

# **FINANCE COMMITTEE**

Tuesday 23 May 2006

Session 2

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## FINANCE COMMITTEE

### 15<sup>th</sup> Meeting 2006, Session 2

#### CONVENER

\*Des McNulty (Clydebank and Milngavie) (Lab)

#### DEPUTY CONVENER

\*Mr John Swinney (North Tayside) (SNP)

#### COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

\*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

\*Mark Ballard (Lothians) (Green)

\*Derek Brownlee (South of Scotland) (Con)

\*Jim Mather (Highlands and Islands) (SNP)

\*Mr Frank McAveety (Glasgow Shettleston) (Lab)

\*Dr Elaine Murray (Dumfries) (Lab)

#### COMMITTEE SUBSTITUTES

Robin Harper (Lothians) (Green)

Janis Hughes (Glasgow Rutherglen) (Lab)

Alex Neil (Central Scotland) (SNP)

John Scott (Ayr) (Con)

Iain Smith (North East Fife) (LD)

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Professor Lorne D Crerar (Standards Commission for Scotland)

Jacquie Roberts (Scottish Commission for the Regulation of Care)

Jane Ryder (Office of the Scottish Charity Regulator)

#### CLERK TO THE COMMITTEE

Susan Duffy

#### SENIOR ASSISTANT CLERK

Rosalind Wheeler

#### ASSISTANT CLERK

Kristin Mitchell

#### LOCATION

Committee Room 4



# Scottish Parliament

## Finance Committee

*Tuesday 23 May 2006*

[THE CONVENER *opened the meeting at 10:00*]

## Accountability and Governance Inquiry

**The Convener (Des McNulty):** Good morning. I welcome the press, the public and our witnesses to the 15<sup>th</sup> meeting in 2006 of the Finance Committee. As usual, I remind members to turn off all pagers and mobile phones. We have received apologies from Wendy Alexander, but I think that Jim Mather will join us shortly.

Under agenda item 1, the committee will take evidence in its accountability and governance inquiry. Our evidence today will be provided by regulatory bodies that the Executive funds. As part of our inquiry, we wanted to compare the lines of accountability for independent regulatory bodies that the Executive funds with those for parliamentary commissioners and ombudsmen.

I welcome our witnesses and thank them for coming to the meeting. Jane Ryder is from the Office of the Scottish Charity Regulator, Professor Lorne Crerar is convener of the Standards Commission for Scotland and Jackie Roberts is chief executive of the Scottish Commission for the Regulation of Care.

Members have copies of submissions that have been sent in response to our call for evidence, including those from the witnesses who are present. The Scottish Executive's submission has been provided to members for information.

Professor Crerar and Jackie Roberts have indicated that they do not wish to make opening statements. I invite Jane Ryder to say whether she wants to do so.

**Jane Ryder (Office of the Scottish Charity Regulator):** No. I am happy simply to answer questions.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** Good morning. We have an interesting panel of witnesses. The Office of the Scottish Charity Regulator is a non-ministerial department, the Scottish Commission for the Regulation of Care is a non-departmental public body and the Standards Commission for Scotland is an independent commission. My question is to all the panel members. To whom do you see yourselves being accountable? Is the current mechanism or structure the best mechanism or structure for

making your organisation and the individuals in it accountable?

**Jane Ryder:** We have multiple lines of accountability. As members know, our organisation recently changed status—it was an Executive agency, but is now a newly established non-ministerial department. The thinking behind the change was that the regulator should be independent of ministerial direction in making regulatory judgments, but should nevertheless develop regulation within the context of Executive policy and legislation that Parliament passes.

We are working out the details of our financial accountability. The current proposition is that we will have discussions and be brigaded, as it were, with the Development Department, and that we will bid for funding, which is exactly what we did with the resource impact assessment that we submitted. It is proposed that the department will make recommendations. That covers accountability with respect to the prior allocation of funds.

On on-going accountability for expenditure, we have a board and an audit committee and there are internal audits. In respect of the subsequent scrutiny of expenditure, our accounts are no longer consolidated with those of the Scottish Executive. They will be separately prepared, like those of an NDPB, audited by Audit Scotland and presented to Parliament. Therefore, there are multiple lines of financial accountability.

Like all public bodies, we are subject to other lines of scrutiny as a result of our coming under the jurisdiction of the freedom of information commissioner and the Scottish public services ombudsman. There can also be scrutiny of and accountability for our regulatory judgments as a result of the requirement to review decisions. The newly established Scottish charity appeals panel and the Court of Session can be involved, which means that there can be judicial reviews.

**Mr McAveety:** Is there too much or too little scrutiny?

**Jane Ryder:** It is too early to say, but I think that the balance between financial scrutiny and public scrutiny through Parliament and the appeals panel is probably about right.

**Mr McAveety:** Is the mechanism sufficient for there to be accountability to members of the Scottish Parliament? From where we sit, it does not feel as though it is sufficient.

**Jane Ryder:** Parliament passed the legislation, so we fulfil the functions that Parliament requires us to fulfil. Our budget was approved by the Scottish Executive—we produced a 68-page resource impact assessment that estimated matters such as volumes and staff time and which

has proved to be fairly accurate. The civil service and ministers tested that and we are reporting to Parliament on that basis.

**Jacquie Roberts (Scottish Commission for the Regulation of Care):** Our lines of accountability are clear; we are accountable to the Deputy Minister for Health and Community Care and governed by a management statement and financial memorandum. I am the accountable officer and I report to the departmental accountable officer. In turn, the minister is accountable to Parliament. As members know, the care commission was established by the Regulation of Care (Scotland) Act 2001. Before the meeting, we witnesses discussed the advantages of non-ministerial departments and NDPBs. It is still too early to say whether there are differences and advantages. We have clear lines of accountability in Government.

**Professor Lorne D Crerar (Standards Commission for Scotland):** Members of the Standards Commission for Scotland are appointed by and responsible to ministers, but act independently of them. In essence, the commission is a complaints body. Our budget is scrutinised by the Scottish Executive and we form part of the audit of the Scottish Executive.

We have the usual arrangement of monthly monitoring by our accountable officer, who is the secretary to the commission—a full-time employee. We also have a monitoring and accounts sub-group that reports to the commission at monthly meetings. Internally, we have fairly robust scrutiny and we have enough scrutiny from the Scottish Executive. We are a small body and our budget is not complicated—much of it is driven by the volume of complaints and the number of hearings that we have. The system seems to work.

**Mr McAveety:** The organisations have different structures of accountability because of how they were created. Do you have examples from the recent past of those mechanisms working or being used to call you to account for financial performance? Does anybody bother their backside to scrutinise you?

**Professor Crerar:** We are regularly asked to account for every penny of our expenditure by our sponsor division. To find value for money, the division is forever making sure that we are accountable for what we spend.

**Jacquie Roberts:** I agree with that. We have close budgetary monitoring from our sponsor department. In addition, we have our own audit committee and our board, which take their responsibility for corporate governance extremely seriously.

**Jane Ryder:** I am sure that our board is already taking corporate governance seriously. I am the accountable officer, and even though we are only two months old, we have set up an audit committee, which is to provide assurance to the accountable officer and the board. The board will want reports from the audit committee.

**The Convener:** As a member of the Scottish Parliament, how would I find out what your key performance measures are and how good your trajectory towards achieving them is? Would I go to your annual report?

**Jane Ryder:** You would go to our annual report for historical figures. We will have a board meeting at the end of this week at which we will talk about performance measures. I have proposed 15 headline indicators on which I will report to the board and which will be published on our website continually. At the moment, the measures tend to be quantitative, such as the number of charities that are on the register—20,243 as of this morning—the number of new applications that we receive each month, and whether we are meeting the projected turnaround times. We will develop more sophisticated measures over time.

**Jacquie Roberts:** The information is available in the care commission's annual report, which we lay before Parliament. Our annual accounts are, of course, audited by Audit Scotland. Information is also in the corporate plan—our corporate plan for 2006 to 2009 has just been approved by the minister.

**The Convener:** Have you ever received any inquiries from MSPs about your corporate plan or annual report?

**Jacquie Roberts:** No. Our inquiries from MSPs are predominantly about constituency matters, and they are mainly complaints or concerns about registered care services.

**The Convener:** So, it is individual cases that you get queries about.

**Jacquie Roberts:** Yes, or we get queries about a collection of services.

**Professor Crerar:** We publish an annual report that mentions our key performance indicators. In addition, our corporate and business plans are available on our website. People can look at those and see what the KPIs are. In the main, they relate to complaints handling and our dealing with complaints within the timescales that we have set.

We receive inquiries from MSPs about how we handle complaints. They usually arise from liaison with councillors to whom complaints have been made.

**Mr John Swinney (North Tayside) (SNP):** I want to ask about the status of the different

organisations, especially the Office of the Scottish Charity Regulator and the care commission. What major factors drove the decision that the Office of the Scottish Charity Regulator should be a non-ministerial department rather than an NDPB?

**Jane Ryder:** Our status was the subject of one of the questions in the extensive consultation on the bill. The determining factor was the idea that the regulator needed to be independent and to be seen to be independent of both ministerial direction and sector capture; that is, to be independent of politicians and the charities themselves. The point was made that most, if not all, NDPBs are subject to ministerial direction, which might compromise the regulator's independence. That decision was made by the Executive at the outset and was in the first draft of the bill when it was introduced in November 2004.

**Mr Swinney:** All those arguments could be applied equally to the care commission. One of the issues that we are wrestling with—I am not being partisan or indulging myself—is the question of independence.

**Mr McAveety:** Independence with a small “i”.

**Mr Swinney:** Definitely with a small “i”.

**Jim Mather (Highlands and Islands) (SNP):** It is a European trend.

**Mr Swinney:** Thank you.

I understand the point that you are making about the regulator needing to be independent of Government and the sector in its determinations. However, it strikes me that some of the decisions that the care commission will have to arrive at and the process that it will have to go through are almost exactly the same.

**Jacquie Roberts:** Yes. It is set out clearly that, as an NDPB, we have operational independence but remain accountable to ministers for performance and the expenditure of our funds.

I was not around when it was decided whether the care commission should be an NDPB, an Executive agency or a non-ministerial department, so I do not know all the details behind that decision. As I said, I have yet to see whether there will be advantages in the care commission's being a non-ministerial department. We have not had direction from ministers and it is probably important that the regulation of care services in Scotland be carried out in the context of the overall policy for the development of care services. Up to this stage, our position has not been at all uncomfortable.

**Mr Swinney:** That is not what I am driving at. I accept that the care sector should be driven by Government policy, but I am interested in whether there are constraints on the care commission's

ability to exercise independent judgment on the toughest decisions that you will have to make because you are financially accountable to the Executive. I cannot remember the exact term that you used.

10:15

**Jacquie Roberts:** We have not experienced any constraints at all in making significant regulatory decisions. Our subjection to ministerial direction and our need to be accountable to ministers are perhaps more about the scope of our regulation; for example, which services should come under our ambit and which should not.

**The Convener:** It is clear to you that you are directly accountable to ministers and that, ultimately, the minister answers to Parliament for what you do. That is the conventional understanding.

**Jacquie Roberts:** Yes. Absolutely.

**The Convener:** On the other hand, there is no ministerial accountability for what the Office of the Scottish Charity Regulator does.

**Jane Ryder:** That is correct. The financial accountability runs through me as the officer accountable to the permanent secretary. In terms of policy accountability, we have to pitch the scope of our regulation within the legislation which, usefully, has set out regulatory principles that we must observe. There is an appeals panel, to which we are accountable for our regulatory judgments.

On our wider public accountability, an important strand of what we have been doing is our development of a freedom of information culture. As well as our consultations, we are publishing a great deal about what we are doing. That is helpful because it shows what we have been thinking and it makes transparent how we have arrived at our decisions. That context is useful.

**The Convener:** You mention your accountability to the permanent secretary. As I understand it, the care commission recruits its own staff, whereas the employees of the charity regulator are, in effect, civil servants.

**Jane Ryder:** That is correct. We are designated as part of the Scottish Administration but not part of the Scottish Executive.

**The Convener:** How does that square with the notion of your independence? You employ civil servants and you are accountable in some way to the permanent secretary of the Scottish Executive. Is your position comfortable?

**Jane Ryder:** It is interesting. It is still early days, and that is one of the relationships that we are exploring. We are trying to clarify the status of the civil servants whom we employ. However, our

position is not uncomfortable in the sense that, because we are an Executive agency, our staff are civil servants. That has not inhibited us in making independent regulatory decisions.

**The Convener:** I understand that; I am just probing to find out where your line of accountability to Parliament is. How can we hold you to account for what you do?

**Jane Ryder:** Our budget is a single line in the Budget (Scotland) Act 2006. It is designated separately in that act; it is not brigaded with the Scottish Executive budget. We have to present our annual report and accounts to Parliament annually, and we must answer any questions.

**The Convener:** So, the only mechanism of accountability is a budget line in the annual budget round.

**Jane Ryder:** That is correct.

**Mr Swinney:** What degree of interplay is there between the regulator and the permanent secretary's office, in terms of that line of accountability? Is the permanent secretary on the phone every week?

**Jane Ryder:** No. The amount in our budget is so small, in comparison to the rest of his responsibilities, that I would not expect him to be on the phone every week—although, if he wishes to be, he can be.

**Mr McAveety:** The title of the committee's inquiry—accountability and governance—is quite grand. Is there a gulf between your understanding of accountability and governance and the understanding of members of the Scottish Parliament, or are we on the same wavelength?

**Jacquie Roberts:** I regard the care commission as being accountable to parliamentary committees. We have attended several committees to contribute to inquiries. We attend the Education Committee regularly and the Health Committee is currently conducting an inquiry into issues to do with care. I regard it as an important part of my task to present evidence to committees. Members of the Health Committee have attended inspections to scrutinise what we do. Although our minister is accountable to Parliament, we are also accountable to parliamentary committees.

We appoint members of staff, but we are nevertheless strictly governed by our management statement and financial memorandum. If we want to make any significant changes to our organisation or staffing, we must go through the minister. We are also governed by the public pay policy unit guidance, which presents some constraints when we negotiate in our partnership forum with the unions.

**Dr Elaine Murray (Dumfries) (Lab):** I seek a wee bit of clarification on OSCR's comment that its budget appears as a separate line in the annual Budget (Scotland) Bill and that the budget is determined through bids to the Development Department, which must agree those bids. As the budget is a line in the bill, the only way it could be challenged would be for a Scottish Executive minister who disagreed with the budget to move an amendment to the bill. That circumstance would, to an extent, compromise OSCR's independence.

**The Convener:** The subject committee could raise concerns.

**Dr Murray:** Yes, but it could not amend the bill—that must be done by an Executive minister.

**Jane Ryder:** We are in new territory and have a new model of governance. There are three other non-ministerial departments—Registers of Scotland, the General Register Office for Scotland and the National Archives of Scotland—but they are all headed by individual office holders rather than by a body corporate. We followed the precedent that they set by wanting to be brigaded with an Executive department—I did not want to be floating completely free, as it were. To be perfectly selfish, it would not be good for us to not have a ministerial champion. We need to be in some way aligned financially with a department and to ensure that we are in the policy loop. That gives us the opportunity to participate in policy development with other departments and vice versa, to ensure that other people have the opportunity to talk to us.

**Mark Ballard (Lothians) (Green):** Jacquie Roberts said that the care commission has operational independence but a clear line of accountability to its department, through the minister, on expenditure and performance. From OSCR's evidence, it is clear that it has operational independence and a clear line of accountability to the Executive on expenditure but, on accountability on performance, Jane Ryder talked about wider accountability to the public. Her written evidence makes it clear that, as a non-ministerial office holder, she reports directly to Parliament and is directly accountable to it. Has any thought been given to what would happen if MSPs questioned OSCR's performance, but the Executive turned down the proposed budget that would be required to improve performance, despite a strong business case? A conflict could arise between the accountability on performance to Parliament and the accountability on expenditure to the Executive.

**Jane Ryder:** We have done a lot of contingency planning and risk assessment, but I confess that that situation has not yet figured on our agenda because we put in a carefully costed business

plan and are only two months into operation on the basis of that plan.

However, we will obviously have to take into account the expectations of the public and MSPs and balance them against the budget realities. It is useful that the legislation requires us to be proportionate in our regulatory activities. I have interpreted that to relate to charities and the public as well as to OSCR—we will take resources into account. We are in the process of developing our performance indicators in the light of the expectations of MSPs, the Executive, the public and our board.

**Mark Ballard:** We heard last week from the Scottish legal services ombudsman that she had prepared a business case and put it to her sponsoring department and that, despite the fact that it was sound, it was rejected on the ground that the Justice Department had run out of money. I am surprised that that does not feature as one of your scenarios. How would you deal with such a situation?

**Jane Ryder:** We would have intensive discussions with the department. I suppose that I, as the accountable officer, would have to take up the matter directly with the permanent secretary. We start from a reasonably robust baseline.

**Mark Ballard:** Given your role in reporting directly to Parliament, if MSPs had concerns about performance and accountability, what would be the most effective channel for dealing with them?

**Jane Ryder:** I suspect that the Finance Committee is one of the most effective channels through which to deal with concerns. As Jacquie Roberts said, committees can question us any time, not just when we present our annual report and accounts.

**Jim Mather:** We talked earlier about the scrutiny of financial values, which seems to be tight. What specific outcomes have you put forward as measures that would be meaningful to the general public? What steps are you taking to establish joint and several responsibility with charities and the care industry to involve all the stakeholders in improving performance throughout Scotland?

**Jacquie Roberts:** That is a really significant question. Three members of the care commission's board are the voices of care-service users and/or carers. We are getting evidence that our input is improving services. When we have assessed services about which there had been complaints or which had requirements issued to them, we have usually found that they have improved. When we have assessed services and found that they have not improved, we have issued notices to cancel the services. Our greatest responsibility is accountability to the Scottish public, who require improved care services.

**Jim Mather:** What single measure do you use that is understandable and clear to the public to show that what you are doing is improving services?

**Jacquie Roberts:** The broad indicator is whether the services have improved since the previous inspection.

**Jim Mather:** With respect, that sounds somewhat vague and woolly. I am asking you to distil out a firm number that gives you a basis on which you can say that you have your finger on the pulse and that you can see month by month, quarter by quarter that a service is improving.

**Jacquie Roberts:** The service sector that we regulate is broad and complex, so I would probably have to break down the figures to different types of service. We will be considering the proportion of care homes that have had requirements issued to them.

10:30

When we did our first baseline study, almost 50 per cent of care homes had requirements issued, which meant that they were not meeting the regulations; we will check whether there has been improvement in that sector. I could go through all the different sectors and give you those sorts of measures.

**The Convener:** Can we draw one wee conclusion from what has been said? I am very clear about who takes the lead in holding the care commission to account; you said that it is the minister. I am not clear about who takes the lead in holding OSCR or, arguably, the standards commission to account. If someone is not doing that directly, there is a risk of an unfortunate lack of accountability. Is that an issue?

**Jane Ryder:** I see that it is not as clear for us as it is for the care commission in formal terms, but that is why we have put considerable effort into our public accountability by being completely transparent about what we do and making so much information available.

To answer Jim Mather's question, we are not in the business of regulating or improving services. Our job is to ensure that charities comply with the legislation, with the end view of improving public confidence through the identification of misconduct, which is a small part of what happens, and through improving the transparency of charities, and providing better information about them, for both the regulator and the public. It is about raising the bar throughout.

At this early stage, a lot of our joint and several responsibility measures are about raising our profile and making more information available. For example, 20,243 charities have now completed an

annual return and sent it to us, so for the first time we have a register of charities. This year, we will roll out our monitoring programme. Therefore, by the end of the year, all charities ought to have submitted their annual return and their accounts. It will be an on-going process.

**Jim Mather:** What steps are you taking to communicate to charities that the joint and several responsibility of boosting public confidence is a key objective? What plans do you have to survey and monitor public confidence in the future?

**Jane Ryder:** We plan to carry out an annual survey of public confidence in charities and of charities' experience of OSCR. We have put a lot of effort into communication with charities through direct mailings and regional events. We held a major conference, which 800 people attended, on 24 April, the day on which we took on our new statutory powers.

**Mr Swinney:** I will move on to take the question of governance, accountability and independence into the budget setting process. In the course of delivering on the expectations for your respective organisations, do you feel that they are adequately resourced to fulfil the functions that they have been given?

**Jane Ryder:** I always hesitate to say that we have adequate resources, but at the moment, I think that we have. We put in a robust business plan and resource impact assessment in December 2004 for a budget running from April 2006, when we assumed our new statutory powers. I am confident that that is a reasonable baseline from which to operate. OSCR is, however, very new; it might be different in other areas and the other witnesses' organisations might have arrived at their baseline figure via a different route.

**Jacquie Roberts:** We always have resource challenges in the care commission, because we are regulate and inspect well over 1,500 services. As you can imagine, members of the public would like there to be more scrutiny of certain services: one member of the public who looked after an older relative with dementia said that they wanted the care commission to inspect care homes eight times a year.

Our challenge is that we have a statutory requirement to inspect all services at least once a year and to inspect 24-hour accommodation twice a year. We believe, however, that we should be developing a more proportionate regime and should consider not inspecting certain services every year, particularly those that are doing well. We are working with the minister, who now has the capacity to consult on whether we could have a more proportionate regime. That would help to address the budgetary pressures because we

would then be able to focus our resources on the places that really matter. Of course, that judgment has to be based on evidence.

**Mr Swinney:** Are you fulfilling your statutory obligations?

**Jacquie Roberts:** Yes. However, to go back to Mr Mather's point, we think that there could be much greater public awareness of the care commission and of the national care standards. We put in a bid to contribute to an awareness-raising campaign—targeting older people in particular—about the fact that there are care standards and that the care commission exists to scrutinise services. Our survey of stakeholders found that 9 per cent of older people who were living in care homes knew about the national care standards; in contrast, the figure was nearly 30 per cent for other members of the public. We face issues in raising awareness. Members of the public should know that the services that they access should reach certain standards. There is always more that we could do, but we are able to meet our statutory requirements at the moment.

**Mr Swinney:** The point that you are making is that the statutory duties that you have might not be the most appropriate duties or be executed in the most appropriate fashion to ensure that you deliver on the wider objectives that Parliament has set for the organisation.

**Jacquie Roberts:** Yes. Our duties could be considered a straitjacket, and I am sure that the minister will be consulting on where we could make some adjustments and where our attention could be directed in a more proportionate manner. For example, in early education and child care, we have been working for three years in a close and integrated way with Her Majesty's Inspectorate of Education. We believe that one member of either of our two bodies could carry out an inspection, rather than one member from each. That would immediately bring about efficiency savings. Because we have evidence that those services are doing well—we have a report to demonstrate that—it may be that we could visit them less frequently.

**Mr Swinney:** That is music to the ears of the Finance Committee, I have to say.

**Professor Crerar:** We are a young body, too, as we have been operating for only four years. Our resources have been supplemented when necessary. We are adequately resourced and can stretch to meet our requirements.

**Mr Swinney:** I want to ask about what happens in circumstances in which resources become an issue in terms of your ability to execute your functions. If there are simply too many tasks that need to be done, too many inspections that need to be undertaken, too many visits to be completed,

too many cases to be examined and so on, what do you do?

**Jacquie Roberts:** We would make a very strong case to the minister.

**Mr Swinney:** What would be the consequences of the minister saying no to your request?

**Jacquie Roberts:** We would inform the minister of the tasks that we would not be doing. The minister is answerable to Parliament in that regard.

**Jane Ryder:** We would start at the same place, which is to say that we would make a strong presentation to the minister. If questions were asked by Parliament, we would have to find a *modus vivendi* with the Development Department whereby those questions could be answered.

We perhaps have greater flexibility, because I understand that the legislation under which we operate is not as prescriptive of process as that under which the care commission operates. We are required to take into account the principles that I mentioned before, including the proportionate principle—work must be proportionate to OSCR's resources. We would want to be clear to people where we were scaling back, if that was what we were required to do, on programmes and activities that we had previously undertaken.

That, I am afraid, is the best that I can do at the moment, because we have not faced that scenario yet.

**Mr Swinney:** What are the consequences of that route for the independence of the respective organisations that you lead?

**Jane Ryder:** We have regulatory independence, but are potentially vulnerable in terms of securing adequate resources. That, in a sense, is the balance that Parliament has struck in creating our new status.

**Jacquie Roberts:** The tension for the care commission is that we can meet quantitatively the statutory requirement of inspecting once or twice a year, but that may not get to the bottom of a problem. It may not give us enough time to speak to the people who use services and their families, advocates and carers to find out how well the service is doing. We would therefore prefer to have more flexibility in how we carry out the task, so that we can concentrate our resources where it matters and have more capacity to involve members of the public in what we do.

**Mr Swinney:** Have you been in that circumstance already?

**Jacquie Roberts:** I would say that the predominant drive of the past two years has been to meet the inspections target. There may have been times when we have had to make a difficult

decision about following up a serious complaint or doing a statutory inspection. Currently, I advise that the serious complaint must take precedence.

**Mr Swinney:** So there may be quantitative achievement, but not qualitative achievement.

**Jacquie Roberts:** There is room for us to improve the quality of our engagement with the people who use care services, so that they can tell us directly whether the services that they receive are good enough.

**Mr Andrew Arbuckle (Mid Scotland and Fife) (LD):** I have a question for Professor Crerar. Of the three bodies that are represented around the table, the standards commission is more demand led because of the work that it does. On that basis, it must be difficult to set a forward budget. Do you put in a safety margin, because you do not know whether you will get, say, 200 or 2,000 complaints? How do you set your forward budget?

**Professor Crerar:** There are two parts to the budget. There is the general administration part, which is generally constant; then there is the hearings and complaints part for the chief investigating officer. We base the budget on our historical evidence. We have been going for four years now and have seen a flattening out of the number of complaints and hearings, so it is much easier for us to set a baseline now than it was previously.

**Mr Arbuckle:** Do you have the capacity to carry money forward if you have money left over from the allocated budget?

**Professor Crerar:** No. There is simply an indemnification for and scrutinising of our costs, so there is no carry forward.

**Mr Arbuckle:** In the four years that you have been operational, have you ever felt financially constrained as you came to the end of a year, for example if there was a surge in the number of issues raised with the commission?

**Professor Crerar:** No, simply because the costs of complaints and hearings can be indemnified, via our framework agreement, by the Executive—if we have to have them, we have to have them.

On forward planning, because we have been going now for four years, we can take a much better view as to the likely incidence of complaints and the hearings that will arise from them. At last, we are now seeing a plateau in the number of complaints and the hearings that arise from them.

**Mark Ballard:** You say in your written evidence that the

"baseline budgets allocated to the Commission do not meet operational requirements."

I think I understand more now about how that statement can be reconciled with the statement that you just made that your funding meets your operational requirements.

**Professor Crerar:** We have a three-year plan: the baseline budget was set three years ago. You will see in the review of the commission the substantial increases in the number of hearings and complaints. There is a direct correlation. The baseline budget is an historical figure that was picked, as I understand it, three years ago. We expect our budget for the coming year to be about £625,000.

**Mark Ballard:** Any increase in demand will automatically lead to an increase in budget, so—

**Professor Crerar:** And the corollary will follow the decline in demand, which I anticipate.

**Mark Ballard:** I hope that that happens as standards improve across the entire sector.

I want to ask Jackie Roberts about the statement that

“minor adjustments to the Management Statement and Financial Memorandum would afford the Care Commission the level of independence which it requires to carry out its function effectively, but still retain sound budgetary control.”

**The Convener:** Did Jackie Roberts not cover that in her response to John Swinney?

**Jackie Roberts:** Partly, but it is also about having a bit more freedom around the appointment of staff and budgetary management. We have a problem with a growth budget being set, as there could be a huge rise in activity, and the process does not necessarily take that into account.

10:45

**Mark Ballard:** You have listed four factors that could challenge your independence. Outside the Finance Committee's inquiry, what mechanisms have you used to take forward those four factors in ways that would improve your level of independence and allow you to be more effective?

**Jackie Roberts:** We continue to lobby our sponsor department and therefore our minister. We also use the NDPB network of chief executives, because I do not think that we are the only NDPB in which this is an issue. I understand that different sponsor departments treat different NDPBs in different ways. We would also take the opportunity to point out our concerns when asked questions by parliamentary committees.

**Mark Ballard:** Have you raised those issues with other parliamentary committees?

**Jackie Roberts:** Not so specifically and not so far.

**Mr Swinney:** I am interested in your statement about the fact that different sponsor departments take different approaches to NDPBs. Last week, the Scottish legal services ombudsman told us that, over five years, at no stage had her accounts ever been audited, which was something of a revelation to us. Can you shed any light on the differences in practice in different sponsor departments?

**Jackie Roberts:** All I have is the hearsay that I pick up when I go to the meetings of the NDPB chief executives. It would be important to find out precisely how the different sponsor departments treat their NDPBs. For example, I know that different decisions have been made about carry forward of expenditure from one financial year to another. We have been allowed to carry forward expenditure if we can make a good case for doing so.

**Mr Swinney:** Has there been any comparative assessment of the expenditure, budgets and financial arrangements of your organisation and those of your counterparts in other parts of the United Kingdom?

**Jackie Roberts:** I would not be able to answer that, because I have not undertaken such an exercise. The question would have to be asked of Scottish Executive officials.

**Jim Mather:** I would like to return to the point that you made about flexibility. Is there a case for revisiting the framework under which you work, perhaps with a view to moving away from inspection and towards creating a climate of more self-improvement in the care entities that are out there, and perhaps making more use of sanctions? For example, how many care homes have been closed, have changed ownership or have changed personnel during your time at the commission?

**Jackie Roberts:** Last year, we issued 65 cancellation notices. I think that you would be interested in our submissions to the Health Committee inquiry, which cover all those ideas. We are undertaking self-assessments and are beginning to establish a quality measurement regime, of which self-assessments will be part.

We are constantly moving forward in terms of meeting the better regulation agenda and trying to make it meaningful. We are developing our website and looking towards far more electronic communications with providers and the public; we are even asking whether the public should be able to make submissions to the website register on what they think about the service.

**Jim Mather:** In that catalytic role, is there any attempt to disseminate best practice—to make heroes of good establishments and pass that on?

**Jacquie Roberts:** Absolutely. Disseminating good practice has become quite an important feature of our newsletter, "care NEWS", and we have put signposts to good practice and good guidance on our website. Last week, I chaired a whole-day session for registered care home managers on infection control. The regulator has a role in and responsibility for improvement and signposting good guidance and good practice. We are involved with the Scottish parliamentary cross-party group on palliative care and have promoted the use of best practice guidance for palliative care in care homes. Along with the Scottish Executive, we sponsor best practice care in infection control in care homes. We regard the dissemination of good practice as an important part of our job.

**Dr Murray:** You have told us quite a bit about the financial monitoring side of what you do. On performance, Jane Ryder mentioned the 15 headline indicators. I got the impression from what she was saying that she would probably determine what those were. In last week's evidence, the former legal services ombudsman told us that she had a number of targets, which she seemed to have set herself rather than follow any guidance from the Executive. Other than your statutory duties under the legislation that established your organisations, do you get any guidance from the Executive about what your organisation is expected to deliver with regard to quality of service, response times, unit costs or regulatory impacts?

**Jacquie Roberts:** Yes, absolutely. The KPIs that are set out in our corporate plan, which is on our website, have to go to the sponsor department and Scottish ministers for approval. Examples of those KPIs are meeting timescales for registering services, responding to complaints and completing complaints investigations.

**Jane Ryder:** Some of our KPIs—the minimums—are set by the legislation, in that the legislation outlines some statutory timescales. In a sense, our target is 100 per cent. Some of our KPIs are set by us, in light of our experience to date and our understanding of public expectations. We set some of our KPIs in the knowledge that we are part of the Scottish Administration. As a public body, we need to consider issues such as best value, efficient government, sharing services, freedom of information and particularly—given that we are working with the voluntary sector—expectations about the participation of our regulated constituency. As an Executive agency, we have published, and the board has adopted, a consultation and participation strategy, which says how people can get involved in policy development.

Our KPIs are a mixture of statutory targets and self-imposed targets—it is almost self-regulation, although I do not like to say that. We expect people to consider those targets and, over time, to indicate where they should be more challenging.

**Professor Crerar:** I am in the same position as Linda Costelloe Baker, in the sense that our enabling statute confines us to certain time benchmarks in relation to the matters with which we have to deal. The remainder of our KPIs are self-imposed targets around our procedures, to ensure that we fulfil the requirements of our stakeholders.

**Dr Murray:** Do you get any feedback from the Executive about performance?

**Jane Ryder:** Not at this early stage.

**Jacquie Roberts:** Yes. We have regular sponsor review meetings with our sponsor department, to keep us to task.

**Professor Crerar:** We have meetings with the minister regarding the general operation of the framework agreement.

**Jane Ryder:** I intend to set up meetings with the department as part of that on-going liaison, even if it is not formally required.

**Dr Murray:** What is your view on the way in which external performance monitoring and target setting are carried out by the Executive? The Executive decides those targets, rather than you and your stakeholders. Does that interfere with the independence of your organisation, or are you comfortable with the way in which you are monitored?

**Jacquie Roberts:** I am comfortable with the amount of monitoring that goes on because we are accountable for what we do. The regular meetings with the sponsor department are suitably challenging.

**Mr Swinney:** I was shocked by one of the points that you made a moment ago. You said that a number of your processes might not be focused on the right targets—annual or six-monthly inspections might not be appropriate, for example. How long has the dialogue to address or change that been going on?

**Jacquie Roberts:** The dialogue began fairly soon after we started, when we realised that some very good services were receiving the same amount of attention as some poorer services. We wanted to spend more time on the poorer services.

**Mr Swinney:** Excuse my forgetfulness, but when did the care commission start up?

**Jacquie Roberts:** We started on 1 April 2002. In the first two important years, we brought

together more than 40 employing authorities into one national body. We needed to develop a consistent, national approach. It was only after the first two years that we became confident that we had the evidence to support a risk-assessment model of how frequently we should go into services.

**The Convener:** In effect, you are saying to us that you think that there is scope for a lighter-touch regulatory system, but that changes to the management statement and the financial memorandum are needed in order to put such a system into effect.

**Jacquie Roberts:** A change to the legislation will be required. The management statement and financial memorandum are subject to other scrutiny.

**The Convener:** Has the Executive begun to look at the changes to the legislation that are needed? If so, is there a timetable for that?

**Jacquie Roberts:** Yes. When we went to the Health Committee last year, it was agreed that the minister should have the power to consult on changing the frequency of inspections of specific services. Different types of decisions are needed for different services. For example, we commenced regulating housing support services in 2004-05. Until now, we have not had enough experience to decide whether to take a lighter approach to the regulation of those services. We still need to build up some evidence before we come back with proposals.

**The Convener:** What about potential duplication between different regulators? Are there any agreements between regulators about who regulates what? Are there any concerns in which the Finance Committee should be interested?

**Jacquie Roberts:** We work very closely with Her Majesty's Inspectorate of Education and the new Social Work Inspection Agency in particular, as well as with NHS Quality Improvement Scotland and Communities Scotland. We cover the services that those bodies offer. We have memorandums of understanding in place to work out who does what.

I strongly support the forthcoming review of regulation, inspection and complaints handling. The care commission and I drove forward the paper about the review that was submitted to John Elvidge. It is really important to have a coherent framework for all the different bodies and their different responsibilities.

We have to ask what level of scrutiny is required to protect people and to give ministers, the Parliament and the Scottish people the assurance that the right services are being delivered. We need first to ask that question and then to look at

the framework and the different bodies that undertake different tasks.

11:00

**The Convener:** Regulation is always a burden on organisations that deliver services. Are there significant overlaps that could be dealt with by a rationalisation of practice and sorting out who does what? Are there better approaches to regulation?

**Jacquie Roberts:** Part of the problem is that many bodies are new. They must establish their practice and ascertain what is and is not effective—we are working out who does what by the week. There needs to be an overall review of the different bodies and their different responsibilities. There are probably still gaps.

**The Convener:** It is probably unfair to ask you whether there is scope for significant savings in the area of regulation, although I suspect that there might well be. For example, unnecessary duplication is emerging as an issue. Service providers think that different aspects of their business are being inspected or regulated by different agencies, which is confusing for them and perhaps also for their clients.

**Jacquie Roberts:** It is important to get the facts about that. If care services are given a licence to operate, that is a huge assurance—it is not necessarily a burden. The work that we put into registering services is a quality control mechanism. Some care services say—believe it or not—that if they were not inspected and regulated they would organise their own quality assurance. Providers understand that it is important to check and quality assure their services.

The information requests that come from the various bodies, which were set up at different times for different purposes, could easily be streamlined. This year, our annual return has taken on questions from the Scottish Executive and other bodies, so that people are asked only once the questions to which we all need the answers.

**The Convener:** Have we struck the right balance between external inspection and internal quality assurance?

**Jacquie Roberts:** The matter is worthy of consideration. We know that members of the public want independent external inspection and more unannounced inspections.

**Mr Swinney:** How many organisations might knock on the door of an individual operator in a year?

**Jacquie Roberts:** That depends on the service.

**Mr Swinney:** Let us start by considering sheltered housing.

**Jacquie Roberts:** A sheltered housing service could be inspected by Communities Scotland and the care commission. Environmental health officers and the Health and Safety Executive might also be involved, depending on whether there were problems—

**Mr Swinney:** Would the Social Work Inspection Agency also carry out an inspection?

**Jacquie Roberts:** That would depend on whether SWIA covered that service, but it is a possibility.

**Mr Swinney:** How many inspections might a nursing home receive?

**Jacquie Roberts:** A nursing home would not be inspected by Communities Scotland or SWIA, which considers the local authority's commissioning of private nursing homes.

**Mr Swinney:** What about the nursery sector?

**Jacquie Roberts:** HMIE and the care commission have a totally joined-up approach to the nursery sector.

**Mr Swinney:** How difficult was it to knit together that approach?

**Jacquie Roberts:** It took time and needed staff training. We needed experience so that we could consider what we might withdraw from. For example, nursery classes or schools that have fewer than 20 pupils are now inspected by only one inspector, who is either from HMIE or the care commission.

**Mr Swinney:** When an HMIE inspector reports on a nursery class with fewer than 20 pupils, is the care commission confident that the report could have come from a member of its own staff?

**Jacquie Roberts:** Yes. We put a lot of work into the approach, which you will be glad to know has produced an efficiency saving.

**Mr Swinney:** I bet it has. It should be a model for other approaches.

**The Convener:** I would like to pursue with Jane Ryder a different issue related to overlaps. There was a lot of agitation for the creation of the organisation that you are now in charge of, and some of your functions might previously have been carried out not only by the Inland Revenue but by bodies such as the Scottish Council for Voluntary Organisations. Now that OSCR exists, should the other bodies be funded to the same level? Is there unnecessary duplication?

**Jane Ryder:** I do not think that there is duplication, because the roles of the organisations are very different. There was a lot of discussion

about that during the legislative process that led to the creation of OSCR, which has the roles of keeping the register, of deciding which bodies are charities—that used to be done by the Inland Revenue—and of encouraging and facilitating compliance, which will require us to work with others. We have only 35 members of staff and, although that will rise to around 45 by this time next year, we cannot give individual advice on compliance to more than 21,000 charities. We will have to work with umbrella bodies and with intermediaries such as SCVO. We have been discussing internally just this week how we can work with intermediary bodies and be sure—and this relates to what Jacquie was saying about joint inspections—that, when we signpost to others, we signpost to quality-assured sources of advice.

As you know, the Scottish Executive's strategic funding review is looking into support services for the sector. It will be interesting to see what comes out of that. The Executive is trying to map the support services that are available to the voluntary sector, to find out whether there are gaps or overlaps. However, at the moment I do not see that there is duplication between us and organisations such as SCVO. The work of those organisations is a very important complement to the work of the regulator.

**The Convener:** For how much longer will it be reasonable to ask for money from the public purse to provide that sort of service? Your organisation receives—how much? Is it £4 million?

**Jane Ryder:** We receive £3.6 million.

**The Convener:** That is new money that has gone in to allow the provision of a service.

**Jane Ryder:** It is new money, but it is for new functions—

**The Convener:** Some of it is for new functions—

**Jane Ryder:** And some of it is for the continuity of functions and for addressing issues of misconduct, but those were always going to be very small parts of our work. Most of the funding goes towards the register, determining status, encouraging and facilitating compliance, and the underpinning infrastructure and administration.

**The Convener:** Can you quantify that? What proportion of your budget is spent on building and maintaining the register?

**Jane Ryder:** I can break the budget down on this year's estimates. The £3.6 million covers both capital and revenue costs. About 23 per cent goes on capital projects—which include developing our electronic infrastructure—and on office fit-out and on depreciation. About 6 per cent goes on software licences and information technology support; and 5 per cent goes on legal and audit

costs, including court costs, which are one of our key variables—just as they would be for a complaints service. About 11 per cent goes on office administration; 40 per cent on staff; and 15 per cent on information and communications. Those are our estimates for this year.

**The Convener:** I suppose that we would need to know how, for example, your staff budget was broken down in terms of the activities that people were engaged in.

**Jane Ryder:** I could break the figures down further, but most of the staff are engaged in what I would describe as front-line activities: maintaining the register; considering applications for charitable status; considering notifications to us; considering consents; and investigating misconduct. Relatively few of the staff are engaged in administration.

**The Convener:** What additional services do charities receive for what you provide? You said that there was no duplication of function between you and the SCVO. I presume that in the past the Inland Revenue did the registration of charities. What do we get for the £3.6 million?

**Jane Ryder:** You get the online register. A register of charities was not published previously. A considerable amount of work has had to be done to establish that, and the details are updated annually by means of an annual return. You also get a developed monitoring system; one of the new statutory requirements is that we monitor charities and we have a proportionate system for doing that. We ask the two thirds of charities that have an income of under £25,000—small charities—to provide us with their annual return and their accounts. The next tranche of charities, the 20 per cent that have an income of between £25,000 and £100,000, have to send us their accounts and a monitoring form, which asks some questions. Larger charities, with an income of above £100,000, have to answer more detailed questions.

We also provide charities with a lot of information and guidance about our statutory functions, such as how to meet the charity test. One of the most high-profile issues has been how charities will meet the new charity test, including the test of public benefit. Over time our board must determine how it wants the programme to run. I envisage that from next year we will do a rolling review of all the existing charities to ensure that they meet the test of public benefit. That is all new.

**The Convener:** In effect, as you see it, the role is essentially compliance and monitoring.

**Jane Ryder:** The role is to do with compliance and monitoring, but we have a statutory duty, which I very much welcome, to facilitate and encourage compliance. That is, as it were, front loaded; we put a great deal of effort into it in the

first few years. Having said that, if we assume that there are, for the sake of argument, 20,000 charities that have five trustees each, 100,000 individuals would be involved. If the charities adopt good governance and there is a rotation of trustees a certain number fall off each year and new trustees come through. Therefore, it is not the case that we can say that the job is done—the process is continuous.

**The Convener:** How do you measure your success?

**Jane Ryder:** As I indicated, in respect of compliance an initial measure of success is that charities complete the annual return and produce their accounts for us. We build up from there.

**The Convener:** So, in effect, it is purely compliance testing.

**Jane Ryder:** At the moment, it is compliance testing. The new Charities Bill in England considered a role for the Charity Commission in monitoring and encouraging the effectiveness of charities. We do not have that role. I said through the parliamentary debate that I thought that at the very least that would be premature for OSCR. It is not currently the role of the regulator to ensure the effectiveness of charities. Our role is about compliance with the new legislation, but in itself that will assist charities to be more effective. Governance will be good or better, their accounts will be available and much more information will be available to the public. The public will start to test out some assumptions and ask questions; it does not lie entirely with the regulator to do that.

**The Convener:** So your focus is not really on improving standards within charities.

**Jane Ryder:** Our focus is on improving standards through improving governance. The focus is very much on governance and financial reporting.

**The Convener:** That involves your establishing significant communication channels with charities and so on. Is that not part of the role traditionally played by the SCVO?

**Jane Ryder:** The SCVO does that, but it is a membership organisation. The voluntary sector is, as Jacquie Roberts said about the care sector, very disparate. The SCVO would not pretend to have engaged with every charity, be it universities, further education colleges, museums, care providers, play groups, scouts, guides or whatever.

**The Convener:** What I am getting at is that we have superimposed your organisation on a system, but nothing seems to have been taken out. That does not seem inherently reasonable.

11:15

**Jane Ryder:** I am not suggesting that funds should be taken away from the SCVO, which performs a valuable role and which will provide a valuable complement to OSCR.

**The Convener:** I am not asking you to put the SCVO in such a position; I am simply asking whether, as you expand your functions, some of them will move into activities that others have been performing.

**Jane Ryder:** That is what the strategic funding review is considering at the moment.

**The Convener:** To what extent do any of your organisations share services with other parts of the public sector?

**Jacquie Roberts:** I think that we have been doing very well. In fact, we are in the lead in that regard. We share two senior managers—the director of finance and administration and the director of human resources—with our sister body, the Scottish Social Services Council. We share facilities management with OSCR, which is co-located with us—the three bodies are co-located. That has produced efficiencies and has reduced costs for both our body and the council. We are seeking further opportunities to share services with other bodies.

An important review is now being conducted on the possible sharing of services among NDPBs. There is a small challenge with sharing services with OSCR, because its staff are civil servants, whereas we employ our own staff. We might not be able to go much further with OSCR at the moment, but we do share facilities management.

**Jane Ryder:** We use Scottish Executive procurement. For example, when we procured our IT services, we used the pre-approved Executive contractors, which meant that we did not have to invest resources in doing the due diligence to establish that they were appropriate contractors. We have used that approach in several areas. It is an efficient method for us to procure services. The due diligence is already done with respect to quality and cost, so we know that the firms concerned will be best-value contractors.

**Professor Crerar:** For a smaller organisation, reinventing the wheel does not make much sense, but in fact we had to set up everything ourselves when we commenced. We have had discussions with the Scottish public services ombudsman about sharing IT and HR to achieve economies of scale, which small organisations such as ours cannot otherwise achieve.

**The Convener:** Both your organisations, Jane and Jacquie, are new. They are both located in Dundee. One is an NDPB; the other is a non-ministerial department. That means that it is

difficult for you to share IT, personnel services, financial control and so on. Are the benefits of that institutional separation so important that they override the financial benefits that might otherwise accrue from having staff with the same status, were the institutional barriers to be taken down?

**Jacquie Roberts:** That is a very good question. It is early days for us to be able to answer it, but we are pushing that point as far as we can. We are in discussions about what else we can share.

I am conscious of the fact that HMIE and Communities Scotland have new offices not far from ours. I am considering whether there are some other efficiencies that we could make in that regard.

**Jane Ryder:** Very usefully, the legislation contains a requirement for OSCR to co-operate with other regulators. I would have liked that requirement to be mutual. As it is, I would describe it as one-handed clapping, although the other regulators have been willing to co-operate. We have been pressing that point.

**Jacquie Roberts:** The committee might be interested in how helpful the care commission found the Hampton review. It came out with some significant principles about scrutiny and regulation. It was not about our sector, but it contained a number of principles. In particular, when a new regulatory task is drawn up, a new body need not be invented; first, it should be established whether any of the existing bodies could undertake the task. If new regulations are required, it should be found out which existing regulations can be got rid of. There are a number of really helpful principles in the Hampton review report, which I commend to the committee.

**Mr Swinney:** We shall avoid reinventing the wheel and, perhaps, reprint the Hampton report.

**Jacquie Roberts:** The Hampton review also makes the point that a thorough regulatory impact assessment should be made before any new scrutiny body is set up. I am not sure to what extent thorough regulatory impact assessments have been made.

**Mr Swinney:** What are your organisations' respective relationships to the Scottish public services ombudsman and what overlaps in function with the ombudsman do they have?

**Jacquie Roberts:** The care commission has a statutory duty to investigate complaints, which we do. If a complainant is not satisfied with a complaint's outcome, they can request a review. We do that through our internal mechanisms and use a review committee that consists of members of our board. If the complainant is still not satisfied, they can refer the matter to the Scottish public services ombudsman.

However, it is worth reconsidering the different routes for complainants and complaints handling. For example, an NHS patient in a private hospital has the right to complain to us and we have a duty to respond. They also have a right to complain to the NHS and to the private hospital provider. That is confusing for members of the public. We have mentioned in our submission to the Health Committee's inquiry on care for the elderly that the different routes for complaints should be reconsidered.

**Jane Ryder:** There is not much of an overlap in the regulatory constituencies of OSCR and the Scottish public services ombudsman because we regulate charities and the ombudsman is concerned with public bodies. However, by virtue of the extension of the ombudsman's remit, there is a small overlap in higher and further education, so we have been talking to the ombudsman about having some sort of memorandum or concordat that agrees who should handle any complaint in that area first. In truth, it is most likely to be the ombudsman, given that we are not regulating services. Also, any complaint about maladministration within OSCR is subject to the Scottish public services ombudsman's jurisdiction.

I will make a small point about dual regulation. It is important to ensure that there is no regulatory overlap but, from talking to charities and voluntary groups, it is clear to us that what feels like regulation is, in many cases, not statutory regulation through the regulators but the impact of contractual conditions with grant funders, such as the nature of the application form that bodies have to submit, the grant-giver's on-going monitoring and the auditing and reporting afterwards. That is not actually regulation, but it feels like it is, and that is where some of the difficulties and some of the perception of overregulation come from.

I have been talking to the large grant-givers, who have an important role to play, as do local authorities and the Executive as large grant-givers. Audit Scotland should also consider its approach to following the public pound and whether audit requirements require local authorities as grant-givers to ask for a great deal of information. We need to discuss information sharing and whether it is possible for grant-givers to use proxies—such as charity regulation or registration with the care commission—for the demonstration of public value. However, the local authority or other grant-giver may be seeking very different outcomes, so there is a lot of work to be done on that.

**Jacquie Roberts:** I agree with that. Some of the independent care providers experience duplication in going through local authority processes to get on approved provider lists, as those processes almost mirror our registration process. Also,

contract monitoring can seem to be an inspection. We are working hard with the Convention of Scottish Local Authorities to get a much more consistent national approach to that so that the money-givers—the commissioners—can trust the information that they get from the care commission.

**Mr Swinney:** Are any arrangements that provide for that in place between the care commission and any local authority just now?

**Jacquie Roberts:** Yes.

**Mr Swinney:** So some local authorities take registration with the care commission as a passport to a provider list, in effect.

**Jacquie Roberts:** Yes.

**Professor Crerar:** There is no overlap between the Standards Commission for Scotland and the Scottish public services ombudsman because it has a different jurisdiction. Appeals from our hearings go to the courts and not to another body.

**Mr Swinney:** Are there any overlaps with any of the other ombudspersons?

**Jacquie Roberts:** We visit the same establishments as the Mental Welfare Commission, although we have different responsibilities and it concentrates on individuals. However, we have a good working relationship and it is possible for the Mental Welfare Commission to refer matters to us. It wishes to maintain its ability to safeguard individuals. That is important, given the people who are on its list. We go to the same establishments, but we take great care not to interfere with each other's activities.

**The Convener:** I can see why you would want to do that, but is there any reason why there cannot be a thinning out of regulators? If you consider the arrangements in different jurisdictions—and if you imagine that we did not have the history that we have—are there any reasons in principle why your work could not be combined with that of the Mental Welfare Commission, the Social Work Inspection Agency or other organisations?

**Jacquie Roberts:** The care commission is a regulator for improvement. We look at the service that is delivered to the people who use it. The Mental Welfare Commission exists to protect individuals and it can follow up individual cases. There is probably room for both those functions. We could spend too much time working out how those functions communicate. The best thing is to get the two functions communicating with a good memorandum of understanding.

I am sure that there is more work for us to do to ensure that we give full information to the Social Work Inspection Agency so that it can concentrate

on the areas that it needs to examine, which are different from the areas that concern us. We can also work more closely with the agency on going into authorities at the same time. For example, we have a statutory responsibility to regulate adoption and fostering services. When the Social Work Inspection Agency visits local authorities, we could go in at the same time to do our work. There is a lot of capacity for getting closer together and doing things in a more streamlined way.

**The Convener:** Would that reduce costs and streamline the regulatory impact at the same time?

**Jacquie Roberts:** I do not think that it would reduce costs for us, because we have to do what we have to do. However, it would make the experience far less burdensome for the receiving authority.

**The Convener:** You said that the functions are separate, but separate functions can be carried out within a single organisational framework. We might not need the same number of organisations even if we need the same number of functions. Is that a fair comment?

**Jacquie Roberts:** Yes. That is why we pressed for—and contributed to—a review of regulation, inspection and complaints handling bodies. However, one can get distracted by looking at organisations and efficiencies. It is important to concentrate on what needs to be done—and why—to provide assurance and protection, and then to consider the organisational arrangements.

**Mr Swinney:** What does the Social Work Inspection Agency do that the care commission does not do?

**Jacquie Roberts:** It does performance inspections of the delivery of social work services in local authority areas.

**Mr Swinney:** What is the common ground between the SWIA and the care commission?

**Jacquie Roberts:** We provide the SWIA with information about the delivery of care services in each local authority area, whether they are delivered by private providers, voluntary providers or the local authority.

11:30

**Mr Swinney:** You say that you would encourage us to look not at organisations, but at the process. That is a helpful point. Looking at the issue from that end of the telescope, what is the Social Work Inspection Agency contributing to that assessment that you are not contributing?

**Jacquie Roberts:** The SWIA examines the way in which a local authority organises its operational management and its strategic decision making about what services should be in place for the delivery of social work services for a whole

population. For example, it will look at commissioning and, more specifically, it will consider the delivery of qualified social work services. That is not within our statutory remit.

**Mr Swinney:** You said earlier that the Social Work Inspection Agency would be involved in the supervision of a care home.

**Jacquie Roberts:** No. It would be interested in the information that we could provide in the context of the overall delivery of care home services.

**Mr Swinney:** It would not be knocking on the door of the care home to carry out an inspection.

**Jacquie Roberts:** No.

**Mr Swinney:** So, you carry out the inspection and you feed what you learn from that inspection into an assessment by the Social Work Inspection Agency of the effectiveness and performance of the individual local authority's social work department.

**Jacquie Roberts:** Yes. From the start, the chief inspector of the Social Work Inspection Agency was determined to avoid duplication wherever possible.

**The Convener:** Are you aware of any regulatory function or regulatory agency being discontinued as a result of your establishment?

**Jacquie Roberts:** Well, yes. We brought together all 32 local authority registration inspection units and all 15 health board registration inspection units. It was 44 into 1.

**The Convener:** You amalgamated those units but the staff were retained.

**Jacquie Roberts:** Yes.

**The Convener:** So, in fact, nothing was lost; it was just brigaded.

**Jacquie Roberts:** We had to take on a lot more responsibilities. We took on responsibility for all day care services for children over the age of eight; independent schools; housing support services; and domiciliary care services. We have increased the remit significantly.

**The Convener:** I do not think that members have any further questions. Thank you for undergoing this gruelling hour and a half, in which you have given us some interesting answers. We are holding a series of evidence-taking sessions, which will probably end with the Minister for Finance and Public Service Reform and the Scottish Parliamentary Corporate Body coming before us at the end of June. We will then consider our report to the Parliament.

11:33

*Meeting suspended.*

11:34

*On resuming—*

## **Local Authority Single Status Agreement Inquiry (Executive Response)**

**The Convener:** The second item on our agenda is consideration of a response from the Executive, following the publication of our report into the cost of local authority single status agreements. The committee invited responses to its report from Unison, the Transport and General Workers Union Scotland, GMB Scotland and the Convention of Scottish Local Authorities, all of which gave evidence to the committee during its inquiry. To date, however, the committee has received a response only from the Executive.

Quite a few of the committee's recommendations were not necessarily for the Executive. Our report highlighted the serious potential financial consequence of not resolving single status agreements within local government and raised some grave concerns about the financial impact, in the short term and the longer term, of the equal pay deals that are being struck up across local authorities and how those are to be paid for. Bearing in mind the fact that our report was produced two months ago, I wonder whether we should write to the Executive and the organisations that have not responded, expressing the committee's concern and its interest in seeing what progress can be made on these matters.

**Mark Ballard:** Given the worrying evidence that we heard from COSLA about the potential impact that local authorities in Scotland faced, I am surprised that COSLA has not replied to your initial letter, convener. I do not know whether that indicates that things are going on in the background. Do you have any idea why COSLA has not responded, given the fact that it will be in the front line?

**The Convener:** As I say, perhaps I should write to COSLA, the Executive and the trade unions, stressing the urgency of dealing with these matters. The committee will then have acquitted its function and will have underlined the importance of taking matters forward. If that is agreed by the committee, I will write those letters accordingly.

**Members indicated agreement.**

**The Convener:** The final item on our agenda is consideration of our draft report on the financial memorandum to the Adoption and Children (Scotland) Bill, which we have agreed to take in private.

11:37

*Meeting continued in private until 11:42.*

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