the national care service as an entity if it delivers services itself.

We have been trying to work through some other questions. I have not yet seen anything in public on TUPE transfer, which was mentioned by another witness. We have been trying to work through that. If staff are not transferred but contracts go from local authority provision to the third sector, what will be the cost implications for our members and how will they deal with things like pensions?

We have been working through the potential consequences of what the bill suggests about employment, workforce and the associated costs and responsibilities, and we think that that needs more work. We would like to see that work being

done quite quickly because this is not only about costs; it is also about the fundamental purpose of the national care service.

**Miles Briggs:** That was a comprehensive answer. Does anyone want to add to that?

**Chris Gehrke:** May I make a point? That area is not clear. I have concerns about what will happen if we remain the employer—which ought to happen—and if decisions on terms and conditions, salary bands and grades are expected of us. That could be a good thing if it delivers a better experience for employees, but my concern is about whether we would be adequately funded for all those elements. That often does not happen; we do not have full cost recovery and the uplifts in the past five years have not met all our needs.

Also, if such things are imposed on us, would that militate against our model and our way of doing things? The beauty of the voluntary sector is that we have different charisms and different ethos. Charities have different aims and cultures. We must be careful that the dead hand of bureaucracy does not snuff out all that difference, because that difference gives choice to the end user. They can choose between the particular models of L'Arche, Camphill, Enable, Leonard Cheshire or any other provider. I urge caution about how that is implemented.

**Miles Briggs:** Thank you for that. All the committees have been hearing that point with regard to the national care service.

I have a follow-up question about the progress that Parliament has made. None of us is saying that change does not have to happen, but, over the past decade, there have been reforms, such as the integration of health and social care—Rachel Cackett and I both worked on the Health and Care (Staffing) (Scotland) Act 2019—self-directed support, which we have already touched on, and carers breaks under the Carers (Scotland) Act 2016. Those reforms have not necessarily all been delivered, so could the move towards creating another organisation undermine those policies? We want all that progress to happen and we want it not to get lost in translation. What is your view on that? Rachel, do you want to kick off?

**Rachel Cackett:** I think that that is a risk. One of the risks that we talked about earlier was that some of those things are not explicitly mentioned or translated into the bill—in particular, self-directed support—which also concerns us.

One of the things that we have put into our model of change is the principle of subsidiarity to the individual. At the moment, the bill is inevitably causing a great deal of tension between national and local government, with regard to control, but I think that the bill should be far more radical. That

is what SDS is about: control and choice should sit with the person in order that they manage their own life with support. That goes back to Chris Gehrke's point.

There is a risk, but I do not know that it is insurmountable. Like the committees, we are trying to work through what could be improved. The bill does not really make it clear what will happen to IJBs. We are all making assumptions about what will happen; we are assuming that much of that legislation will be repealed and that we will not end up with two different versions of how we manage health and social care integration. Having also worked extensively on the Public Bodies (Joint Working) (Scotland) Act 2014, I note that it is interesting that integration is hardly mentioned.

To go back to our vision statement, what is the vision that we are looking towards, and will the bill help us to get there? Some of the principles that have been talked about do not mention things such as choice and control. For example, some disabled people's organisations are unhappy that it does not mention the right to independent living. If such things really matter and the bill will be the legislation that gets us the reform that we want, we must make sure that those things are reflected in the bill.

**Frank McKillop:** I agree with that. The call for a national care service—which had been building over a number of years, led to the Feeley review and has led, now, to the National Care Service (Scotland) Bill—probably reflects frustration that policies were not being experienced in practice. As I said, there is a lot of international interest in some of the policies that Scotland has; Enable has been at various conferences around Europe where they have been discussed. People from other countries say that it is amazing that we have self-directed support legislation, and we say, “Yes, we have the legislation, but—.”

Perhaps it is foolishly optimistic on my part, but part of the thinking behind the bill is that it will be how we will make all those policies happen in reality. I do not think that we want to get into finger pointing, because that is not healthy, but there is perhaps a feeling that the current structures have not worked in delivering those policies. Rachel Cackett alluded to there being lots of fingers pointing in various directions about whether the funding will be provided to deliver the service or whether delivery will be done by the front line. Those sorts of questions and arguments are always there in the relationship between local and national Government.

However, it is recognised that, for whatever reason, the reforms have not been working. If we are going to have a national care service structure, that has to be the final piece of the puzzle and the

solution to the initial reforms not having worked to date. That has to be how we get to that place. It is really important that elements such as self-directed support are baked into the bill absolutely clearly, so that the bill makes them happen. If it does not make them happen, we will just have moved the deckchairs but not addressed the problem, so it is absolutely critical that we put those elements at the heart of the bill.

**Miles Briggs:** At the Local Government, Housing and Planning Committee meeting on Tuesday, I asked the same question. After this evidence session, the minister is coming in. What would you say to him? I will start with Sheena Arthur. I know that you are online, and we have not brought you in.

09:00

**Sheena Arthur:** From our many conversations with our members and the people who use our services, I argue that, if we have people at the centre, we can make progress more quickly and more effectively. People who use services, their families and their carers are experts in this: it is their daily lives. We must keep them at the centre of what we are doing and not just change the language that we use then use the same processes and system that we know need a lot of improvement. There is a risk that we change the language but not the behaviours and practice.

As we have heard, we have a lot of great legislation in place in Scotland, but that does not translate into everyone having a great experience. We need the people who live that experience daily to lead and support the transition; we need them not to be “consulted” or be in a side space commenting on what other people are suggesting, but to really lead.

We also need to ask the people who might be used to being in decision-making spaces to step back a bit and enable people to really direct what they need and want, because those people have experience of it, every day, that we can listen to and learn from.

My plea would be to enact all the great vision and desire to make things better, but not to try to do it by using our current processes, structures and power relationships, and to support each other in that.

**Miles Briggs:** Thank you. Does anyone have other points to make?

**Chris Gehrke:** I would say to the minister, “Let's slow things down to enable proper consultation, so that there is true co-design.”

We also have to grasp the hot potato of funding. No nation in the UK seems to be willing to do that. It is potentially eye-wateringly expensive, but it

need not be so. We need to commit money to the sector to enable fair work to be delivered. The fair work report came out in 2019.

We also need proper funding so that end users have better experiences. I have somebody who wants to live alone but is repeatedly told that there is no money to enable her—she is a young lady in her late twenties—to do that. That is wrong and unjust. In my previous job, a young guy used to sit and stare out of his window because his package was reduced. Those are the realities.

As an employer, I am having to give bridging loans to enable people to get by in life. Other organisations have things such as charitable funds.

Those are the three bits of action that we need now.

**The Convener:** We move to a supplementary question from James Dornan, who joins us online.

**James Dornan (Glasgow Cathcart) (SNP):** I go back to what Rachel Cackett and Frank McKillop were talking about. Frank has kind of answered my question. They spoke about the problems that they had, and said that they wanted co-design to be in at the front. Frank went on to talk about some of the issues that had arisen with self-directed support and so on.

Clearly, the bill is a way of trying to effect everything that should have happened in the past but did not happen very often across the country, because of local authorities, as opposed to national Government. It might be a way of ensuring such equality of commitment across the country. I accept that the financial situation differs in different parts of the country, but maybe the bill is a way of resolving that issue as well.

In particular, Rachel Cackett, do you not agree that the Social Security (Scotland) Act 2018 showed that co-production and co-design after the introduction of a framework bill could be the way forward? Mr Feeley certainly seemed to think so. Why do you not think so?

**Rachel Cackett:** I challenge slightly your interpretation of what I said, but I will come to that.

The Social Security (Scotland) Act 2018 is a helpful model in some areas. We are looking at it in relation to some of the changes that we might want to be made at stage 2, if the bill continues, because it is important to do that thinking early. Frank McKillop talked about commissioners. That is a really interesting part of the 2018 act—although it perhaps requires more resource than it has—that does not appear in the bill, despite the 2018 act being promoted as an important model.

There is also a fundamental policy difference between social security and social care. Social

care is an on-going, one-to-one relationship with people that enables them to live their lives, sometimes for the entirety of their lives. Social care is a very different place. We cannot necessarily pick up a policy idea that has worked in one area and translate it to social care.

The co-design piece is really important. If we are clear about what we mean by a co-designed approach, we are totally supportive of that. I think that some of the difficulty that the bill is finding itself in as it goes through Parliament is due to the fact that the right co-design approach that is being promoted was—ironically—not applied to the bill. We have a bill that sets out a structure for national governance to some extent—it is not entirely clear to us exactly how that will work. I have already said that the part about co-design and co-production in a national board that Derek Feeley suggested is missing. That is a huge omission.

One of the difficulties that we have is almost a timing issue. We are where we are. This is the bill that we have. We will continue to work with it and continue to be productive with it as long as we feel that it can get us towards our model of reform. However, the bill sets a tone of sorting out the national structures first. In our model, we begin with subsidiarity to the individual. That is far more radical than whether local government or national Government has the power and control. Self-directed support was meant to be the radical place in which power and control were held by people who required care and support.

We are thinking through whether the principle of the bill and the structure that is being set up enable what could be an absolute exemplar of providing social care in a way that gives dignity, choice and control—Frank McKillop made a point about being in Europe and talking about that. The difficulty is that you legislate only for certain things—you cannot legislate for everything, nor should you—but we have started with the legislation. That is the process that we have and we are working with it, but some of the big, unanswered questions mean that we do not have the colour in the bill to be sure that those provisions are the right ones to deliver the vision.

That is what we are trying to do now. We are really open to working on that and finding a way. However, at this point, there are a lot of unanswered questions that make it hard to know whether each provision is exactly the right one to give choice, control and dignity to the people who need to be in our social care system.

**James Dornan:** I am not suggesting for a second that you do not support the principle of a national care service, but surely you have the opportunity to sell what you are asking for. I do not think that the Government is looking for a prescriptive method of providing a national care

service. It is looking for something like what happens in the national health service. If ministers are held responsible for something, they have to have a general overview of what is happening in the service, which does not happen just now because of the way that it is broken up between local and national Government.

Surely it is for you and the other organisations to point out the failings. The Minister for Mental Wellbeing and Social Care will appear before us next. I will take on your role and ask him some of the questions that you have asked us. Surely, you can see that there is an opportunity for you to get the kind of care service that you want, which will give parity of esteem across the country.

**Rachel Cackett:** I come back to the point that we are still doing our work, in the same way that the committees are, to see whether the bill could become what we want it to be. You will have seen from our stage 1 response to the Health, Social Care and Sport Committee that we have serious concerns.

I will address the accountability point, because it is really important. The minister has explicitly said that he has heard, loud and clear, that the majority of people who have been consulted are looking for national Government accountability for social care. That is fine. However, the bill sets out such accountability in specific ways. The core accountability of ministers is dealt with in two provisions at the start of the bill, once the principles have been set out. Those provisions are quite broad and do not necessarily give us a sufficiently clear and transparent sense of ministers' accountability. Under section 2, their duty is "to promote" a national care service that will improve people's wellbeing.

I would suggest that, if ministers are to hold accountability for something with the risks that social care has and with such profound consequences for people's ability to be full participants in their communities, that accountability should be much clearer than it is. According to the bill, ministers would basically be choosing for themselves whether they had applied the principles appropriately.

One of the aspects that we are looking at is commissioners, but there is very little in the bill about, for example, how ministers will go to Parliament to report on what the success criteria for the national care service are. Those are not yet set. Please do not misinterpret me: I am not asking for social care to have the equivalent of the NHS's health improvement, efficiency and governance, access and treatment—HEAT—targets. However, there needs to be some way of asking whether the service is successfully helping people to live the lives that they want to lead and

giving them choice, control and dignity. None of that is in the bill.

Where such accountability sits is a political decision; it is not one for providers. However, if it is to be held centrally, we need to be clear about how it is being held; what that accountability is for; how it will be reported on; and how, in and of itself, it will solve the problems that we have been discussing here. How will that solve the implementation gap for self-directed support? One provider said to me, "If self-directed support had done everything we'd hoped for, would we be here?" That is a reasonable question. If the issue is about changing accountability, how will the bill make that better? CCPS is really open to that being the case, but we think that, because the bill is so much of a framework bill, it does not yet do enough. For us, the question is, could it? That is where we would get into the stage 2 discussion.

**The Convener:** We will move on to our next theme. There has been quite a bit of crossover in our discussion, so I believe that only one member wants to come in here.

**Pam Duncan-Glancy:** My questions have been answered, convener.

**The Convener:** Fabulous. In that case, we will move on to our third theme, which is homelessness. We will hear first from the deputy convener, Emma Roddick.

**Emma Roddick:** Beth, you have been quite quiet so far. I would like to pick up on what Crisis has already said about not including homelessness in the functions that can be transferred to the national care service. In your opinion, what will the impact of that be?

**Beth Reid:** We need to think about the relationship between homelessness and social care. Some 8 per cent of the population have experienced homelessness at some point. Some of those people will have a need only for new accommodation, but more than half of them will have support needs when they present as homeless. The majority of those are mental health needs, lack of independent living skills, physical or learning disabilities and medical needs. It is important to note that most of those will sit within the remit of the national care service.

We often talk about people having complex needs. That is not a great term, but their needs will often sit at the centre of the triangle of homelessness, health and social care support. We know that good housing underpins social care—we saw that during the pandemic. Social care support promotes good housing outcomes, and vice versa: a lack of support from social care can really exacerbate the risk of homelessness.

The bill's policy memorandum says that homelessness is a housing function, which seems to be the reasoning for leaving it out of the national care service. However, that goes against the grain of our homelessness policy in the past few years, when we have talked about the no-wrong-door approach and, in particular, about the importance of shared public responsibility for preventing homelessness.

In our discussion, we have talked a lot about the pressures on social care services and people's difficulties in accessing those services but, over the past few years, we have made progress in linking homelessness and social care support during the pandemic and through the rapid rehousing transition plans. Therefore, we are a bit concerned about the simplistic analysis that homelessness should sit with housing functions.

09:15

We need to put the experience of service users right at the centre, and they tell us that what they need and want is a seamless service, whereby they approach a service and they get what they need. We need to ensure that the changes do not create more barriers or complexity, and we really need to ensure that they do not create more stigma, whereby a person would go to the national care service unless they were homeless, in which case they would go to the local authority.

It is worth noticing that, for the first time, we are separating social care and homelessness. We are moving away from a situation in which social care and homelessness are dealt with by one public body that has local accountability to one in which homelessness is dealt with by one public body with local accountability and social care is dealt with by a different public body with a different kind of accountability. We need to ensure that the links remain and, to get that right, it is absolutely essential that we have strategic planning across the board. The experience of the end user must be at the centre, and if we do not get the functions behind that—the strategic planning, the shared objectives and the interagency budgeting—right, there is a risk that it will not be.

It is concerning that there is not more detail about that in the policy memorandum; it is not touched on in the bill at all. There is some policy already out there—"Housing to 2040" touches on some of this. If we can bring some of that in, such as the work on shared accountability frameworks and shared objectives, that would be really valuable. I think that we need to go a bit beyond that, but we need to join up the policy agendas, and if we can take learning from work such as the housing to 2040 work and apply it here, that will help.

**Emma Roddick:** Thank you. You have answered the next question that I was going to ask.

**The Convener:** Foyso Choudhury, who joins us online, has a question.

**Foyso Choudhury:** Given that homelessness services are not included in the functions that can be transferred to the national care service, are they at risk of falling through the cracks?

**Beth Reid:** I go back to my point that we must get the strategic planning right. The homelessness prevention recommendations that are expected to come to Parliament this year have a strong focus on strategic planning. Those proposals are around health and social care partnerships, and we need to consider what those would look like under the plans for the national care service, including what they would look like under the national health service as well as the national care service. If we do not get the planning right, there is definitely a risk that things would fall through the gaps.

**The Convener:** We move to our final set of questions, which come from Jeremy Balfour.

**Jeremy Balfour:** I want to go back to how co-design works in practice, which Chris Gehrke and others have talked about. Do you expect that there will be a consultation document that everyone will respond to, after which the Scottish Government will go away and do whatever it wants, or do you think that there could be a much more interactive way of doing it? How would that work in practice?

I will start with Chris Gehrke, because he is not from the central belt. Chris, could you tell us how you envisage things working in your geographical area, so that there is a process of input and testing? Do you know what the timescale will be for how long it will take to get to the point at which the Government is ready to introduce regulations?

**Chris Gehrke:** As I said, the co-design process ought to have started from the top. It should look at the objectives and principles in the bill, put those to users and people whose needs are not currently met—carers and everyone else—and allow them to map out and work with those ideas. That seems to be the sensible and authentic place to start a co-design process.

With regard to the process itself, I think that it would have to happen within local communities. It would have to happen over a dispersed area, or there would need to be a very clear and well-resourced process that could be picked up by providers, different community bodies and different authorities.

As I said, that process would have to be well resourced with accessible materials. Consideration would need to be given to the time constraints that people might have in accessing it,

particularly if they are unpaid carers. Thought would have to be given to the costs associated with that.

There is a particular sensitivity in Highland and a feeling that areas within Highland do not all have an equal say and are not always listened to. The only way to address that would be to ensure that there are proper and adequate resources to enable the consultation process to reach all areas.

**Jeremy Balfour:** Beth Reid, can I come back to you? In a previous remark, you said that people who are homeless are often not even picked up. How do you envisage the process happening? Can it happen?

**Beth Reid:** In what respect?

**Jeremy Balfour:** Consultation and how we engage with those who do not often get the opportunity to engage in that process.

**Beth Reid:** The first thing that I would say is that there is a long history of consultation and engagement in the homelessness sector. For example, the prevention commission informed the homelessness prevention review group, and there was also the all in for change group.

There is a lot out there, and we know a lot about what people want. In a consultation that Crisis carried out earlier this year, people said that they wanted there to be a multi-agency approach, with services being joined up from the beginning, and that they did not want to have to talk to lots and lots of people over and over again about the same issues in order to get the help that they need. Work has already been done.

Organisations also have a lot of expertise. We need to get to the people who find it difficult to engage with services or who find services to be inaccessible. That is challenging, but there are people out there who have expertise, and we need to draw on that.

**Jeremy Balfour:** Frank McKillop, how do you see your members engaging, rather than just coming to spend a couple of hours and then walking away? How do we make the process more fluid?

**Frank McKillop:** We have been involved in a few of the Scottish Government events looking at design ideas for the national care service. A number of our members have engaged with that at various points. What always strikes me at such events is that there is a great deal of sympathy for the Scottish Government teams running them. They are trying to corral hundreds, if not thousands, of views from different people across Scotland, who all have different experiences and different ideas about how they would like to see those systems designed.

We are trying to deepen that engagement, because there is always a risk that that kind of format can be quite unwieldy. We do not ever want it to be a tick-box exercise, but there is always that risk. As I said, I sometimes sympathise with the civil servants undertaking that engagement. It is difficult to get a collective view from the six witnesses in this session, so getting a nationwide consultation and co-design process to come to an agreed end point is very difficult. With our members, we always try to bring one of the officials in separately to have a smaller group discussion.

It is important that the co-design has an evidence base and learns from what is actually working. There is a risk that we might have lots of brand new ideas, but without having the capacity to implement and test them to find out what would work. Alongside co-design, we must learn from the evidence about what is already in the sector and what is successful, and about the good experiences that people are having of social care in reality. We need to get beyond just collecting views and opinions to collecting evidence about what already works.

**The Convener:** That brings us to the end of this session. I thank all the witnesses for joining us, especially at such an early time. We really appreciate you feeding into the process.

I suspend the meeting to allow for a changeover of witnesses.

09:24

*Meeting suspended.*

09:31

*On resuming—*

**The Convener:** I welcome to the meeting our second panel of witnesses. Kevin Stewart, the Minister for Mental Wellbeing and Social Care, is accompanied by Scottish Government officials Ian Turner, the deputy director for adult social care workforce and fair work, and Anna Kynaston, the deputy director of national care service programme design, engagement and legislation.

I invite the minister to make an opening statement.

**The Minister for Mental Wellbeing and Social Care (Kevin Stewart):** Good morning. Thank you for having me along to give evidence.

It is fair to say that the national care service is one of the most ambitious reforms of public services. It will end the postcode lottery of care provision across Scotland and ensure that the people who need it have access to consistent,

high-quality care and support to enable them to live a full life wherever they are.

The NCS bill sets out a framework for the changes that we want to make and allows scope for further decisions to be made. That flexibility enables the NCS to develop, adapt and respond to specific circumstances over time. I will reflect on why change of that scale is necessary.

Scotland's community health and social care system has seen significant incremental change over the past 20 years. Despite that, people with experience of receiving care support, and of providing it, have been clear that there remain some significant issues.

We are not making changes to address only the challenges of today. We must ensure that we build a public service that is fit for tomorrow. About one person in 25 receives social care, social work and occupational health support in Scotland. Demand is forecast to grow and the NCS must be developed to take account of our future needs.

We will build a sustainable and future-proofed system to take account of the changing needs of our population. The principles of any new system will be person centred, with human rights at the centre of social care. That means that the NCS will be delivered in a way that respects, protects and fulfils the human rights of people who access care support, and their carers.

Improved carer support is one of the core objectives of establishing the NCS. As part of the human rights-based, outcome-focused approach, carers and people with care needs will be able to access support that is preventative and consistent across Scotland.

Nationally and locally, the NCS will work with specialist charity and third sector providers of social care as well as other third sector organisations in the field of social care to meet the needs of people.

The NCS will bring changes that will benefit the workforce, too. The importance of staff in the social care sector has never been clearer and we are fully committed to improving their experience, as we recognise and value the work that they do. The NCS will ensure enhanced pay and conditions for workers and will act as an exemplar in its approach to fair work.

Our co-design process will ensure that the NCS is built with the people that it serves, and those that deliver it, at its heart. We are committed to working with people with first-hand experience of accessing and delivering community health and social care to ensure that we have a person-centred national care service that best fits the needs of the people who will use and work in its services. Human rights will be at its heart.

**The Convener:** Thank you, minister. Overall, 72 per cent of respondents to the consultation on the national care service agreed that the Scottish ministers should be accountable for the delivery of social care through a national care service. What would be the benefits of having that accountability at a ministerial level?

**Kevin Stewart:** In taking up this post, after the First Minister asked me to take on the role, I began to do what I always do, which is to listen to the voices of lived experience, and accountability featured strongly in what people said—much more strongly than I expected. Often, when people have a difficulty, they feel that accountability is lacking.

I will give an example. Many times, my officials and I have heard people tell us their stories in which things have not gone right for them and they have gone to the health and social care partnership and been told that the matter is not the HSCP's responsibility but the council's responsibility or the NHS's responsibility. That is not acceptable.

People—including MSPs at points—cannot understand that I and the Scottish Government have no accountability in any of that. We set policy direction but we are not responsible for delivering the services. Many members write to me regularly, asking me to resolve problems that they encounter with constituents.

People believe that there should be ministerial accountability. They believe that the local accountability must be more robust. For all of us who regularly deal with casework, there is nothing more frustrating than somebody coming to you with a problem—sometimes an easy thing to resolve—that has not been dealt with.

It is a bit of a surprise for me how high up the agenda accountability was for people but it is very high indeed.

**Emma Roddick:** Good morning, minister. In the Health, Social Care and Sport Committee, you focused on the order in which the process is being done, with the bill being enabling legislation and the detail being developed through a process of co-design and subject to sign-off from the Parliament through secondary legislation. Does introducing enabling legislation in that way and then co-designing the systems provide more opportunity for organisations and people with lived experience to feed in?

**Kevin Stewart:** That follows on almost perfectly from the convener's question.

Feedback from stakeholders has made a number of things clear. They have said that they want ministers to be accountable for the delivery of social care and they want the voices of lived experience to be central to the shaping of a

national care service. Having a framework bill allows us to achieve those things.

The bill sets out the framework for the changes that we want to make, and the principles that will be absolutely central to the national care service. It allows the Parliament an important opportunity to scrutinise and influence that framework. That is immensely important, given the scale of what is involved.

It also gives us the ability to gradually build what is required, through consulting and listening to people, so that we have the right secondary legislation, which is adaptable and flexible as we move forward. All the way through the process, we have to ensure that we have people at the very heart of the co-design and building of the service.

I have spoken about the incremental change that has happened over the past two decades or so. Despite the fact that that was done with the best of intentions, there are definitely gaps in implementation—we have made moves, but we still have gaps in service. We need to plug those gaps. Some folk out there would argue that some of those are not gaps but gaping chasms. The best way of plugging those gaps is to listen to people, all the way through the journey, in order to get it absolutely right.

**Emma Roddick:** Presumably, the alternative is to bring detail forward, then ask people to respond to it. Would that allow the same consultation and co-design?

**Kevin Stewart:** No, I do not think so, because we have done it in that way for so many other things. The Government has been clear that we will ensure that those who currently require care and support, their carers and the workforce are at the heart of shaping the new service.

When it comes to the voices of lived experience, many folks have gone through lots of other processes that have not worked for them. We need to make sure that we get it right this time. This is a great opportunity for listening, consultation and co-design. If nothing else, one of my big ambitions is to remove as many of those implementation gaps as possible. This is the right way of doing so.

**Emma Roddick:** I have a final question on this theme. The committee has always been very aware that we ask people to give very personal testimonies, and it can be difficult for them to do that and to believe that doing so will result in change. In doing co-design first, would there have been any danger of not then having parliamentary approval, and of things not ending up as had been expected by those who fed in?

**Kevin Stewart:** Some people with lived experience—such as those from the social

covenant steering group, and others—whom we have talked with and listened to since we began, would argue that the framework is the right way to go, because, if we started the co-design process without the framework, they could put in all that effort then find all of it wasted.

Again, some of the people who are very active in social care—for example, disabled people's organisations—have been involved in things previously, thinking that that was going to lead to change, but it has not done so. The framework has to be there so that we can do the next part of the work, through co-design.

Others have argued that we could have done it the other way around. I do not think that that would have worked. If we had done it the other way around—without that framework—I do not think that many folk with lived experience would necessarily have had the confidence to participate to the degree that we want.

**Paul McLennan:** Good morning, minister. Some witnesses have told us that urgent reforms cannot and do not need to wait for the national care service to be established. To what extent is establishing the national care service a precondition to improving social care? To expand on that, we asked witnesses in the earlier session how the Scottish Government can ensure that the process of creating a national care service does not destabilise existing services at this time of transition. Could you comment on that, too?

09:45

**Kevin Stewart:** I thank Mr McLennan for that question, which is very important, particularly given what we have gone through over the past two years—not only the pandemic, but the current cost of living crisis and the on-going war in Ukraine.

For many things, we do not have to wait for the national care service to be established, and the Government is working with others at this moment to make improvements. I will give you some examples. There are a lot of things that we can do in the here and now to make improvements and we are taking action to do so. We have committed to increasing spend on social care by 25 per cent by the end of the parliamentary session. That helps lay the groundwork for the national care service. In April, as you know, we set the minimum hourly rate for providing direct adult social care at £10.50 an hour, which was the second pay rise in a year. The Government has also transferred £200 million to local government to support investment in social care, which includes delivery of that uplift.

We are also working with the Convention of Scottish Local Authorities to progress fair work in the sector. The fair work in social care group has

developed a set of recommendations for minimum standards for terms and conditions, which reflect those fair work principles and will look at things such as improving the rates of maternity, paternity and sick pay. Of course, we are doing a lot with partners to assist in recruitment and retention. A lot of things are going on.

I agree with those folks who say that we cannot afford to wait for a national care service in order to make movement in some of those areas, and we will not wait. We will continue to make the right investments to build our social care system in Scotland and do our level best for the social care profession.

**Paul McLennan:** With regard to the second point, I was talking about what we can do to assist organisations that are going through the process of transition as we move towards a national care service.

**Kevin Stewart:** As we move forward with incremental change, we have to continue to listen to organisations. I am pleased that you have already had a number of organisations here this morning, so that you could hear at first hand some of the things that they want to see. Their voices are required for that co-design. I have talked about the expertise of those with lived experience, but there is also the expertise of those folks who work on the third sector's front line for many groups, including those disabled persons organisations that I mentioned earlier. We pledge to listen as we go along.

Let us be honest about the fact that co-design will have to be done within parameters. However, people understand that and they also understand that certain things might not be achievable. I have faith in people bringing their views to the table and helping us to make the right decisions as we move forward.

**Paul McLennan:** I want to expand a little on that, because your answer was moving on to my next question. You rightly focused on ensuring that people with lived experience are part of that co-design. That is incredibly important, so can you say a little more and expand on that?

**Kevin Stewart:** We want as many folk as possible to get involved in the lived experience experts panel and the stakeholder groups. We are at the early stages of that. Last week, for example, I attended an event looking at how we establish the charter of rights and responsibilities. That was an extremely positive meeting. I am not saying that no negative points were raised—some always are—but, if we go forward in the spirit in which that meeting was held, where there is a level of trust in what we are doing and people feel that they can contribute, we will do very well. That is what I want to see across the board.

**Paul McLennan:** It would be useful if we could be kept aware of the work of the lived experience panel as that develops, because it is incredibly important.

**Kevin Stewart:** We can easily do that. We can keep the committee and Parliament up to date about how we are getting on.

There have been 400 registrations for the lived experience experts panel so far. I want that number to be much higher and we will do all that we can to boost that. There is also the stakeholder register that I mentioned already. I want as many people as possible to play a role.

Beyond the lived experience panel and stakeholder groups, I will continue doing what I have always done, which is to go out and about and listen. That is the essential element in all of this. Sometimes, when you go out, you find that folk have come up with a simple solution that has never been tried before or that happens in one place but not in another. We must export the best practice that exists. This is quite a small country, but we have sometimes not done that particularly well. The NCS gives us an opportunity to do that better, but that does not mean that we should not be doing that in the here and now.

**The Convener:** We move to questions from Foyso Choudhury.

**Foyso Choudhury:** The committee has heard—as, I am sure, many individual MSPs have heard—that there are pressing issues for care right now and that we cannot wait for the national care service. Is all reform of the sector on hold while the bill is being considered?

**Kevin Stewart:** As I have already made clear, for many issues, we cannot wait for the national care service. That is why the Government has invested in the sector. There have been two pay rises in a year. As I highlighted earlier, we recognise that there is much that we could and should do now, and we are doing that. Joint work with COSLA to advance the fair work agenda is happening now. We recognise the pressures that are out there. That is why we have invested money to combat what we will face over the course of this winter.

Some folk have accused us of concentrating our efforts on the national care service. This is the third committee that I have been at in a fortnight, so it may seem that way to folk from outside. However, the cabinet secretary Humza Yousaf and I are dealing daily with what is happening here and now. You heard from Rachel Cackett earlier. She has been involved in a number of meetings in the past couple of weeks with folks from across the sector to ensure that we are making advances in reducing delayed discharges, for example, to stand us in the best possible stead as we move

into winter. It will be a tough winter for social care and for the NHS, but we must do all that we can to make as many mitigations as possible, in order to do the best that we can in that period of time.

**Jeremy Balfour:** Good morning, minister, and good morning to your team. It is nice to see you again.

We do not often get consensus among our witnesses, but I highlight one question that I asked the witnesses both last week and this week regarding the legal status of the charter. In response to a previous question, you said that accountability is really important, and that it is important that the Scottish Government, as well as you as a minister, can be held accountable. Would it not give greater weight to that accountability if the charter had legal status? What is the thinking behind not giving it legal status at this time?

**Kevin Stewart:** The purpose of the charter is to ensure that everyone knows and understands their rights and responsibilities and what to expect from the future national care service. In addition, the charter will provide information on the process for upholding those rights.

The forthcoming Scottish human rights bill will underpin in statute human rights in Scotland, and we are working across Government to ensure that the co-design work which is taking place will reflect the contents of that future bill. The intention is to include information on the NCS complaints and redress system, which will provide the necessary recourse if the rights in the charter are breached. That will provide a clear pathway to empower people to claim their care-specific rights, through raising awareness of those rights and informing people about how to bring a complaint should those rights not be met.

**Jeremy Balfour:** I will push you a wee bit on that, minister. If those rights were legally enshrined, there would be at least the opportunity to seek a judicial review if someone felt that there had been a major breach. My understanding is that, without that legal basis, that option would not be available to an individual.

**Kevin Stewart:** There are other ways in which folk can get redress. The complaints and redress system is really important for people and we need to ensure that we listen to people on that front too. We will listen to folk during the co-design work in order to ensure that we get that right.

People feel that some aspects of the complaints and redress system work well, but others do not. We need to look at how we make a change from the bottom up so that people feel that they are actually being listened to, that their complaints are being dealt with appropriately and that the right redress is available.

Again, I say to Mr Balfour and to the committee that we will listen to what folks have to say about the pitfalls and where the system has gone wrong for them in the past, and we will build a system that works for all.

**Jeremy Balfour:** In committee last week, and to some extent this week, there was a view among the witnesses that we have come through the pandemic and there is a lot going on, and it will therefore be difficult for people to get a break to give them an opportunity to engage in the process. I am thinking, in particular, of those who have lived experience. Have you given any thought to that?

I think that everyone recognises that short-term and long-term reform is required. However, with regard to the long-term reform, it would be helpful to give people a bit of breathing space to allow them to get through the next year or next couple of years without having to engage in the consultation, because they simply do not have the time or the energy to do so. You would end up missing people out, not because they do not want to take part, but simply because of what has happened over the past few years.

10:00

**Kevin Stewart:** We will make it as easy as possible for folk to engage, and we will continue to listen to what people say about the barriers to engagement that may exist. I canna stress this enough, however: many individuals with lived experience and many organisations, particularly some disabled people's organisations, want the change to happen yesterday, in effect. That is the reality.

Covid shone a light on some areas where we do not do well for people, and people want to see change now. Many activists with lived experience have been seeking change for 20 or 30 years—even 40 years, in some cases. I had better not name any individuals, as I might get into trouble for being ageist, but a lot of folk have been at this for a long time, and they have put a lot of work and graft into trying to get the change that they think is necessary. Those folks really want things to be done now; they do not want any more delay. I say again: they want movement now. We are doing some things in the here and now to improve things, but folks want to see that change.

We are not seeing many folk shying away from engagement—and that engagement does not have to be through the lived experience experts panel. My officials and I have gone out and engaged with people right across the country, and we will continue to do so. We will take the snippets and the suggestions from everything that we pick up on a daily basis, as well as looking to the

suggestions and comments from the panels, stakeholder groups and so on.

**Jeremy Balfour:** Thank you. I will return to the subject of co-design, but I will leave it there for the moment.

**Pam Duncan-Glancy:** Good morning, minister, and good morning to your officials. I am pleased that you have referred to the fact that we cannot wait but need to take some measures now, and I am not at all surprised to hear that disabled people and their organisations are urging change as soon as possible. I remember being involved in asking the Scottish Government to address social care 15 years ago. To say that there has been incremental change since then is probably an understatement.

There are a number of problems right now. Disabled people are getting so few hours of care and support that they are having to choose between using those hours to go shopping, to pay their bills—with someone there to help them—or to have a shower. That is the reality that disabled people are facing right now. As regards carers who are working in the sector and living on poverty pay, the minister has mentioned that there have been two pay increases, but that has not been enough, and carers are leaving the sector to work in supermarkets instead, because the pay is better there. That is leaving people without the care and support that they need.

Which parts of the problems that I have just outlined is the minister going to address now, instead of waiting until the national care service is developed?

**Kevin Stewart:** As I said earlier, I have responsibility for policy direction. Some folk probably wonder why the Government would want accountability for some aspects of delivery. When members write to me, I have to reply that it is a matter for the local authority and for the local health and social care partnership. That is frustrating both for me and for members. We need to make the change.

There are a number of aspects around delivery where we need major change, which is why the national high-quality standards that will be in place are so important. However, I cannot put those quality standards in place now, because I do not have the power to do so. The bill and what we are doing at the moment will give us that opportunity.

As you do, Ms Duncan-Glancy, I hear such stories fairly regularly. It is annoying and frustrating for me but even more annoying and frustrating for the folks who have to make those choices.

We have to move away from some of the things that we do now that are not beneficial to anyone. We must move to much more preventative care,

and we must ensure that it is person-centred care—that it recognises people's needs. We talk about person-centred care a lot, now, but it does not happen in certain places.

As you are well aware, there are postcode lotteries whereby people are very well served in some parts of the country but not in others. We cannot have that either. The NCS gives us the opportunity to rid ourselves of those postcode lotteries.

Pay and conditions are important, but so are career pathways, which are lacking. That means that, often, it is difficult to entice young people, in particular, into the care profession. We have to change that, and there are opportunities to do so.

In addition, the NCS gives us the opportunity for national sectoral bargaining. The fact that that has not existed has meant low pay for a long time. Adult social care pay is greater here than in any other part of the United Kingdom, and we will continue to look at all those issues, because fair work has to be at the heart of it as well. It is about not only changing services for people but recognising and valuing a workforce that often feels that it has not been valued.

Finally, that move away from crisis and towards prevention is extremely important. Crisis costs the public purse a huge amount of money. However, there is also a human cost in not getting it right for folk. Making that shift, with those high-quality standards, can make a real difference in savings to the public purse and can stop some of the things that should not happen to folk. We can then put those savings into the system, to continue that work.

Finally—I have said “finally” twice; I hate it when folks do that, so I beg your pardon, convener—another aspect is about freedom and autonomy for front-line staff. There is much better service delivery when front-line staff have that freedom and autonomy. The prime example of that is in my home city of Aberdeen. I am sorry to bore some of the folk who were at the local government committee meeting on Tuesday by repeating this example, but the Granite Care Consortium's care-at-home staff have the ability to step up or step down care, in consultation with the person who is being cared for, and their family. As folk can imagine, there is more stepping up than stepping down, but giving the staff that ability means that folk are not reaching crisis point. Beyond that, there is the obvious impact of stopping folk requiring additional services or maybe even being hospitalised.

**Pam Duncan-Glancy:** The problems that have been outlined about postcode lotteries, and the need for a national approach to what people can expect, are not new, and I share the

characterisation of those concerns. However, I do not share the Government's characterisation of the situation as one in which it does not have any accountability or responsibility for that. People who receive services for social care, or people who work in social care, should not be expected to have to go to multiple doors and multiple agencies to get answers. I am afraid that, actually, the buck stops with the minister. I therefore hope that there will be a mechanism in the here and now, as well as in the future, for people to hold the system to account.

The other point that I want to make—after which I will get to my question—is that, although I am pleased that the issue of sectoral bargaining has been raised, there is nothing whatsoever in the bill about it. That is giving serious concerns to various people across the sector, such as trade unions and third sector organisations. It would therefore be good to hear that the bill will include a commitment to collective bargaining.

**Kevin Stewart:** The answer to the accountability aspect of that question is that the Scottish ministers are not accountable for service delivery. A lot of folk think that we are, but we are not accountable for service delivery.

**Pam Duncan-Glancy:** Forgive me, but the Scottish ministers are accountable for what they direct local government to do, the money that they put into local government and the work that they do in social care, so I do not think that it is fair to characterise the situation as one in which the minister has no responsibility.

**Kevin Stewart:** I do not have any responsibility for service delivery. You are right that ministers have responsibility for policy direction and resourcing, but we do not direct local government or health and social care partnerships. We have removed ring fencing from the local government landscape to a huge degree, which local government asked for.

Some things are my responsibility—I know that—but I am not accountable for service delivery. The public finds it hard to believe that ministers are not responsible for that, so one of the reasons for the change is to ensure that ministers are accountable for service delivery and that we get accountability right at the local level as well, because people do not necessarily feel that the way that that is done at the moment is right either.

Sectoral bargaining is extremely important. It does not need to be in the bill, but we are working closely with stakeholders and unions on how we move all of that in future, and I want to push the boundaries. The Parliament does not have powers over employment, but we must ensure that we get that right, and bargaining is one of the key

elements to doing so. Again, we need to engage with and listen to colleagues who are on the front line and trade unions. I hope that local government will also come to the table, and I am sure that the third sector will. We need to get that right.

I have always talked about care as a profession. Long before I got this job, in speechifying that I made from the back benches, I talked about care as a profession. However, many folk do not see it that way, for the simple reason that, traditionally, it is an area of work that has attracted low pay and poor conditions. We have to change that. We have to build the workforce for the future, and I want the profession to become attractive to young people because, if it does not, it will not be sustainable. We must get all of the elements absolutely right.

**Pam Duncan-Glancy:** I have one final question, convener—you will not need to come back to me if I ask it now.

I am pleased to hear that sectoral bargaining is on the agenda, and I press the minister to give an absolute commitment to it, because I know that a number of people are seriously concerned that, as a result of this process, we will go backward rather than forward on fair work. A firm commitment on that would therefore be helpful.

It could be one person's view that a framework bill is flexible and another person's view that, because there is no detail, people cannot have confidence in what it will deliver. In that regard, I am interested in human rights. Two specific rights are in the bill, but neither of them relates to article 19 of the United Nations Convention on the Rights of Persons with Disabilities. I heard what the minister said about the forthcoming human rights bill, but we cannot have a situation in Scotland in which we have one overarching human rights bill that governs everything and all of the services. We also have to look at how we implement human rights through different parts of Government, including in the national care service. Will the minister therefore commit to putting the right to independent living in the bill? How will human rights be delivered for the people who use the national care service and those who work in it?

10:15

**Kevin Stewart:** There are a number of complex issues there. We are fully committed to fair work, and I have a strong desire to ensure that we get all this right. I should probably declare an interest in that I have two nieces who work in social care, one of whom is on maternity leave and very nearly did not get maternity pay. I will not go into the detail, but that is unacceptable in the 21st century. I want to make sure that we get it right for the workforce, the majority of whom are women. We need to move now on things such as maternity

pay and paternity pay with the co-operation of COSLA and others. However, the NCS gives us a huge opportunity on the other pay and conditions aspects.

On your question about how we handle human rights, interdepartmental working and making sure that legislation connects, we constantly talk across Government about how we get those things right. To ensure that human rights are at the very heart of the process, we need to continue to listen to folks about where they think that their rights and needs are not being met. Again, the co-design process gives us the ability to ensure that everything that we do covers as many bases as possible—if not all bases—and does our level best for folks. Human rights are extremely important in all this; they are at the heart of what we are doing. As I said, we need to continue to listen to folk on what we need to do on that front.

Have I missed something? I have a feeling that I missed something.

**Pam Duncan-Glancy:** You missed the bit about including the right to independent living in the bill. As I am sure you are aware, Dr Jim Elder-Woodward has prepared a paper and is a good promoter of that work. In that paper, he sets out various ways that the bill could make clearer what the human rights of the people who will use the service will be. Would the minister be prepared to look at embedding the structure that Dr Elder-Woodward has outlined into the framework of the bill and including independent living in that?

**Kevin Stewart:** This may sound a bit flippant—perhaps Dr Jim Elder-Woodward will have a pop at me later—but I have no option whatsoever but to listen to Jim, and I will always consider whatever he puts forward. As the committee may or may not be aware, Dr Elder-Woodward serves on the social covenant steering group, and he has been a very strong voice for disabled people's rights for a very long time. I give the commitment to Ms Duncan-Glancy that we will consider whatever Jim puts forward—I do not have the option not to.

**The Convener:** We move to Jeremy Balfour, who has questions on co-design.

**Jeremy Balfour:** Some of this has been explored, but I want to cover two areas that were brought up in the earlier evidence session today. If the bill is passed by Parliament, you then intend to carry out a co-design process on the regulations and guidance that come out of the bill. Do you and your officials have a timeline in mind for the consultation, drawing up the regulations and introducing them in Parliament for scrutiny?

**Kevin Stewart:** It would be daft of me to commit to a timeline on any aspect of the bill for the simple reason, which I have highlighted, that we want to

have the voices of people with lived experience and stakeholders at the very heart of all this. Co-design work can't go on forever but, at the same time, we have to enable people to feel that the time that they are taking is right.

It would also be wrong of me to give any indication of timelines for secondary legislation, because those are a matter for Parliament rather than for me. However, I will say that I want to give folks, including those in the Parliament, the ultimate opportunity to scrutinise what we are doing in order to get the secondary legislation right. I know that parliamentary processes can sometimes be onerous, but it is not up to me to decide those timelines.

If the committee wants to discuss some more technical aspects of the process, I will be happy for Ms Kynaston to come in. However, it would be daft of me to commit to timelines, many of which I would have no say over anyway.

**Jeremy Balfour:** With respect, minister, the timeline is your decision, because it will start when the Scottish Government lays the regulations in Parliament. It is not for this committee to scrutinise anything until you have brought it forward, so you are the person who ultimately starts the process. You might not decide how long it will take, but you will fire the starting gun, if I can put it that way. Have you considered that?

The other issue is that the final decision on the content of the regulations that Parliament will scrutinise will be yours. Co-design can take us so far but, ultimately, the decision on what will be put before Parliament will be yours.

For all members, irrespective of their parties, one frustration about scrutinising so many sets of regulations is that we cannot amend them: we have to say either yes or no to them all. As well as engaging with stakeholders, how much engagement on the regulations do you see happening with members of the Scottish Parliament? Will the regulations come to the committee as drafts before you lay them, or will they simply come to us and that will be it?

**Kevin Stewart:** Again, at this moment I am not going to commit either way on whether drafts will be issued. However, I will say that, as always, I want to be as co-operative and collaborative in all this work as I possibly can be, not only with the voices of lived experience, stakeholders, local government and the third sector but with the Parliament.

The framework bill is similar to the one that was used to create the national health service. As I have said, it is a big piece of work and it involves probably the biggest reform in this area. I want there to be co-operation and collaboration right across the board. I know that there will be areas

where we will agree and others where we will disagree—sometimes greatly. However, as always, I will have my door open and will do whatever is required to achieve the ultimate level of co-operation. Committee members who have worked with me previously will know that that is the case.

**Jeremy Balfour:** Absolutely—I would confirm that. There is no doubt that, when we were working on the Planning (Scotland) Bill, there was a good relationship between you and those of us who had an interest in it.

You will be glad to hear that I will move on to my final questions, which are on integration joint boards. In the draft primary legislation as it stands, there is nothing on those. How will they fit into the system? Will they need to be reformed? Which area will they fit into?

**Kevin Stewart:** We have said that we will form local care boards, and people have been trying to get me to say who should be on those boards. There are some folks who obviously should be, but that is really a matter for the co-design process. What I will say—I am adamant about this—is that the voices of lived experience should be on care boards and should have voting rights, which in many settings they have not previously had. Obviously, there are people who will definitely, or are likely to, be there, such as elected members of local authorities, trade unions and employees—the list goes on. However, it is not for me to dictate who should be on those boards; that has to be part of the co-design process.

**Jeremy Balfour:** Thank you, minister.

**Kevin Stewart:** In addition, I highlight that a very good example of the co-operation that will be required is the work that Mr Balfour and I did with others, including some previous members, on the inclusion of changing places toilets in the bill that became the Planning (Scotland) Act 2019. That has changed the dynamic not only in planning and building standards, but in how we continue to enhance and improve such provision. That kind of work shows Parliament at its best, and I hope that we can achieve exactly the same thing with all, or most, aspects of this bill.

**The Convener:** Absolutely, minister—I think that all of us round the table want to achieve that.

**Paul McLennan:** My question is about another human rights issue. Last week, we heard from witnesses who said that people's rights were removed during the Covid pandemic. How will the bill prevent that from happening again? Is the bill necessary in order to do that? It was the care homes issue that was brought up in that context.

**Kevin Stewart:** We are absolutely committed to using the learning from the pandemic to ensure

that people are supported to see and spend time with the folks who are important to them. I know that Mr McLennan has had a lot of dealings with members of the care home relatives group, as have I, over the piece. Some of the stories, which we have all heard, are very harrowing indeed. That is why Anne's law is included in the bill, in order to support the rights of people who are living in adult care homes to remain connected even during outbreak situations.

We have done a lot of work on that over the piece, and the committee will note that I have already changed regulations in that regard. From talking to the Care Inspectorate yesterday—I speak to that organisation every month or so—I know that there have been no complaints since its last report regarding folks not being able to see relatives, and long may that continue. That shows that the change in regulation has helped dramatically.

Nevertheless, that is one of the areas that we need to get right in primary legislation. The bill will give ministers the right to issue visiting directions to care home providers and ensure that they comply with those directions. I am quite sure that this is one of the areas of the bill in which the public at large will have a great interest, particularly all the folks from the care home relatives group, with whom I know that Mr McLennan and others have been engaging, as have I.

**Paul McLennan:** I will move on to the next theme. In the context of the bill, we are talking about care users and carers, and the workforce, but I want to talk about the broader societal impact of the bill. We have not touched on that; it is almost wrapped around the bill. Do you want to expand on where you see the bill having a broader societal impact?

10:30

**Kevin Stewart:** It could have huge impacts on the way that people think about care.

We have the ability to create a profession that can attract people. I should expand on the career progression aspect. Sometimes, we do not make it easy for people to change, swap and be flexible in their careers. Sometimes, it is not easy to move from care to social work or the health service. From talking to young folk who are working in care, I am aware that that is a frustration for them especially. Getting that right, building opportunities and attracting younger folk to the care profession could bring about a real change in the thinking about care and in its culture. That is one impact.

There is a great opportunity to change the way of thinking about care beyond that, which we are trying to do. Many people feel that they are seen

as a burden because they require care. That should not be the case. The investment that we are making in care is for the greater good of our society as a whole.

I will give you a language example. I do not like the term “respite” much. That is why we are talking about short-term breaks, and it is one of the reasons why the right to short-term breaks is part of the bill.

There are many changes that can take place with the bill, as is always the case with such bills. Discussions about big pieces of work such as the bill often get folks thinking differently.

**Miles Briggs:** Good morning, minister, and good morning to your officials. I will ask a couple of questions that relate to some questions that have already been asked.

You said that you want to listen to folk whose rights are not being upheld and whose needs are not being met. Why, then, is the right to independent living not in the bill? In addition, given the concerns across Scotland about self-directed support—a policy with which we all agree—why is ensuring that we get that policy working properly not front and centre in the bill?

**Kevin Stewart:** Self-directed support is a big bugbear for me, I have to say. It is probably also a bugbear for many of the folk around the table. The legislation on that had cross-party support. It was all done for the best of intentions and all in primary legislation. Unfortunately, folk out there have not stuck with the spirit of the legislation but have tried to find flaws and loopholes in it to deny people their right to self-directed support. Again, there is a postcode lottery across the country in folks’ ability to access self-directed support. That is not good enough.

I have had folk working for a lengthy period on changing the guidance on self-directed support. I think that we will publish the new guidance in the next couple of weeks. That will be helpful in teasing out some of the difficulties that exist, but it will not do everything.

That is one of the reasons why a lot of what we are doing with secondary legislation is important. It means that we can be flexible and adaptable if we do not get the legislation quite right, whereas the legislative vehicle to change a piece of primary legislation is often lacking and it takes a long time. Flexibility and adaptability are the key points on that.

I am not—at all—ruling out putting the right to independent living in the bill, but I want to listen to the Jim Elder-Woodwards of this world about what is required and what we actually need to achieve. Is that best done through primary legislation or through secondary legislation, which has more

flexibility and adaptability? I assured Ms Duncan-Glancy that we will look at and listen to what we get from lots of folks like Jim and we will move accordingly.

**Miles Briggs:** Thank you for that; that is helpful. For those of us who want to make sure that self-directed support is not lost in translation in the bill, part of that is about making sure that we work with—

**Kevin Stewart:** I am sorry to interrupt, but I would like to expand on that. Where self-directed support works well, it can absolutely be a life changer for people and their families and carers. There are some immense stories about situations where self-directed support has made real differences to folks’ lives.

There are parts of the country where flexibility has been brought into play, because people have been listened to. In those instances, doing something a bit differently for someone, which will make a huge odds to them, is the right thing to do. However, in other parts of the country, there is a closing down of available options, and there are different payments. I spent the summer going around the country asking about SDS and various other things. There are stark differences, and we have to end that postcode lottery. I am very much in favour of giving folks as much independence and autonomy as we can.

**Miles Briggs:** In our earlier evidence session, we heard about the diverse fabric of the social care sector and different models of interconnectivity between the NHS, councils, housing associations and employability services. However, I want to focus on homelessness provision, because that will not necessarily be transferred and it is not in the bill. There are concerns about the direct impact that the bill—and other bits of legislation that are coming forward—will have on the homelessness sector. What will be put in place to ensure effective joint working between homelessness services and the national care service?

**Kevin Stewart:** Mr Briggs and others around the table know the role that I had previously and the changes that we made to homelessness legislation and regulation, as well as changes to culture. I certainly want to ensure that all of that hard work continues to bear fruit. Without doubt, that means that there has to be an interconnection of services. I recognise, as we all do, how valuable the interfaces between the national care service and housing and homelessness services will be.

We are working closely with stakeholders through the development of the national care service to make sure that all of those links are in place. We have already held our first round-table meeting with the homelessness prevention and

strategy group, which I used to chair, and we will continue to engage regularly and meaningfully with the sector. I have met people, as you would expect. No matter what is in or out of the national care service, we have to make sure that those linkages with all services are there. I do not want any difficulties with transition phases such as we have seen before.

In my work with colleagues across Government, we are clear that we have to get all those linkages absolutely right; that is why there is a lot of work going on in the background. Some may argue that that involves diverting resource to deal with the NCS rather than the here and now, but a huge amount of that work needs to be done anyway in order to improve linkages and prevent difficult transitions. I am well aware of where there could be blips, and we are doing everything possible to ensure that those connections are there.

**Miles Briggs:** All the committees that are looking at the NCS bill know that there is real concern out there in different sectors about what the service will look like and what detail they have not been part of. As the bill progresses through Parliament, it is critical that we start to get answers on that.

**Kevin Stewart:** People are always wary of change, and sometimes we tend to look at the possible negatives and challenges rather than the opportunities. There are a huge amount of opportunities here. As I said, I am happy to continue to engage with, and listen to, the housing and homelessness sector and other sectors. I want them to be involved in the co-design process so that we get the service absolutely right. Homelessness services may not be in the NCS, but we very much need those voices in order to get the connections right.

**Miles Briggs:** I agree on that point.

Finally, minister—

**The Convener:** Sorry, Mr Briggs—is your next question on homelessness?

**Miles Briggs:** No, I was going to move on to my second question.

**The Convener:** Okay. It is just that you have moved on to theme 9, so we are a bit further ahead. Is your next question on the same theme?

**Miles Briggs:** No. It is okay—I will stop there.

**The Convener:** Okay. Thank you. We move to questions from Foysoyl Choudhury, to be followed by Paul McLennan.

**Foysoyl Choudhury:** How will the third sector be integrated into the long-term delivery of the national care service? I know that the minister has given a lot of examples, but I am not clear on how it will be integrated in that regard.

**Kevin Stewart:** The third sector is a valued part of social care in Scotland, and it will continue to be so as we move forward. The sector is currently delivering quality social care, and sometimes very specialist social care, across Scotland. Third sector organisations are vital in providing advocacy for people and a huge range of other services. I have no doubt that the third sector will continue to be a major player in the delivery of social care, including specialist services, in Scotland. We expect, with a national care service, that there will be a mixture of providers. That is the way that it should be.

Currently, many third sector organisations find that the arrangements for procurement and tendering do not work well for them. The committee has heard from witnesses earlier this morning and previously that it is much easier for third sector organisations to operate in some areas than in others because of the procurement and tendering situations that exist. We have the ability, through ethical procurement, to iron out some of the difficulties that have arisen over the past two or three decades in order to get that right. Again, that will give third sector organisations much greater clarity than, many would say, they currently have.

**Foysoyl Choudhury:** Thank you, minister. I have no other questions, convener.

**The Convener:** I will bring in Paul McLennan.

10:45

**Paul McLennan:** Foysoyl Choudhury asked my first question, and the minister touched on the second question that I was going to ask, about procurement, so I thank him for that.

I have one small question about third sector representation on care boards, minister. What are your views on that? That is the only question that I have on that area.

**Kevin Stewart:** You are being very naughty, Mr McLennan, because I said that I really do not want to be drawn on my views on who should be around the table. I think that, in the discussion during the co-design phase, many folk will say that the third sector should be there—they will advocate that—but that is a matter for the co-design process.

**The Convener:** We move to our last theme, which is homelessness. We will take questions first from the deputy convener, Emma Roddick.

**Emma Roddick:** We heard concerns from Crisis earlier in today's meeting and in its written submission about tackling homelessness not being one of the functions of the NCS. Does the minister believe that the public sector prevention duties and other joint working will ensure that

adequate consideration is given to preventing homelessness and supporting those who experience it?

**Kevin Stewart:** Yes, in short. We are introducing the new duties to prevent homelessness, including the new duties on public bodies to act to prevent homelessness. Those have to be embedded in the NCS. We need to ensure that interventions are made much earlier than they often are at present, and that there is case co-ordination in order to get it right for folks. We need to do that across services as a whole, not just in the national care service. I am sure that Ms Roddick and the committee are aware that the new duties will be guided by the shared principles of public responsibility to prevent homelessness.

Work has been done over the past few years. I was previously involved in it, and the fact that I have changed jobs does not mean that I do not have a deep interest in ensuring that we get it right on homelessness. The lessons that we have learned from the homelessness and rough sleeping action group and the lived experience panels that we put in place give us, as a Government, and Ms Robison the right information to ensure that our current work leads to real change across the board.

**Emma Roddick:** That is reassuring. Speaking of early intervention, are there on-going discussions at this early stage about how the NCS will react to and be compatible with the prevention duties?

**Kevin Stewart:** We will look at all of that as we move forward. I have had a fair amount of discussion with Ms Robison, and officials are working together on all aspects of that.

I know that your emphasis is on homelessness prevention, but we also have to look at how care and housing already intersect. I am very proud of the way in which we have moved forward in Scotland with the housing first approach. I do not have the most up-to-date figures, so you will have to excuse me if I get this slightly wrong, but figures from a while back showed that, under the housing first approach, the tenancy retention rate for folks was 90 per cent. Most folk never thought that that would be achievable, so why has it happened? It is about not just the housing aspect but ensuring that care, addiction and mental health services all match up.

In order to prevent homelessness and ensure that we do our level best for people overall, there has to be continued co-operation across the piece to ensure that we do the right thing by each person.

**Emma Roddick:** My final question is on something that we heard from the previous panel. L'Arche Highland told us that there are concerns

that rural voices will not be heard unless the co-design process takes place in those communities and is funded well enough to provide things such as travel expenses to enable voices from those communities to feed in. Are you happy to look into that, minister? Perhaps you are already doing so.

**Kevin Stewart:** This is an all-Scotland programme and we have to get it right for everyone, whether they live in a city such as Edinburgh, in a rural area or on an island. We have to draw a distinction with those folks who live in very remote rural areas. I want everybody to be involved in the process, and we will do what we can to hear as many voices as possible.

On my travels—I am pleased that we can now get out and about a bit more—I recently visited Shetland. In looking at aspects such as care boards and delivery, we might well have to adapt the process for island communities and other more remote communities, and we are open to that. We need those voices to say things like, “That may not be quite good enough for us here because of this.” We will do all that we can to attract those voices.

Moving away from geographical communities, I note that we also have to ensure that we hear the voices of other communities, including minority communities, as it is often much more difficult to get them to come to the table. I am thankful to the Minority Ethnic Carers of People Project in Edinburgh, which in recent weeks gave me the opportunity to talk to Chinese and south Asian carers and their loved ones, and to folks from the Gypsy Traveller community. We are doing our best to bring in all the voices that we can.

**Emma Roddick:** Fantastic.

**The Convener:** I must apologise, minister—I skipped over our final theme. We have one theme left, which is carers. We have questions from just one member, Miles Briggs.

**Miles Briggs:** We have left the most important theme until last. We need to see how the bill will deliver for unpaid carers.

During consideration of the bill that became the Carers (Scotland) Act 2016, another Aberdonian, Nanette Milne—whom, I know, the minister knows well—lodged amendments to put in place breaks for carers. That was really important at the time, but it has not been delivered, partly due to the fact that support plans are not being delivered or commissioned. Statistics show that only about 20,000 of the estimated 339,000 unpaid carers are able to access those plans. How will the bill ensure that that situation is turned around and that unpaid carers actually get those breaks?

**Kevin Stewart:** As far as I am concerned, improved carer support is one of the core objectives of the national care service. I was at the

carers parliament, and I heard some stories that were galling, to say the least. The Government has put substantial resources into carers support, and over the last period, in recognition of what folks had gone through with Covid, we provided additional moneys to allow for more short-term breaks.

However, I know from talking to folk at the carers parliament—members will also hear this in their constituencies—that that money often does not get to the people to whom it should. We have to do much better in that regard, and that is why, in the bill, we have enshrined the right to short-term breaks. We obviously have work to do on that—again, we need to listen. It is essential that we get that element absolutely right.

A man from Shetland, Jim Guyan—I will name him because I saw his name in the papers, so I hope that I winna get into trouble—said that he asked Shetland health and social care partnership and others where money for carers support is going, but he is unable to get that information. Folk should not have difficulty in getting information on where money is going.

There were discussions at the carers parliament about whether the Government should ring fence elements of carers support, but that is not popular with local government, as we all know, and it is often not popular with some of you folks who are round the table. There is a level of frustration among many carers that they are not getting the deal that they should be, but the bill will enhance those rights.

**Miles Briggs:** As the bill progresses, I will want to make sure, through amendments, that that is delivered.

The minister started the evidence session by saying—the cabinet secretary also said this when he launched the bill—that the bill will end the postcode lottery of care in Scotland. We all want to see that, but this framework bill has been designed around the NHS. We have a postcode lottery in our NHS, and ministers are responsible for policy direction and delivery, so why will this be different?

I represent Edinburgh, which has some of the worst delayed discharge rates and some of the highest homelessness numbers in the country, and I worry that the bill will not necessarily change that. What learning will ministers who have been responsible for the NHS for 16 years bring to the bill?

**Kevin Stewart:** The key element is getting the national high-quality standards right in order to end the postcode lotteries. In relation to the other side of my portfolio, which is mental wellbeing, I am doing something similar by introducing standards for various treatments. We now have

new child and adolescent mental health services standards and specifications, which should allow change across Scotland in how services are delivered, with services improving.

You have heard me and others say that, because of the way in which delivery was changed to be much more community focused, CAHMS in Grampian got through the pandemic period in fairly good shape. The health board still delivers for people, has much lower waiting times and, in the main, meets its targets. We need those same standards everywhere. That is what we have done on CAHMS, and we are about to do the same in relation to psychological therapies. I intend to do that across the board. Those quality standards and specifications are important for ending the postcode lotteries.

Beyond that, and because all of that will be at the forefront of our minds, we also need to change the cultures that have built up in certain places that impede good service delivery and good care and support for folk. I come back to my point about not only having high-quality standards but making sure that good practice is exported across the board, because it often is not. The flexibility in the system at a local level will still lead to different ways of working, and we should learn from those and make sure that the best ways become the norm.

**The Convener:** I thank the minister and all the other witnesses who joined us this morning. The evidence sessions have been very helpful.

That concludes our public business for today. Next week, we will take evidence from VoiceAbility on its progress to date on providing independent advocacy under the Social Security (Scotland) Act 2018. We will also consider an instrument relating to the Scottish child payment regulations.

10:59

*Meeting continued in private until 11:31.*



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

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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