

FINANCE COMMITTEE

Tuesday 13 June 2006

Session 2

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FINANCE COMMITTEE

17th 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:

John Elvidge (Scottish Executive Permanent Secretary)

Alan McKeown (Convention of Scottish Local Authorities)

Val de Souza (Convention of Scottish Local Authorities)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 13 June 2006

[THE CONVENER *opened the meeting at 10:05*]

Adult Support and Protection (Scotland) Bill: Stage 1

The Convener (Des McNulty): Good morning and welcome to the 17th meeting in 2006 of the Finance Committee. I remind people, as I normally do, to switch off their mobile phones and pagers. We have received apologies from Wendy Alexander and Frank McAveety.

Under agenda item 1, we will take evidence on the financial memorandum to the Adult Support and Protection (Scotland) Bill. Members will recall that we agreed to adopt level 3 scrutiny of the bill, which involves taking written evidence from bodies on which the costs will fall and oral evidence from the Convention of Scottish Local Authorities and then Executive officials.

Representatives from COSLA are with us. I welcome Val de Souza, who is group manager of the planning and services division of West Lothian community health and care partnership, and Alan McKeown, who is team leader of COSLA's health and social care team. Usually, we offer witnesses an opportunity to make a short opening statement before we move to questions. Does anyone wish to make a brief opening statement?

Alan McKeown (Convention of Scottish Local Authorities): I would like to.

I think that there is widespread, truly multi-agency support for the bill, which will not only lead to our progressing a number of complex cases, but could lead to our looking back at a number of cases that have previously been unexposed. It is probable that the bill will also lead us to look sideways because, as we unearth cases, we will know who perpetrators are and we will need to keep an eye on them. Doing that will require a truly multi-agency approach.

Our view is that the costs fall into three general categories. There are general costs that are covered by the bill, but we think that there are also underestimated costs and unidentified up-front costs. The costs may have been estimated at around £13 million, but—if I may be so bold as to say so—that figure can easily be doubled. Financial memorandums are considered very early in the parliamentary process; we will understand the full costs only when we get the schedules if the bill gets past stage 3.

Val de Souza has worked closely on the bill with the Executive and we will continue to work closely with it. She has also worked closely with her colleagues in West Lothian and throughout the Lothians. She has close contacts with people in the Borders; indeed, we have drawn on examples from the Borders. In our evidence, we hope that we will give concrete and objective examples of where the cost drivers will be and that we will answer members' questions as factually as possible.

The Convener: Thank you very much.

You said that costs could double. Where are the main risk areas in that respect? Obviously, such an increase would be worrying.

Val de Souza (Convention of Scottish Local Authorities): Some increases are difficult to anticipate at this point, but I think that there will be increases across the board.

I put together a paper at the last minute because I did not know that I was coming to the meeting until the end of last week. There will be an impact on staff and staffing levels, and the work that people will do will change greatly, which is a major consideration.

A lot of expense will be incurred if councils set up adult protection units. The bill refers to strategic development officer posts, which will cost a substantial amount of money, although the costs of the adult protection committees will perhaps be less substantial. I suppose that a substantial amount of money will be required to support what the bill proposes. Some of the money that will be required will relate to the impact on staffing and the work that we do to support that, but some of the work and the associated cost will be administrative—it will be about supporting staff to carry out their responsibilities and monitoring and evaluating the work that is being done to ensure that we are getting it right. I can give you more detail if that would be helpful.

The Convener: It might be useful to get as much quantification as possible of the expenditure that will be necessary. I agree that we find it difficult to deal with financial memoranda at a relatively early stage in the passage of bills because the costs can be affected by the regulations and guidance that are put in place. However, in principle there is no reason why we should not have proper modelling to give us a very firm idea of how things will work in practice before legislation is put into effect. We are keen to get as much definition as we can.

Val de Souza: In our submission, we make a general statement about one of our templates or guidelines, which is to examine what has happened in the Scottish Borders area following the inquiry that was held there. Scottish Borders

Council has had to invest to develop the delivery of its social work services to respond to the requirements of the social work inspectorate, which were about raising the standard of those services to an acceptable level and implementing robust systems that would support what we are asking of staff and of councils.

The director of social work services in the Borders recently made comments about having to put a substantial amount of money into the learning disability service to set up a specialised unit that would deal with vulnerable adults and cases of learning disability. I think that the cost of that was just under £1 million, to give a ball-park figure. The Executive may want to check that out in more detail. That was not money that was allocated after the event; it was money that had to be found from somewhere else.

If we were to examine the situation in the Scottish Borders partnership area across the board—I am talking about the work not only of the council, but of the health service, the police and the voluntary sector—and to compare it with that in other areas, I think we would find that practice was not great throughout the country and that it needed to be brought up to quite a high standard. I do not think that the Social Work Inspection Agency is asking too much of services. Services have changed and evolved dramatically over the past 10 years. Now that the SWIA is in place, it is setting standards that are putting many cost and staff pressures on councils and other organisations that work in the area of adult protection.

The bill offers us an opportunity to examine the situation closely and to assess how we will shape up and how we can get close to achieving the new standards, which I think will be substantial.

Mr John Swinney (North Tayside) (SNP): I want to follow the line of questioning that the convener started by going through the different areas of cost that you identify in your submission so that we can obtain an understanding of why they differ from the costs in the Executive's financial memorandum.

The first area of cost relates to the introduction of adult protection units. You may correct me if I am wrong, but your main point seems to be that the cost of creating a unit will be determined by whether it is a practice unit or a planning and strategic unit. Is that the distinction that you are making?

Val de Souza: I am saying that there needs to be more clarification of what we expect from adult protection committees—I am sorry; did you ask about the units?

Mr Swinney: Yes. I am referring to paragraphs 11 and 12 of the submission that we received this morning.

10:15

Val de Souza: In relation to the adult protection units, the main example that we have at the moment is the unit that Scottish Borders Council has set up. I guess that that is the only model that the Executive had to draw on when it was drafting the bill. Under that model, there is one member of staff—an adult protection officer—to work on adult protection issues, supported by administrative staff and training staff. In other words, we are talking about three members of staff.

The adult protection officer has a dual function, one part of which consists of supporting the adult protection committee, which considers strategic issues; training; patterns that emerge in what is not working well; standards; and monitoring and evaluation. Much of the rest of his time is taken up with dealing with practice issues by advising and consulting practitioners; attending or chairing case conferences; giving advice on the legislation that is available—on what can and cannot be used—and the assessment and management of risk; and advising on what is acceptable and what sources practitioners can draw on to keep people safe.

Mr Swinney: Does such a person exist already in local authorities?

Val de Souza: Yes.

Mr Swinney: You estimate that the national cost of the introduction of the adult protection unit will be £9.5 million. What proportion of that is current local authority expenditure, rather than new money, or a new cost that is being incurred?

Val de Souza: I do not know whether I can speak for Scottish Borders Council, which is where close to £1 million was pumped in—I am not sure where that came from. That would be additional expenditure from its point of view. If we were to set up something similar in West Lothian, new expenditure would be involved. Some team leaders' jobs would be vired across, so there would be an element of overlap, but the posts do not exist at the moment.

Mr Swinney: I was driving at whether the post would be a new function requiring new personnel and new costs or whether similar work is being done just now, although not as comprehensively.

Val de Souza: That is right. In preparing for today, I got in touch with quite a few of my colleagues who work in this area. They emphasised the pressure—although it is welcome pressure in a way, because people want to raise standards—that the Borders inquiry report and the recommendations from it have put on practice across the piece, particularly in social work. One of our practitioners in West Lothian estimated that the waiting list for services has increased in the past 18 months because of the pressure of the

bureaucracy and the requirements that have come to their team through the standards and requirements that arose from the Scottish Borders inquiry.

The service is being squeezed at the moment. There is a waiting list for cases that do not involve adult protection for those who are at high risk of abuse—the kind of cases that we cannot afford to get wrong. Authorities are putting a huge amount of their limited resources into that area and are finding that the pressure in the teams has become intense. There is little administrative support and they are finding problems with staff turnover. One person said that they reckon they have lost five members of staff in the past 18 months because of the bureaucracy, pressure and waiting lists. The work is new. It is being contained, but not terribly well.

Mr Swinney: The point is that if the Scottish Borders model is to be the model for all local authorities, there is a journey to be made, which will involve resources.

Val de Souza: Yes.

Mr Swinney: The other major cost difference between the estimates from COSLA and the Executive appears to be set out in paragraphs 15 to 17 of the COSLA submission. There seems to be a pretty sizeable difference, which is driven by the number of cases that an individual case manager would be able to drive. The Government suggests that an estimated case load of 23 is realistic. You suggest a case load of 15. Will you talk us through the reasons for that difference?

Val de Souza: It is very difficult to create from nothing a bill that makes a huge amount of sense and is robust in its costs. I seem to be defending the Scottish Executive again, although that is not quite my role.

When I looked in more detail at the cost estimates for case loads towards the end of last week, I drew on my experience of co-ordinating the learning disability audit in West Lothian. One of the conclusions that we drew was that because of the consistent pressure that some social work staff were under, particularly in relation to cases in which risk and abuse were unpredictable, staff behaviour was unpredictable. We are talking about situations in which people's behaviour was on the cusp of being offending behaviour—it was certainly challenging—and there might have been mental health elements, but it was right across the board.

Given what we knew about the cases, we concluded that it would be very difficult for a social worker to hold more than six such cases at any one time. You might think that I am exaggerating and I do not mean to imply that six cases is all that a social worker has to deal with—they have other

things to deal with, as well as a further nine cases at a lesser level. I am talking about the kind of cases in which somebody needs 24-hour supervision, whether they live in the community, in a group or whatever. For example, there might be no cover one day a week for some reason or social workers might be trialling less than 24-hour cover. Social workers deal on a daily basis with the unpredictability of not knowing what someone is doing for those two or four hours during which they are not under supervised care and have to deal with people ringing in to ask where somebody is because they have spotted them in various places.

Social workers could not possibly have 23 cases of that nature, let alone 15. To add a sense of proportion, there would not always be 23 cases at that level in West Lothian or in any of the council areas. Those are high-tariff cases, which are given to senior practitioners who are willing to take on cases with a high-risk element.

I hope that I am not going in too technical a direction for members to follow. We are between a rock and a hard place with those cases—we are damned if we do and damned if we don't. Professional judgments are required at every step along the way.

We looked at case load configuration in scrutinising some of those cases in West Lothian. We looked at who took on the tough cases and why they were weighted for some individuals and not others. We concluded that there should be about six cases per case load. The figure of 23 cases that the Executive came up with drew heavily on existing complex care management information and policy. That is a fairly solid place from which to take the information, but the level of unpredictability, risk and abuse brings the tariff up for me. It is unrealistic for somebody's case load to be at that level.

Alan McKeown: From a cost point of view, cases do not drop out of the system—the total is cumulative. It is not one in, one out as it might be in other services, so not only is the cost cumulative but the pressure of the case load becomes cumulative.

Mr Swinney: I will broaden out the question slightly from the cost to local authorities. We have had a number of submissions from health authorities; we received one particularly comprehensive submission from NHS Lothian, with which I suspect you are familiar given that you are from West Lothian. NHS Lothian highlights a number of costs that will arise from the fact that the bill is an interagency bill. Therefore, costs to local authorities will not be compartmentalised. What information can you share with us about the discussion that has taken place among partners—either the health authorities or the police

authorities—on the relevance of the costs identified by the Executive and whether additional costs have been missed out?

Val de Souza: Health and police colleagues—health colleagues in particular—are a bit surprised that the Executive is saying that the cost to them will be limited. Do you want me to speak from their point of view?

Mr Swinney: Yes. I want you to comment on any issues that are relevant from their point of view.

Val de Souza: There are two ways of answering the question, the first of which is to consider separately health, police, the voluntary sector, housing, education and other areas. The second way is to identify a responsibility to fund an interagency response, so that the responsibility moves away from local authorities as a whole.

Colleagues in the health sector were surprised that the financial memorandum suggested that there would be little cost to them. The COSLA submission makes the point that the current input from our general practitioners is in a sense quite minimal. GPs are in a crucial position because of the information that they get from a host of people about how they live their lives and the risks that exist in some families, but they find it difficult to get away from the work that they are doing and to free themselves up to attend an adult protection committee or adult protection case conferences. The situation is mirrored in child protection. GPs do their best, but there is frustration among the professions that are involved in interagency work that they are not visible in those discussions, because we think that they are crucial to the process. I am not necessarily laying the responsibility only on GPs—perhaps other health professionals could bring such information to the table. GPs say that the cost of covering their attendance at a case conference would be about £300. We have to ask where that money would come from, given that we see GPs as crucial in the sharing of information and the overall and continuous protection of some very vulnerable people.

We have conducted interagency training throughout the Lothian and Scottish Borders area on the implementation of our guidelines, which were launched in 2003. However, we found it exceedingly difficult to get GPs to come along to the training. The issue is their time and the way that their days—and their priorities—are structured. It comes down to whether such training can be treated as part of GPs' continuous professional development schedule and whether they can get locum cover, which would cost about £300, or more for a full-day session. That is only one of the issues on the health side.

The way in which my health colleagues and I would see their involvement in the Adult Support and Protection (Scotland) Bill is that health visitors, district nurses and practice nurses are out in the community. Like our home helps and domiciliary care workers, they go in and out of people's houses daily. The rest of us may go to someone's house once a week, once a fortnight or once a month. We get a snapshot, but those people are in people's houses daily and can see what is happening.

The biggest record of adult abuse is of physical or financial abuse, because we can see the evidence. We can see bruises or tell that people cannot pay for things, so the abuse comes to our attention. However, a huge amount of other types of abuse takes place. Emotional abuse, psychological abuse and sexual abuse can be largely hidden. Staff who visit households daily can see what people's lifestyle is like, what the risks are and what forms of abuse might take place. They often get a gut feeling and when they come back they might say that something is not right. They can build up a picture.

We rely on those people to refer situations to us. The local authority has clearly been given the lead in investigating such situations, but we depend on people's awareness having been raised through training. Their role in referring is crucial and they must know to whom they should refer the matter. Referrals take time. Sometimes, health professionals will phone on Friday and say, "Something occurred to me on Tuesday." It is something of a joke in social work circles about child protection and adult protection—they tell us on Friday because they are a bit worried about thinking about it over the weekend. It is just one of those things, but why did they not tell us on Tuesday when it occurred to them?

When they are challenged, people will say, "We don't have time. We have to go on to the next case. We have 30 people to see in a day, and we're doing dressings and this, that and the next thing. It's been on my mind but I haven't had the time." We need to look at that. It is one thing to say that a bill will be introduced and that we will try to improve standards and have robust systems, but we should be talking about a transformation. We have to change people's minds and hearts. They have to know that it is their duty to report anything suspicious or anything out of the ordinary that does not fit. For that, we will depend particularly on health professionals and some of our own staff.

10:30

Derek Brownlee (South of Scotland) (Con): I am struck by the uncertainty of figures for the case load. At the beginning of your submission, you say

that research suggests that one in eight older people experiences elder abuse. Based on that ratio, my back-of-the-envelope calculation is that between 150,000 and 200,000 people in Scotland come into that category. However, the Executive figure is of 4,000 new referrals each year. Even with the new legislation, only a tiny proportion of the instances of abuse will be picked up and become part of the case load. Is the figure of 4,000 simply a gross underestimate, as the research would suggest?

Val de Souza: I think that the Executive was trying to build its figures on evidence, and it was given the Scottish Borders figures on the basis of what had happened down there. My answer to your question would be that the figure is indeed an underestimate, because there are unidentified cases and undisclosed cases. Those will not go away.

Through policies on child protection or policies to tackle domestic abuse, or through any of the other policies that have been implemented via legislation, awareness is raised. You will then find that it is not only present situations that come up but, as Alan McKeown says, a lot of historical cases too, with people saying, "That happened to me." We have to apply the same level of stringency to every case that comes in. We have a duty to investigate.

Derek Brownlee: I presume that, for some cases that come before you, there will not have been abuse but there will have been perfectly reasonable grounds for suspecting that there had been.

Val de Souza: Yes, but we have to investigate those cases as well.

Derek Brownlee: Indeed—so perhaps the case load is not 150,000 or 200,000 but is significantly higher, once the false positives have been added in.

Alan McKeown: It could be. It is likely that, as a spotlight is shone on the issue, the volume of cases will increase. Some suspicions might be disproved, and that is valuable but, as Val de Souza said, we must investigate any case that comes before us. We have to take every case to its conclusion. We must apply due diligence or we would be found wanting in the eyes of inspectors and of the public.

Derek Brownlee: The Borders example is useful. As I understand it, what is happening in the Scottish Borders Council area will, by and large, be what will happen Scotland-wide under the legislative framework. Val de Souza mentioned a cost of £1 million a year in the Scottish Borders area. The figure in the financial memorandum for Scotland is roughly £13 million of recurring costs, and you have said that that could be doubled.

However, if we consider the Borders figure, and take into account the population of the Borders, the figure for Scotland would be around £50 million. Are you therefore saying that the potential cost could be anything from the £13 million in the financial memorandum, to the £26 million that you have suggested, to the £50 million that would be obtained by extrapolating from the Borders figure?

Alan McKeown: The committee's scrutiny process will give you a feel for that; I do not think that we can comment right now. Depending on how the services are structured and provided, you could be talking about a figure between £13 million and the upper figure. However, that would depend on the final process, what the schedules look like and how we handle things. John Swinney asked what we are doing already. Some of the projected costs might not necessarily be new costs in terms of a public sector reform agenda and some services might be shared across boundaries. We expect people to consider that, so we expect that efficiencies will be sought in organisations and in the way that services are organised and delivered.

My opening comment about it being very early in the process applies to the figure—we could say that it will be one figure or the other, but we just do not know. We will know more at the end of the process. We have to work with the Executive, our partners in the voluntary sector, and the police and the health service to ensure that we nail down exactly what we want to do and how we will structure and cost it. We know that the costs that are predicted at the start of a bill will never be the same as those that emerge at the end, so our scrutiny of the costs has to be very hard.

Derek Brownlee: I accept that entirely. However, only one local authority provides such a service and if its costs were to be prorated up, that would suggest that the costs that are outlined in the financial memorandum are a quarter of what the total will turn out to be. It would be very useful if your line-by-line analysis of the various headings of the bill could show what the per capita cost will be in Scottish Borders relative to what your submission suggests. I am not suggesting that you do that today.

Alan McKeown: We are happy to do more work on that. The committee will be better informed through this process than we will be and it will come to a view about what it thinks is reasonable for the financial memorandum to suggest and whether the projected costs are appropriate for the delivery of the provisions of the bill.

Derek Brownlee: Your submission contains a projected training cost in excess of that which is projected in the financial memorandum, albeit that the scale is somewhat lower. The examples from West Lothian are useful because they give us some understanding of how you reached your estimates.

You suggest a cost of around £700,000 for training. To what extent could that be substituted for other training? In other words, to what extent could the requirement for training be met out of the existing training budgets through not undertaking other courses? Is there any slack in training budgets that could be put into training for new legislation?

Alan McKeown: Training budgets are never overly funded. When we introduce something new, we have to ensure that our staff are equipped to deliver it. If we were to substitute the required training for other training, something else would not get done. That is a dilemma and we have to go through a financial wrestling process. We might be able to consider whether the training could be sourced regionally or nationally and whether we could achieve savings that way. The figures in the submission just show the potential magnitude of the training that would be required if everyone were to deliver the services in the way that we want them to be delivered, so that when a service is inspected, we know that we have done all that we can to ensure that it is at the right level.

Val de Souza: The costings were done on an interagency basis, so they do not represent just the cost to the local authority. There would be a drawing together of responsibilities from other sources. There is an interagency agenda and training is delivered and received on an interagency basis, so the costs can be meted out accordingly.

Derek Brownlee: I assume that it would be difficult at this stage to indicate the extent to which the costs for training and everything else would be split between the various agencies that will be involved. There must be some blurring around the edges between, say, health boards and councils

Alan McKeown: We would need to know the final make-up of the bill and how the training will be handled in the localities before the costs could be decided on and apportioned. There are various ways in which that money could come into the system to meet those training needs. If training is to be done on an interagency or regional basis, it would be inefficient to fire money out in three ways only to pull it back together so that it could be sent out the door another way.

The Convener: When we legislate to deal with an issue that has not been addressed in previous legislation, there is a danger that we try to create an ideal framework and—as you suggest has been the case—pick out an example of best practice and seek to generalise it for use throughout Scotland, which might have an associated substantial increase in cost. That increase may not be affordable, but perhaps it also should not be seen as being affordable in the context of the demands on social work budgets,

because what is spent on the bill must be set against what is spent on other social work functions and activities. Are we getting that right? Is the bill drawn too widely in respect of the real problems? Is it overspecific in putting in place procedures that might be ideal but which are not necessarily required for every client to whom the bill might apply?

Alan McKeown: Val de Souza will talk specifically about social work. There may be the potential to consider how social work services manage their risk portfolio. We are shedding particular light on one aspect of that and it is right that we do that. The bill is about protecting people—I do not think that anybody would disagree that we must do that. You are right to say that we must consider the budget in its totality and that, if we continue to add high-profile, staff-intensive and stressful case loads to social workers' work, it will take a cumulative toll as well as a toll on the specific budget. We might have to think about ways of managing the totality of risk, perhaps by having authority-by-authority risk-management strategies. We raised that in the social work review, so we might be able to consider it across the board. Val de Souza will probably give you more of a social work feel.

Val de Souza: I appreciate the point that you made, convener. To put the matter in my language, I sometimes wonder whether we are getting caught up in an adult protection industry. At the front line, if an at-risk-of-abuse referral comes in, it is difficult not to deal with it immediately and not to put pressure on staff to pull everything in from every corner to deal with the situation because we would be hammered if we did not—excuse my language. Besides, it is not acceptable to know that a person may be at risk of abuse or of being exploited and neglected but not to deal with it.

Many things have been happening since the Borders inquiry. Social work services have been getting many more referrals: if we get them, we have to deal with them. The police have the same line—if they get a referral, the family protection unit has to deal with it. They cannot leave it till tomorrow or say that, because they have heard it before, they will not deal with it.

From a practice point of view, it is difficult to see how matters proportionalise across the agency. Staff say to me that, because they have to deal robustly and systematically with every referral that comes in, other cases are not dealt with. For instance, another agenda that we are trying to promote and pursue is carers assessments. However, staff do not have much of a decision to make on whether to deal with a carer assessment or with a person who is on the point of being exploited or is being put at risk. Staff have to

follow the person who is being exploited, neglected or abused. On a day-to-day basis, it is difficult to translate that into flattening the agenda or making it more proportional across the piece.

Since the Community Care and Health (Scotland) Act 2002, hospitals and big institutions have been closed but, on risk and abuse, there has been no great feel for what measures and support we are trying to bring into the community. We know about that in terms of care packages, but we are having to manage many folk who are now living in communities and who are both perpetrators and victims of abuse. I do not think that that has ever been quantified.

10:45

What we are dealing with now, especially with the bill, is recognition that we have been under the cosh in trying to deal with the problem cumulatively over the years. We have now to achieve standards that are dictated by the Social Work Inspection Agency. West Lothian Council will be inspected later in the year. Even as I talk, I am thinking about a meeting that I will have to go back to this afternoon and am wondering whether we have got it right and what they might find in our systems that is not right. The pressure in respect of the protection of vulnerable adults agenda feels acute at the moment. I am not sure whether that answers your question, but that answer is as good as I can give because I am in the middle of it all.

The Convener: Two questions arise from that. First, to what extent do you think the bill reflects the defensive agenda of practitioners who wish to ensure that they cannot be attacked or penalised for not doing the right thing in handling cases? That is the issue that came out of the Borders case, and there is a fear that that might be an issue again somewhere else in Scotland. To what extent does the bill take a practice-driven approach and to what extent does it approach the matter not from a social worker's perspective, but from the perspective of what is best for the client?

Derek Brownlee asked what additional money you would need to make the ideal system in the bill work. If I was a councillor—which I have been in the past—I would be asking you the reverse question: Within the available money, what can you do, what cannot you do, and where would your priorities lie? There will not be unlimited resources, so what do we absolutely need to do and how can we specify that in a way that makes best use of resources? Are there things that are, in a sense, bolt-ons or less necessary?

Val de Souza: There are three elements to adult protection: there is practice, in terms of guidance and supporting staff; there is training; and there is monitoring. If I was to prioritise for a council, I

would say that we have to offer administrative support to our practitioners in basic things such as minuting meetings and tracking referrals. At the moment, practitioners spend a huge amount of professional time doing administrative tasks. That would be the number 1 hit for me.

We also need to ensure that we get the training right, because things are moving awfully fast at the moment. Since the Borders inquiry, the number of changes that staff have been asked to take on board in two years has been insurmountable. Training is needed to keep people up to speed and well informed.

Thirdly, we need to monitor what we are doing and we need to try to get the best value for what we are doing. There is very little research and knowledge of what we are up against, which is why some of the work is difficult to quantify. We need really good monitoring systems. My three priorities would be staff support and guidance, monitoring and administration.

Alan McKeown: I would come at the matter from the angle—that of being a councillor—that the convener suggested previously. If I was a head of service looking at the bill, I would be wondering what we would be able to deliver for the money that we will get when it is made available in its community planning totality. If things do not go quite right or if things change, we need to be able to say that we said at the beginning that that was what would happen. We need to be able to say what we can do for the money, and that if the money is not put in we will have either to stop doing something else or change what we are doing in respect of the bill. We have to become much smarter in how we work in social work because of the pressures that we face. We are not quite there yet, but it is something that we have to do. We are continually introducing people-centred bills, which is taking its toll.

The general policy direction in both health and social work has been to change the culture from dealing with crises and to move into the world of prevention. That direction is absolutely right, but it takes time, requires careful planning and needs a strategic overview that sets the changes in context so that everyone knows exactly what they are doing and the standards to which they need to perform. In a range of issues on which Parliament has introduced improvements, we are just working through what is still a relatively young process. We need to think carefully so that we make commitments that we know we can deliver rather than commitments that we would like to deliver.

The Convener: To be more specific, if the money that has been mentioned turns out to be all that is available, what will authorities be able to deliver under the bill?

Alan McKeown: We will know that only at the end of the process—I am sorry if that sounds like a cop out. Only when we get the schedules will we know exactly what we will be able to do and how we will do it. We cannot be certain before then. I would like to give a more specific answer, but I cannot until we have gone fully through the process and have put flesh on the bones.

The Convener: Our difficulty is that stage 1 of the bill is when we need to consider the financial memorandum. If the bill's policy intent cannot be delivered because it does not marry up to the available resources, something will need to give. The inclination of people on your side of the table is always to say that more money must be fed in, in order to achieve the policy intent. However, I am putting the reverse question: if those are the financial constraints in which we need to operate, what policy choices do those constraints force people to make? In your professional judgment, where will authorities go with that? I know that that is not a question that you want to answer.

Val de Souza: Frankly, I think that we would be struggling to answer. I do not know whether Alan McKeown is reluctant to answer.

Alan McKeown: With a limited pot of money, we can do only a limited number of things. If one thing costs £1 and we have a budget of £100, we can do 100 things.

The Convener: Which things would local authorities choose not to do in that context?

Alan McKeown: We need first and foremost to protect the individual.

Val de Souza: Going back to what I said earlier, I think that monitoring and supporting staff by providing administrative help are what I would do immediately. It is really difficult to say what I would not do; none of the bill's provisions is superfluous.

The Convener: If the bill is passed, local authorities might well end up having to make such a choice two years down the track.

Alan McKeown: We might then need to talk about choosing not to do things in other areas of the social work budget, which might mean examining free personal care and what we charge and do not charge for. That may be a bad example—I will deal with that issue later—but we would be forced into such hard choices and that is the world in which we would need to operate. As I said, the bill will be delivered within the context of a drive for efficiency whereby we share costs, provide leaner services and work smarter so that we get better at what we do, but we might still need to raise thresholds for services, reduce the level of services by one hour per person and cut services and jobs. We would need to know exactly what the bill will look like in its final stage, but that

is the type of process that we would need to undergo. If the money is not made available, we will need either to do things better or to do fewer things. Is that the answer?

Mr Swinney: Mr McKeown may not have given the answer, but he has certainly summed up the dilemma. I want to push you just a little bit further on the efficiency savings that you have mentioned several times. The committee is always interested in the extent to which better working practices can help to create the type of model that the bill is trying to establish, or whether it is simply that more money is required. Mr McKeown's previous answer highlighted how local authorities face the dilemma of, for example, allowing timescales for free personal care for the elderly to slip so that other services can be paid for. I would not criticise local authorities for providing a realistic expression of the dilemma that they face.

Given that the bill is structured in a way that emphasises joint working, will it provide an opportunity for the cost of the proposals to be met by achieving efficiencies across the health service, social work service, police service and the voluntary sector? Also, once you achieve some of those efficiencies, will there still be a net additional cost that will need to be funded from new money?

Alan McKeown: The reality is that there may be more costs in the short term as we try to bring everyone together, to rationalise systems and to deal with culture, personality and boundary issues. In the long term, the bill provides an opportunity to work much smarter and to work better to drive down the costs of processes. That will need the establishment of a sound infrastructure, which we know will not happen overnight. In the long term, I hope that we can have smart systems, but we may find that, as a result of developing the policy, the case load increases and any efficiency savings are therefore balanced out.

The answer to the question is that I expect us to drive toward efficiency savings on a range of fronts. However, we will need to keep in mind what might happen to our case loads. Our experience of introducing such legislation is that it results in increased case loads. People know that there is a service, so they rightly want to highlight their issues.

Val de Souza: I will carry on from that, but on a different level. In the past one or two years, the agencies have been working together much better. The added value from that is that we are delivering better services to the people whom we try to protect. Because of better information sharing, we can identify problems more quickly. However, it is difficult to say whether that results in a cost saving. If we identify problems more quickly, the down side is that we sometimes have to deal with them for longer because they do not go away or

get better. However, the evidence is that interagency working is creating a much better culture of joined-up working and that it is getting it right for the people whom we try to protect. That does not exactly answer the question.

Jim Mather (Highlands and Islands) (SNP): I am keen to explore some of the nuances that have arisen. Has much thinking been given to how we can reduce the incidence of abuse and hence the incidence of case referral? That would have huge financial implications.

Val de Souza: I do not know whether anybody has the answer on how to reduce the incidence of abuse and referrals. Little research has been done on that—that is another matter for which money is required. We are finding that many people do not disclose abuse when it happens, but do so later in their lives, so we are discovering a whole lot more abuse than we ever suspected or wanted to think was out there. I cannot answer your question logically.

Jim Mather: Let me come at the matter from a different angle. Are there any countries that have a markedly lower incidence of abuse? If so, have you studied them and do you understand what is different there compared to here?

Val de Souza: No. I do not—

Jim Mather: Are you saying that no other country has a lower incidence of abuse?

Val de Souza: I could not say that, because I have not done any research on it. I am not sure that much research has been done on the issue; people from the Executive may have done some. In England, where similar policies have been in place for several years, the statistics are high and similar to those that we mention in our submission. Certainly, issues such as physical and financial abuse are hugely underestimated. Another issue that has been pointed out in an English report is that, sadly, people are often abused by care workers and other people whom they know and who are involved in adult protection. People know that that happens in child protection, but the situation is mirrored in adult protection.

We should realise that vulnerable children become vulnerable adults. The people for whom we create child protection practices and legislation do not disappear at the age of 16; rather, they become vulnerable adults who then have children who become vulnerable. The pattern is cyclical.

11:00

Jim Mather: In his Allander series lecture, James Heckman offered us advice and guidance on how to break out of that cycle and made a cost justification for effort made with children at an early age in an attempt to break that cycle. There

must be other people breaking that cycle at later stages and there must be good international experience that could help us save on costs.

Val de Souza: Certainly, we can try to find out whether there is any other research. I am not aware of any—I would not say that I spend a lot of time looking at international research in this area, but I keep an eye on what is happening in England, Wales and Northern Ireland.

Jim Mather: You talk about multi-agency co-operation and agencies working together. What are those agencies?

Val de Souza: I can speak only about the situation in the Lothians and the Scottish Borders, in which practice has been dictated by Lothian and Borders police's catchment area. In that area, the three statutory agencies are working together: health; social work; and the police. The voluntary sector is also involved to a degree.

Jim Mather: Are there no examples of people dealing directly with communities or the education services?

Val de Souza: People from such services have been invited to take part in the training that we run. Our community education colleagues have all been through the training, as have people in the voluntary sector, the private sector and the independent sector and we have invited service users and carers to take part. We have kept the scope very broad but, largely, the people who are involved are from health, social work and the police. They are the main statutory element.

Derek Brownlee: One of the matters that is raised from reading the financial memorandum and your evidence is how you facilitate information sharing; there is not a lot of detail in that regard. Are we talking about there being some sort of electronic record of people at risk?

Val de Souza: As the convener said, when we are given an opportunity such as the one that is presented by this committee, there is a risk that we might get carried away and list all the things that we want to fix. With that in mind, we wanted to keep our contribution on information sharing brief. We think that it probably relates to somebody else's mandate.

Alan McKeown talked about infrastructure. At the moment, we do not have a good infrastructure in terms of sharing information across health, the police and social work—the systems do not talk to one another. If we are going to do this right, we need to get information sharing right and if we do that, we will have smarter working and quicker practice. It would be difficult to walk away from the opportunity in giving this evidence of saying something about information sharing. There are a number of levels of information sharing. There is

the infrastructure element and there is the element that involves changing hearts and minds so that people talk to each other. We have to change the cultures that we work in to ensure that people who are aware of situations tell other people about them. That is a training issue. There is a huge amount that can be done in that regard, but some of what we are talking about relates to mainstream practice, such as that which is being done by the community health and care partnerships, and other work.

Derek Brownlee: So there is no tangible proposal on the table.

Val de Souza: I think that integrated children's services might say that there are pilots on-going in relation to information-sharing protocols and infrastructures. The joint future unit and the joint improvement team in the Scottish Executive are working on information systems and on ways of sharing information better in terms of protocols and infrastructure.

Alan McKeown: I understand that work on information sharing will come out later this year. It is crucial that we get that right without much delay.

Derek Brownlee: Has thought been given to integrating that with the move to electronic health records?

Alan McKeown: There are enough problems with the internal national health service systems without having to try to map an external system on to them. However, work is being done on information sharing in relation to e-care and there are some resources and political drive behind that. All of us in local authorities and health boards are trying to play our part in that.

Val de Souza: That is the work that I referred to in terms of the integrated children's services agenda. I think that pilots are on-going in that regard, possibly in one of the Lanarkshire council areas.

Derek Brownlee: We are aware of problems relating to electronic systems, particularly given the massive cost escalation that we have seen south of the border. I presume that if you do not add on to an existing project but develop a stand-alone system that is fit for purpose and which has all the security provisions and protocols that are needed in relation to professional standards, it could be a significant and expensive undertaking.

Alan McKeown: On cost, if you give an information technology company the opportunity to develop a national system, you could just pick a number and multiply it by 10.

Val de Souza: In practice, the councils have enough to cope with in relation to the systems that are in place. They would like to have something that would dovetail with what they have rather than something new.

Derek Brownlee: If we are talking about information sharing between—

The Convener: Derek, we need to draw this discussion to a close.

Derek Brownlee: The financial memorandum talks about making minor improvements to existing systems. Based on the existing systems that you are aware of, is that feasible in terms of achieving the goal of sharing information across agencies and between areas?

Alan McKeown: We have such a wide range of information management systems in use that it is possibly realistic. However, I doubt that it is realistic to consider action in one wave across the board.

The Convener: I thank our witnesses for coming along and answering our questions. I hope that the experience has not been too difficult. We will take more evidence on the bill from Scottish Executive officials at next Tuesday's meeting. After that, we will prepare our report, which will go to the lead committee.

11:06

Meeting suspended.

11:09

On resuming—

Accountability and Governance Inquiry

The Convener: The next item is for the committee to take evidence as part of our accountability and governance inquiry from John Elvidge, permanent secretary to the Scottish Executive, who is accompanied by David Robb, head of the public bodies and relocation division. Thanks very much to both of you for coming along.

We invited you because we were interested in your submission, which I saw as an attempt to gather together the main governance strands and issues and to identify the models and inconsistencies that characterise where we have arrived at. The initial point is recognising that where we have arrived at on the parliamentary commissioner side and, arguably, on the regulation and inspection side in the Executive is the product of a series of ad hoc decisions rather than adherence to a coherent model. Do you see advantages in and arguments in favour of moving towards a more consistent and regulated system and undoing some of the ad hocery that we have identified and to which I think you pointed in your submission?

John Elvidge (Scottish Executive Permanent Secretary): It is difficult to oppose the intrinsic merits of coherence and rationality, is it not? It must be sensible to tidy up from time to time and try to bring order and clear guiding principles to what we do in the field of governance and accountability.

The Convener: So do you have any advice on how that might best be achieved?

John Elvidge: Giving you advice is a tricky area. I have some general observations about guiding principles. There seem to me to be two broad issues. The first is proportionality, which is ensuring that oversight arrangements take account of the considerable variation in the scale of what is being overseen; one needs a framework that is capable of delivering reasonably light-touch oversight to relatively small bodies.

The other broad issue that seems to me particularly relevant to the issues that I know you are grappling with is the tension between oversight and independence. In the range of bodies that we are talking about, there are different kinds of independence. At one end of the spectrum, the models rest on the assumption that functions are better delivered with a degree of operational independence. One seeks to preserve that without suggesting that it is not proper to intervene at a strategic or policy level. At the other end of the

spectrum, one is trying to preserve an almost complete independence of decision making, in which people act in a regulatory or quasi-judicial role. The biggest challenges perhaps arise at that end of the spectrum.

I would simply observe that, most of the time, I do not see any necessary conflict between a reasonable degree of oversight of financial, efficiency and proprietary issues and the independence of the decision making of people in their roles. I know that one can take the arguments to extremes and postulate conflicts. If one were to set up an organisation or an office-holder of the kind to which I referred and sought to give them no resources to carry out their function, clearly one would have reached the point of conflict. However, unless one is postulating actions that might fall into the territory of unreasonableness, it does not seem to me that there is a necessary conflict. The opposite proposition—that a series of office-holders should be able to demand, without any check or balance and according to their own judgment, unlimited resources to fulfil their function—presents obvious challenges of its own.

11:15

The Convener: It seems to me that there are two main models of accountability that should apply. One is accountability through ministers to the Parliament and the other is accountability to the Parliament in which ministers do not necessarily have a role. The real test for the Parliament is in relation to those issues on which the accountability is not through ministers. As you said, a suitable balance is required between operational independence and financial scrutiny, but we also need accountability to Parliament that is more than a tokenistic publication of results. That issue was inadequately grappled with when many of the independent bodies were set up.

Another issue—and one that reflects your wider responsibilities—is the extent to which the operation of some of the bodies might impinge on other governance issues. I suppose that that arises particularly in relation to freedom of information. Parliament wishes to create a freedom of information culture, but the consequence might be a reduction in proper documentation and recording or reluctance on the part of business interests to disclose things that are properly confidential. Do you regard that as a problem, given the way in which the legislation has operated? Do governance issues arise there?

John Elvidge: It is difficult for me to say that people have never, in any circumstances, reduced the extent to which there is documentation in response to the freedom of information regime. That would be a sweeping assertion that I could not possibly substantiate. My perception is that,

broadly speaking, there have not been significant shifts in the way in which people work. There has not been a shift to a culture of not writing things down and, therefore, a loss of proper processes through which one can track accountability. I would certainly say that there should not be a conflict and it is my judgment that, in general, we have not seen such a conflict emerge.

In the other area that you identified, there is no doubt that commercial interests are nervous about the potential impact on their wider interests of the disclosure of their dealings with particular customers. That is a particularly acute concern for commercial interests for whom customers in the public sector form a minority of the customer base. However, I do not take it from that that there has been a general change of behaviour by commercial interests. What we have seen, from time to time, is evidence that individual commercial interests are considering their position and asking themselves whether they wish to be in a commercial relationship in which there is a risk that the commercial details of the relationship will be disclosed. However, we have not seen evidence of any significant scale of movement away from willingness to do business with the public sector.

The Convener: But it needs to be kept under review.

John Elvidge: Yes. One might form the view that the period of greatest challenge in that area is behind us. The need to adjust to the FOI regime probably stimulated a number of organisations to take stock of their interests in that issue. I cannot think of any factor that would cause us to assume that the risk of disruption from that is greater in the future than it has been in the past. That is not to say that one unfortunate experience by a particular company could not have an effect on the view taken by others, so you are right to say that that is something that we need to keep our eyes on.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): The committee has taken evidence in which it has been suggested that budgetary constraints have impacted on the ability to deliver a service. Are you aware of any instances in which budgetary constraints have prevented bodies from carrying out their core duties?

John Elvidge: I am not aware of any instance in which such constraints have prevented a body from carrying out its duties. I am aware of instances in which individual organisations believe that they need more resources to achieve performance standards that they would like to achieve and there has been tension about whether those resources can be made available, but I am not aware of anyone having been prevented from fulfilling their function.

Mr Arbuckle: What steps do you take when a body is prevented from fully carrying out its duties? Who decides what to do?

John Elvidge: Ultimately, as we are the provider of the resources, it is our decision whether resources should be spent on that or on one of the many other things that they could be spent on. In that sense, it is no different from the judgments about competing priorities for money that people make as part of the bread and butter of their work. Who takes the decision relates perhaps to the order of magnitude of the issue. If it is a relatively finely balanced decision about a service that is relatively small in the general scheme of things, those decisions are probably taken at a relatively junior level in the organisation. If we are talking about something more substantial, the decision-making level will rise, and if it is a matter of major public concern, one would expect a degree of ministerial involvement in the decision making. There is no absolute answer about who is the decision taker.

Mr Arbuckle: So initially such a decision could be taken by the accountable officers looking after that particular body.

John Elvidge: I find it improbable that many, if any, of those decisions would rise to accountable officer level. The reality is that on many occasions, those decisions will be taken by people managing a budget several steps down the chain of financial responsibility from the accountable officer.

Mr Arbuckle: Could you explain to us the nature of the accountability of the Office of the Scottish Charity Regulator? To judge from what you have told the committee, there is a sort of twin tracking going on. OSCR has to remain more independent than most bodies yet it has to be financially accountable.

John Elvidge: It is early days, but OSCR is quite a good example of how the model that I was suggesting could work more widely. We believe that there can be a process whereby the regulator proposes an operating budget on an annual basis. There is a process of scrutiny and discussion of the component elements of the budget and of the underlying justification for it. A settlement is reached on the issues, according to an annual cycle. Those issues might be wholly divorced from the regulator's conduct of the organisation's core business—subject to neither side of the relationship straying into the bounds of unreasonableness. As it is not my general experience that people are unreasonable in their dealings with one another in this area, I think that the process is reasonably straightforward. It is not dissimilar to the process of annual budget discussion that happens with a lot of organisations, except that there is not the same degree of dialogue about how potential changes in

the exercise of the organisation's function might impact on the budget that is necessary to run it.

Mr Arbuckle: So, in summary, OSCR could provide us with a role model for the future.

John Elvidge: I would say so. I formed the impression from the regulator's own evidence that she thought so, too.

Mark Ballard (Lothians) (Green): I wish to move from budget setting to budget monitoring. You mentioned that as a key area of your oversight. The former Scottish legal services ombudsman told the committee that financial guidance was issued to her only a week after the launch of the committee's inquiry; that she had not been audited for five years; that, until recently, monitoring of her overspends and underspends had been limited; that, due to her status not being comparable to that of the English corporation sole, there had been considerable risk placed on her as an individual, rather than as a legal entity, when entering into contracts for staff and buildings; and that she had raised that issue several times but had not got any helpful response from her sponsoring department. Were you aware of the difficulties that the former ombudsman experienced? Do you know whether such patterns are repeated in other situations in similar bodies?

John Elvidge: I was not aware of that until I read Linda Costelloe Baker's account of those difficulties to the committee. Those had never come to my attention. I know a bit about them and their context now. I will not pretend to you that I have sought to carry out a thorough investigation of the matter, because I have formed the initial conclusion that there is nothing sufficiently worrying to merit that amount of energy being expended on it. Crucially, at no point has there ever been any suggestion that the financial activity of that office was giving cause for concern.

11:30

What one means by limited budget scrutiny is a matter of individual judgment and interpretation. I am aware that a quarterly process established how spend was going against budget and that at no point in the period when Linda Costelloe Baker occupied the office did there appear to be a danger of overspending. Given those fundamental facts, I do not think that I criticise my colleagues for not investing more of their time than they did in dialogue about spend against budget.

It is self-evident that, over that period, people conducted the relationship ad hoc without the benefit of the formal framework of financial principles that is now in place and which I understand has been under discussion for rather a long time. Of course, it would be better in principle to have the statement of framework in place earlier. That must be so.

We need to consider the case in context. The origins of the office were that it would involve a single office-holder who was supported by no more than what we might call personal support staff—a secretary and an administration assistant. Under the first two holders of the office, that is what the office remained. In recent years, it has begun to develop the addition of staff who undertake other functions—one can see a change, although the number of staff is not huge. It began to move from being an individual to being something that is more recognisable as an organisation.

It would have been a good idea to put in place a financial framework for the office earlier. However, the test that I apply is whether any practical damage was done in the process. I found it difficult to identify any practical damage. I suspect that the situation might have quite a lot to do with the low priority that the people who dealt with the matter gave to the formalisation of the financial framework.

The last point that I should make is that differences of view remain between us and Linda Costelloe Baker about whether she was ever exposed to any risk as an individual in the process. Our legal advice is that she was not, but she clearly believes that she was. I would not expect us to do other than to behave in line with our understanding of the best legal advice that we can obtain. I sympathise with her, because if I were in her position and I received conflicting legal advice, I would not be particularly comforted by the fact that we were acting in line with the legal position as we understood it.

Mr Swinney: You said that in the circumstances of the Scottish legal services ombudsman, there was nothing to worry about and everything was going to plan and to budget. You said that that was the view that you formed after the event. In how many other cases does the Scottish Executive operate that auditing and accounting approach to expenditure?

John Elvidge: I cannot think of another case in which we have seen such a transition from something that is in effect not a public body—a single office-holder—to something that is more like a public body. I cannot identify another set of circumstances that throws up the same issues. Where, from the outset—

Mr Swinney: I was not asking about that. I am asking for examples of the practice that one could charitably describe as light-touch accountability.

John Elvidge: I was going to come to that point. Because I cannot think of another body in those circumstances, I am reasonably certain that no other body lacks the framework of formal documentation that the Scottish legal services

ombudsman lacked. I did not suggest that it was desirable that the ombudsman should lack it; I simply offered the view that it was understandable that the team of people dealing with the matter gave more priority to conducting the day-to-day relationship than to putting the framework in place. I do not think that the example tells us anything about what is happening in governance arrangements generally.

Mark Ballard: Ms Costelloe Baker said that she had not been formally audited for five years. You said that there was a quarterly review. Do you agree that the lack of a proper audit was not desirable?

John Elvidge: I am not sure that I do. My colleagues and I sit down with our internal auditors and Audit Scotland every year to address the question where audit capacity should be directed over the next 12 months. I am not sure that I think that audit capacity should have been directed to a body spending £400,000. In a perfect world, there would be enough audit capacity to audit every single budget that we have, but that is not how it is. Audit capacity has to be rationed, like everything else.

Mark Ballard: I would not ask you to draw a definite line in the sand, but at what level of spending by a non-departmental public body or similar body would you say that there was a requirement for audit?

John Elvidge: That is not a purely financial judgment. One has to ask oneself what the risk factors are. There is not a magic number that determines whether something should be an audit priority. Over time, it would be desirable for the audit process to visit everything. I cannot give you an answer in the terms that you seek. The process that we follow is more risk led than cash led.

Mark Ballard: But without an audit, how can you be certain that you are fully identifying risk?

John Elvidge: We cannot be absolutely certain, but in this case our routine monitoring processes were not identifying any cause for concern and, I would argue, the nature of the activity is intrinsically low risk—the financial risks that might have arisen are not particularly significant. The organisation did not spend substantial sums of public money, other than to run itself, which is a relatively easily tracked process for a small body.

The Convener: I want to pursue the audit arrangements that you described. You said that you sat down with the Auditor General and decided where the audit resource should be applied. Is that an appropriate arrangement for auditing a substantial amount of money? Are there no criteria against which we carry that forward? What resources are deployed?

John Elvidge: My answer might have been a bit unhelpfully incomplete. Most formal public bodies have an obligation to be audited annually built into the arrangements that set them up. All our programmes are audited at a general level every year. In one sense, nothing escapes the audit net, because the totality is audited every year.

The question that is discussed with Audit Scotland and internal audit is where a drilling down process should occur beyond that of the general audit. The budget out of which the costs of Linda Costelloe Baker's operation were met will have been audited at some level. The question is whether one should drill down below that to audit the individual entity.

If the entity had been set up as a public body from the outset, the answer would almost certainly have been that an annual audit process would have been built into the arrangements. Again, the situation is slightly a product of the gradual way in which we arrived at such organisations.

The Convener: I suppose that two issues arise, the first of which is the spreading of good audit practice throughout. You seem to accept that, for whatever reason, that may not have been done in the case of the Scottish legal services ombudsman service.

The second issue is much larger. Is there an appropriate level of independence and rigour in decision making on the deployment and utilisation of audit more generally, and is it effective enough? When the Auditor General was before us, issues were raised about the governance arrangements at Audit Scotland and, in particular, the Auditor General having considerable power over the oversight committee that looks into Audit Scotland. Does the same issue not arise for the Executive? Do you have a firm enough audit mechanism that allows us to track through the financial controls and procedures as a good audit mechanism should do?

John Elvidge: I think that there is such a mechanism. I have two observations to make. First, in relation to the Executive, there is no risk of my dictating what gets audited. Audit Scotland has the clear right of proposition as to what it wants to audit. Ultimately, it does not matter whether I think it a good idea that it should audit something, as Audit Scotland is in control of its audit programme.

Providing a balance against the possibility that Audit Scotland might miss something is a function of the Scottish Executive audit committee. It is composed entirely of non-executive directors who are put in place to exercise oversight of the risks in the budget and the soundness of the audit process, and is separate from me. The independent role of the audit committee means that, if it thought that the Auditor General was

missing something of significance in his audit proposals, it could press the case for those proposals to be adjusted.

Mark Ballard: I return to the second part of your response to my initial question, which was on the status of the Scottish legal services ombudsman when entering into contracts. You said that there was a difference of opinion between your legal advice and her legal advice. In addressing the audit process and the budget process earlier, you talked about moving from ad hoc to more formal procedures. In terms of the new regulatory bodies—the new commissioners that are planned—will steps be taken to ensure that the different legal opinions on the status of commissioners when entering into contracts are clarified beyond any question of doubt? We need to ensure that the situation does not continue.

11:45

John Elvidge: I am sure that we shall do that. One of the benefits of getting into this kind of tangle is that one learns quite a lot in the process. It is obviously desirable for such issues to be clear from the outset. As a general rule, there is much more thinking around governance arrangements now than there would have been in 1990, when the statutory office of the Scottish legal services ombudsman was originally brought into being. At the risk of sounding slightly sycophantic, one might argue that greater attention to governance arrangements is one of the consequences of the Parliament's existence.

Mark Ballard: And perhaps the reason why the Finance Committee wins so many awards.

Jacqui Roberts, from the Scottish Commission for the Regulation of Care, said in her oral evidence that she knew that, for different non-departmental public bodies,

"different decisions have been made about carry forward of expenditure from one financial year to another."

Jacqui Roberts also said that the care commission had been allowed to carry forward expenditure if it could

"make a good case for doing so."—[*Official Report*, Finance Committee; 26 May 2006, c 3634.]

She had discussions with officials in similar organisations, and it seemed that there was no consistent policy across NDPBs.

Are there any moves to have a consistent Executive policy on carry forward of expenditure? Do you have any idea of the basis for any differences in the ways in which sponsor departments operate in that regard?

John Elvidge: The direction of movement has been the other way, and is likely to stay the other

way. We have moved from automaticity and standard rules on carry forward of underspend towards a more discretionary approach. The broad reason for that is concern about cumulative underspending, which I know the committee has shared. Automatic carry forward of underspend can, self-evidently, encourage people to be relatively relaxed about the occurrence of that underspend. Therefore, we have moved both in our treatment of arm's-length bodies and in our treatment of the internal elements of the Executive to a much more discretionary approach, in which people have to demonstrate their continuing need for the resources before they are carried forward.

There is perhaps only one general principle that one can draw from the way in which that judgment is exercised. Where the underspend relates to identifiable capital projects that are in train and which are clearly going to spend the money—just to a different timescale—by and large, we take the view that carry forward is appropriate. In other instances, we look at the evidence that the money will be needed in the subsequent year.

Mark Ballard: You are satisfied that there is enough guidance to sponsor departments to enable them to operate that discretionary policy effectively.

John Elvidge: I am sceptical about how far guidance would take them. People who work closely with individual public bodies make judgments that are rooted in the circumstances of those bodies. I find it difficult to imagine what general principles would assist them greatly in the exercise of that judgment. In saying that, I am assuming that people apply a reasonable amount of common sense in everything that they do.

The broad principle—perhaps this is an extension of what I said about capital projects—is that one is looking for inflexible costs as opposed to variable costs. In cases in which it is clear that costs are inflexible, one tries to make allowance for them. However, in cases in which they are not, one is inevitably more questioning of the need for resources to be carried forward, particularly as it is an important part of our general dialogue with all public bodies that we wish underspending to come down so that aggregate underspending comes down.

The Convener: I followed what you said closely. Setting aside the issue of capital projects, which I think we understand, a possible interpretation of your attitude is that if different departments have evolved different ways of dealing with the non-departmental public bodies or the agencies that they control, then so be it; there is no need to do anything about that. That seems to be an extremely relaxed way of dealing with what might be considered to be historical differences in practice.

John Elvidge: It depends what you mean by “different ways of dealing with” those bodies. All the departments will go through a recognisably consistent process at the same point in the financial cycle—their work will be governed by the same framework of dialogue and questioning. In my view, it is important that that process should be consistent. What I am saying is that people have to reach a series of judgments and that there is no mechanism in place to establish the consistency of decisions that are taken about different public bodies that operate in quite different functional areas.

The Convener: You are saying that if the Scottish Executive Environment and Rural Affairs Department does something in one way and the Enterprise, Transport and Lifelong Learning Department does it in a different way, there is no problem with that.

John Elvidge: My point is that all processes for generating consistency have a cost, particularly when they involve a large number of bodies. One cannot achieve consistency for free. I question whether the cost of going through an automatic process to judge consistency would deliver a practical benefit that justified the cost, especially as we are talking about an area in which consistency would be inherently difficult to judge because we would be considering decisions that had been taken about individual bodies in highly diverse sets of circumstances.

I am influenced in my thinking by the fact that, in my experience, the chief executives of various organisations are not slow to draw attention to any treatment that they want to complain about relative to what they understand to be the experience elsewhere. It is perhaps a better system to give people the capacity to come back for a second bite at the cherry and to argue their case than it would be to go through an automatic annual process of trying to establish consistency, which, in my judgment, would always prove elusive because of the complexity of the underlying circumstances.

The Convener: We will move on. John Swinney wants to ask about remits.

Mr Swinney: Do you think that there are any overlaps in the remits that were constructed as part of the suite of proposals on ombudsman-type bodies for which the Executive has legislated?

John Elvidge: I confess that I have not thought about that in the kind of detail that your question implies is necessary. However, I am clear in my mind that each of the office-holders is intended to occupy a core territory that can be distinguished from the core territories of the other office-holders. It is clear that it is possible for the remit of one to overlap with the remit of others.

The example that has exercised people most recently is the proposal for the human rights commissioner; they have tried to understand where human rights stop and the concerns of other commissioners start. I recognise that there is a potential overlap there, and that there can be a fine line, in principle, between treating individual instances in which someone is aggrieved as issues of maladministration for the Scottish public services ombudsman to deal with, and treating them as more specialist issues that would be appropriate for another commissioner to deal with. One has to reflect on the fact that different commissioners sometimes have different powers of remedy, and that, although there might be an overlap in principle in what they could investigate, it might be legitimate to have two different remedies available to complainants.

Mr Swinney: Your reference to the proposal for a Scottish human rights commissioner is apposite. What I am trying to get at is the degree of consideration that takes place within the Executive when it legislates to establish such bodies. What attention is paid to potential overlap issues? I am sure that you could tell me that, in some respects, that is a policy decision for ministers to determine, but I am interested in the issues that exist for you, as permanent secretary and accountable officer, in terms of value for money. Although I want every individual not to have their human rights infringed and although I want every individual to be able to complain, I do not want them to be able to do so at twice the cost because we happen to have created an architecture that is littered with overlap. Could you reflect on that point, coming at it from a value-for-money perspective?

John Elvidge: There are two dimensions to that. First, there is the functional one. Yes, we think about it and, as far as possible, we try to ensure that legislation is proposed in terms that will minimise functional overlap, even if it cannot eliminate it.

Mr Swinney: What is the mechanism for that in the Executive?

John Elvidge: The mechanism for that in the Executive is the way in which the teams that are responsible for individual pieces of legislation and the office of the solicitor to the Scottish Executive think about the construction of each individual piece of legislation and about the precise purpose that that legislation is trying to serve. It is the team's job to think about the relationship of the new proposition to existing propositions.

Mr Swinney: When a team identifies a potential overlap, who takes a look at it and says, “We’re not having that overlap. We’ll simplify it”? Alternatively—I tend to think this is what happens—do people look at the overlap, accept it and continue it?

12:00

John Elvidge: Ultimately, and in a real practical sense, all decisions about the content of proposed legislation are ministerial decisions. No significant detail of any piece of proposed legislation escapes the ministerial team that is responsible for it. The task of taking legislation through the Parliament places a considerable burden on ministers because of the detailed engagement that they must, of necessity, have, so the decision maker on the issues that you mention will invariably be ministerial.

An unanswered question about efficiency and value for money has been left hanging. I think that everyone believes that there is scope for rationalisation in the various commissioners' administration costs. Of course, the commissioners themselves deserve credit for having taken some of the initiative in the pursuit of those efficiencies. We have an interest of a kind in that. It is not, formally speaking, my interest as accountable officer, because the costs do not come out of my budget. In formal and propriety terms, I have to recognise that that is not my business, and I do not have an accountable officer's right to intervene. Nevertheless, as it happens, I have some dialogue with the commissioners about their efforts to improve efficiency, not least because that can sometimes touch on other things that are being done to improve efficiency in the public sector more generally. For instance, there are obvious questions about whether the commissioners and ombudsmen could buy into larger services to help them in their drive for efficiency.

Mr Swinney: To move slightly back through the process, if the Parliament establishes a commissioner for a particular reason, they will have a financial memorandum, which is determined by the Parliament. I am more interested in the formulation of the proposal that creates that office and in what you just said about a discussion about value-for-money issues.

When we recently passed the Police, Public Order and Criminal Justice (Scotland) Bill, ministers made points to me about the police complaints commissioner for Scotland sharing services that were not covered in the revised financial memorandum. My concern is that an office-holder gets a financial memorandum that says that they can spend £1.5 million when, in reality, the results of parliamentary debate and ministerial discussion may have suggested that the amount that they can spend should be nearer £100,000. It strikes me as being a flaw in the process that financial memoranda can create such expectations for office-holders when those issues are introduced by the Executive as part of its proposal to the Parliament.

John Elvidge: I will pause for thought for a moment, because you are taking me into territory that I have not thought about in advance. My first reaction is that two separate functions have to be fulfilled in the process. First, sometimes, a maximum limit is imposed on what the Parliament is prepared to see spent on a particular activity. The other is control of what happens in a particular year. In my past experience—I am delving a bit of a way back into the past—attempts to set maximum financial limits have customarily resulted in quite high limits, because revisiting them requires the use of parliamentary time. Therefore, there is a natural tendency to create some headroom in that process.

Irrespective of what the maximum figure is, the more powerful and significant part of the process of financial control involves a closer look at an organisation—the year-by-year control and the setting of annual budgets. I take your point about signals and the creation of expectations, but we ought to be capable of handling the existence of the two functions side by side.

Mr Swinney: That is where we get to the nub of part of what the committee is considering. I apologise if I quote you incorrectly—I wrote down what you said and cannot find it just now—but I think that you said that there is a tension between oversight and independence. You are absolutely right about that. The Parliament's ability to exercise oversight to deliver financial control may be construed as undermining the independence of an organisation, because a financial memorandum has been set in what I consider to be a pretty loose fashion, particularly if the maximalist approach of setting a maximum financial threshold has been taken.

As an institution, our ability to carry out the functions that our constituents sent us here to carry out is constrained, because the minute that we question why spending has been undertaken in a particular way, we get howls of protest that we are questioning the office-holder's independence. Your comment puts crisply the dilemma that we face. Bearing in mind that most of the financial propositions with which the Parliament now deals are creations of the Executive, the situation poses particular problems that must be addressed in the legislative process.

John Elvidge: That is an interesting bringing together of various points. It is difficult to control how someone will construe certain issues in pursuit of an argument that they wish to make. In my responses, I am tending to concentrate on my belief that each of the elements can be explained in its own terms and may have its own rationality. I do not dispute that you are equally right that someone who seeks to pursue an argument may bring those facts together in a different

configuration. The point is interesting. I am reasonably certain that the conjunction of points in the way in which you have put them has not normally been part of our approach of questioning the separate rationality of each point. That is a useful point for reflection.

Dr Elaine Murray (Dumfries) (Lab): Jacqui Roberts drew our attention to the Hampton review, extracts of which have been circulated to members. That interesting review suggests that there is significant scope to consolidate the existing set of regulators by broadening skills in some areas and gives several options. Are the Parliament and the Executive going in the opposite direction, given that we seem to be creating more commissioners rather than consolidating existing ones? When we raised concerns about the proposed Scottish civil enforcement commission, the Executive produced an options paper.

You have drawn our attention to the fact that we have proposals for a Scottish commissioner for human rights; a legal complaints commission, which admittedly will replace the Scottish legal services ombudsman; a police complaints commissioner; and a road works commissioner. That last one was new to me—it sounds a bit like a pothole tsar, although I do not know what the exact proposal is. We are creating more such posts in Scotland. When their creation is being considered, do civil servants produce an options paper so that ministers can reflect on how best to achieve what they are trying to achieve?

John Elvidge: There is a process of considering the merits of creating a new post versus piggy-backing on something that already exists. On whether we are going in the opposite direction, I am not sure. The Hampton review seems to be largely about the impact—particularly on business—of the big, high-volume regulatory functions and whether they can be rationalised. Much of what we are talking about has more of a flavour of scrutiny and complaints resolution than of that kind of regulation. I am not sure that we are necessarily going in different directions. It may be that we are favouring one approach in one area, without prejudice to the view that might be taken of that kind of large-order regulatory function.

If we think about what is happening in that area—what I think of as the core Hampton territory—a lot of dialogue is going on about how individual regulatory bodies in Scotland can work more closely together. A different question is whether we favour, as Hampton does, the actual organisational merger of those organisations. The crucial difference in Scotland may well be to favour co-operation over organisational merger. However, I am not sure that the handling of what I characterise as the Hampton issues tells us much

about the core territory that we are discussing, other than that unnecessary overlap and duplication of costs must be undesirable in either context.

Dr Murray: Although the functions of some of the organisations that Hampton looked at might be different from those of the NDPBs and other bodies that we have set up in Scotland, some of the Hampton criticisms must still apply, irrespective of function. For example, the Hampton review says:

“Small regulators, although focussed, are less able to join up their work”.

It also says that they are “more expensive” and points out:

“Regulators with fewer than 200 staff are on average more than £8,000 per staff member more expensive”

than larger regulators. Surely some of those considerations can be translated to the situation in Scotland when we set up commissions and so on. Is such financial analysis part of the options paper that ministers receive?

John Elvidge: I suspect that I would mislead you if I suggested that a full financial analysis in those terms accompanies every choice when creating a new post. There is, I think, a scale issue here. The Hampton points—which are essentially economy-of-scale arguments—become more powerful if, when one aggregates things, one has something that demonstrably gives one economies of scale of a different order of magnitude than one has with the individual entities. Without offering you a definitive view, I have a doubt in my mind about whether, even if we aggregated the bodies that we are talking about, we would end up with a large enough critical mass to get genuine economies of scale. There are undoubtedly efficiencies to be had, but I am not sure that the Hampton numbers would carry through to the context that we are discussing. However, I am hypothesising from first principles; I am not saying that to you because I examined the points that you made in any detail before coming here.

12:15

Dr Murray: When new bodies with particular functions are set up, are efficiencies created elsewhere? Are efficiencies created for the Executive or local government, for example, when somebody else does something? Can you point to savings elsewhere because new bodies have undertaken the work?

John Elvidge: In relation to the bodies that we are talking about, I cannot immediately think of an example for which I would make that argument. It seems that there has been a series of decisions to

augment the remedies that are available to the public rather than substitute one way of delivering remedies for another.

Dr Murray: It could be argued that some of the work that the care commission does now used to be done by local authorities.

John Elvidge: I was not thinking about bodies such as the care commission; I was thinking of the range of ombudsmen and commissioners. There ought to be economies of scale in a body such as the care commission because it brings together functions that would otherwise be carried out on a more disaggregated basis in the public sector. One could argue that in a range of public sector bodies efficiencies of that structural nature are being achieved.

Dr Murray: How much cross-departmental discussion of proposals is there in the Executive? For example, someone might propose the creation of a commission when somebody in another department is doing something similar. You say that decisions are taken by ministers, but they work to their ministerial brief and do not necessarily look at what is happening in other departments or at what other ministers are doing. Who brings proposals together so that they are dealt with efficiently throughout the Executive?

John Elvidge: There is a series of answers to that question. Broadly speaking, one could characterise the Executive either as a series of teams that are functionally focused on specific subject areas or as a variety of teams that look across the Executive to consider legal or financial issues, for example. Of course, there is also senior management oversight of the organisation. I am not sure that I could tell you which team with a cross-cutting remit would spot what you describe in any particular instance, but generally I expect each of them to be alert to those issues and to draw the attention of the functional team to the fact that they might be missing a synergy.

Mark Ballard: I want to follow up something that John Swinney said earlier when he spoke about financial memorandums versus budgets. You mentioned in your opening statement not only budget monitoring but performance monitoring. Do you see any contradictions between performance monitoring—in particular target setting—and operational independence?

John Elvidge: Not necessarily, but I can see that there is scope for it to become difficult territory. One might expect to find quite a lot of common ground between what a commissioner, for example, seeks to achieve and the Parliament's view of what should be achieved. Where that is so, independence is not necessarily threatened by crystallising that common ground into performance targets that can be monitored.

Equally, I can see that there is territory where there might be dispute about the impact that pursuing a particular target would have on other aspects of a commissioner's business. The answer is not black and white. There may well be scope to establish common ground and make some progress on target setting and performance monitoring.

Mark Ballard: But you recognise that there is potential conflict, especially in relation to target setting.

John Elvidge: Yes, but there must be, must there not? If one tells someone who is responsible for delivering a range of things in an organisation that, whatever else happens, they must deliver X, that will have implications for the other things that they are responsible for delivering. That is unavoidable because, over time, conflicts arise in making decisions on how to use resources. The tension must be there.

Mark Ballard: What steps do you take to avoid or reduce that tension?

John Elvidge: With bodies that are not designed to be wholly independent, one has an iterative discussion about the performance targets and how they might be changed in the light of operational issues that challenge their delivery. That is what one would do with Scottish Enterprise, the care commission or a range of other bodies in which target setting and performance monitoring are integral parts of the oversight and accountability regime. If one is moving partly in the direction of that model, one can partly appropriate the techniques that are used to make that model workable.

Jim Mather: We have bounced around the issue of efficiency and effectiveness quite a lot today. Earlier, we talked about the tension between oversight and independence. Do you see a tension between oversight and efficiency and effectiveness?

John Elvidge: No. Given that it should be the case that effectiveness and efficiency can be delivered without detriment to the core purpose—the question is fundamentally about doing something better rather than what one does—I do not think that there is a necessary tension between the pursuit of efficiency and independent judgment about the core functions. Oversight that is directed at efficiency does not necessarily conflict with independence of judgment around the core function.

Jim Mather: We could focus on the efficiency and effectiveness of a given commissioner or regulator, but should we not examine the matter in the round and consider their impact on what happens at the coalface, in terms of the effectiveness of service delivery, and the

minimisation of issues that are relayed to given commissioners or regulators?

John Elvidge: Yes. I am inclined to argue that that is clearly a proper function for the Parliament. A regulator or commissioner can do exactly the job that they were charged with doing, but there is a separate question about what impact that has on the wider systems in which they intervene. That must be a proper question for the Parliament.

Jim Mather: In that case, would it be seemly for a commissioner or regulator to be required to step up with the agencies at the coalface to determine common worthy aims that are discussed in Parliament? Should such aims be imposed upon commissioners by Parliament or ministers?

John Elvidge: I find it more difficult to generalise on that question. One would want to think through each individual instance to be sure that one had reached the right conclusion.

Jim Mather: My concern is that, without that, we will not have a culture of perpetual improvement.

John Elvidge: Yes. I start from the position that, unless there is some reason to the contrary, such dialogue is generally beneficial in any area of public business. I pause only because some commissioners or regulators might feel that the need for distance between them and various public bodies might be compromised in some way by that dialogue. However, I have no difficulty with the proposition that one should start from the idea that such dialogue is desirable, and that it should not be pursued only when there is a clear and identifiable reason for not doing so.

Jim Mather: There is a case for each commissioner having individual objectives, but my proposition is that it might be seemly for Parliament or ministers to impose on commissioners a common-good, worthy aim about where we expect them to move towards in the longer term. That might have a beneficial effect for Scottish taxpayers.

John Elvidge: Yes. I think that ministers and the Parliament are generally seeking to do much the same in the messages that they give to public bodies about how they expect public services to be delivered. That is, we expect public services to be delivered on an integrated basis by bodies working together rather than on a fragmented basis. An increasingly powerful message is that we expect people to look closely at the efficiency benefits of co-operation in various forms. I see no reason in principle why the bodies that are at the heart of the committee's inquiry should be exempted from those presumptions.

The Convener: I have one final question. Scotland is a small jurisdiction in terms of population. Other small jurisdictions—a good

example might be New Zealand—have decided to limit their institutional regulatory structures because they cannot sustain the full panoply of different regulators. Do we need to consider doing that in Scotland? It strikes me that we are in substantial part reproducing the United Kingdom pattern of regulation, which will always end up being proportionately more expensive in Scotland because of a lack of economies of scale. Taking account of the size of our jurisdiction, can we really have the full range of regulatory systems and commissioner arrangements that apply in the wider context of the UK?

John Elvidge: You would not expect me to dissent from the proposition that we should examine the sustainable affordability of any course of action. That test should be applied to everything. The implicit question is whether the area under consideration should be a priority for such scrutiny, but that is where we reach the point at which the question would be better directed at Mr McCabe than at me.

The Convener: Do we have any quantification of the background to that issue? On what basis could we assess judgments about the cost of regulation?

John Elvidge: I cannot think of pre-existing evidence that would address the desire to have a quantified base for such judgments. It feels like that would be a reasonably complicated piece of work to carry out. That is not necessarily a reason for not carrying it out, but it is not sitting there on the shelf.

The Convener: I thank John Elvidge and his colleague for coming along. I am sure that we will take up some of the issues with the minister, who gives evidence to us next week. We will also take up issues about the commissioners with the Scottish Parliamentary Corporate Body.

John Elvidge: It was a pleasure. I hope that we have been of some help.

Items in Private

12:30

The Convener: The final item on our agenda is to decide whether to consider a paper on the review of Scottish Executive management of public finances from our budget adviser in private at our next meeting and to consider themes arising from our accountability and governance inquiry in private at our meeting on 27 June. Do members agree to that?

Mr Swinney: Is there some reason why consideration of the paper on Scottish Executive management of public finances must be in private? It strikes me that, as it is about scrutinising the Executive's performance, it might be worth putting it into the public domain?

The Convener: The reason is that the paper is a preparatory briefing for our questioning of the minister the following week.

Mr Swinney: So it is directly related to that.

The Convener: Sorry, the briefing is not actually for questioning the minister the following week but for when the budget review comes in. We will make the briefing public at that time, so it will not be withheld indefinitely. The briefing will be for committee members only, but it will be put into the public domain when we quiz the minister.

Mr Swinney: When will that be?

The Convener: In September.

Do members agree to take those items in private at future meetings?

Members *indicated agreement.*

The Convener: Thank you very much.

Meeting closed at 12:31.

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