OFFICIAL REPORT
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DRAFT

Health, Social Care and Sport Committee

Tuesday 20 May 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 20 May 2025

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HEALTH, SOCIAL CARE AND SPORT COMMITTEE

15th Meeting 2025, Session 6

CONVENER

*Clare Haughey (Rutherglen) (SNP)

DEPUTY CONVENER

*Paul Sweeney (Glasgow) (Lab)

COMMITTEE MEMBERS

*Joe FitzPatrick (Dundee City West) (SNP)
*Sandesh Gulhane (Glasgow) (Con)
*Emma Harper (South Scotland) (SNP)
*Gillian Mackay (Central Scotland) (Green)
*Carol Mochan (South Scotland) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)
*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Morven Davidson (Scottish Government)
Lesley de Jager (Coalition of Care and Support Providers in Scotland)
Neil Gray (Cabinet Secretary for Health and Social Care)
Karen Hedge (Scottish Care)
Dave Moxham (Scottish Trades Union Congress)
Laura Zeballos (Scottish Government)

CLERK TO THE COMMITTEE

Alex Bruce

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Health, Social Care and Sport Committee

Tuesday 20 May 2025

[The Convener opened the meeting at 10:50]

Decision on Taking Business in Private

The Convener (Clare Haughey): Good morning, and welcome to the 15th meeting of the Health, Social Care and Sport Committee in 2025. I have received no apologies for the meeting.

Our first agenda item is a decision on whether to `take item 5 in private. Do members agree to do so?

Members *indicated agreement.*

Employment Rights Bill (UK Parliament Legislation)

10:51

The Convener: Our next agenda item is an evidence-taking session on a supplementary legislative consent memorandum on the Employment Rights Bill. The purpose of the bill is to deliver the key legislative reforms that are set out in the United Kingdom Government's plan to make work pay. The bill's explanatory notes state that its purpose is to

"update and enhance existing employment rights and make provision for new rights; make provision regarding pay and conditions in particular sectors; and make reforms in relation to trade union matters and industrial action. It further creates a new regime for the enforcement of employment law."

An earlier LCM, lodged on 11 December 2024 by the Cabinet Secretary for Finance and Local Government, was referred to the Economy and Fair Work Committee, which considered it on 19 March. A supplementary LCM was lodged by the Cabinet Secretary for Health and Social Care on 3 April and was referred to this committee. It relates to provisions in the bill concerning social care negotiating bodies, which are included in part 3, chapter 2, with further consequential amendments in schedule 5.

The committee is due to take evidence on the supplementary LCM from the Minister for Social Care, Mental Wellbeing and Sport at its meeting next week. In today's evidence session we will hear from a panel of stakeholders. I welcome to the committee Lesley de Jager, director of people and culture, Cornerstone, who is attending on behalf of the Coalition of Care and Support Providers in Scotland; Karen Hedge, deputy chief executive, Scottish Care; and Dave Moxham, deputy general secretary of the Scottish Trades Union Congress. We will move straight to questions.

Emma Harper (South Scotland) (SNP): The supplementary legislative consent memorandum is part of the process of our National Care Service (Scotland) Bill, which is now the Care Reform (Scotland) Bill. To what extent could a sectoral negotiating body for adult social care achieve the Scottish Government's aspirations for a national care service in relation to embedding fair work principles?

I remind everybody that I am still a registered nurse.

Karen Hedge (Scottish Care): Thank you for having me here today. The definition of the type of negotiation that we will have should be considered. There is a question about parity—you

see that in the current LCM. We have discussed that with trade unions, the Government and the Convention of Scottish Local Authorities.

On the issue of whether there is sectoral or collective bargaining, at the moment, due to the current negotiation arrangements, there is disparity between what can be accessed by people who work in the independent sector—whether they are working for private organisations, charities or employee-owned organisations—and by those who work in the statutory sector. For example, people working in the statutory sector have negotiated having their Scottish Social Service Council registration paid for. There is, therefore, a need to define whether we are talking about sectoral or collective bargaining.

The question of whether we would have parity with staff who are outsourced also applies in relation to the LCM. The issue is incredibly important and it is good that the committee is considering it as we progress with both the Care Reform (Scotland) Bill and the Employment Rights Bill. Our intention would be that that detail would sit in the care reform bill.

Dave Moxham (Scottish Trades Union Congress): From a trade union perspective, during the process around the various iterations of the Care Reform (Scotland) Bill, it has always been a priority for us to establish an underpinning of pay and terms and conditions for staff in the sector. That has been particularly relevant for staff who are not covered by other bargaining arrangements, such as agenda for change or the local authority rate.

As we are deliberating on how the legislation down south relates to devolved issues and the procurement-related sector here, it is welcome that the discussion is taking place and that sectoral collective bargaining—I take the point about the slight differentiation there—is high on people's agenda.

Things could always happen more quickly, but we are relatively positive about the developments that have taken place over recent years in taking forward the potential for bargaining architecture, and I agree with Karen Hedge that the care reform bill should legislate for that. I think that our job now is just to work out how, in legislative competence terms, that best interacts and engages with what is happening down south.

Lesley de Jager (Coalition of Care and Support Providers in Scotland): One of CCPS's concerns around the progress of legislation is that we need action now. We cannot wait for statute to make improvements to social care workers' pay—there is a desperate need for change.

As Dave Moxham noted, we have been developing a model over the past three years, which is, for all intents and purposes, ready to go on a voluntary basis—getting it up and running does not require a statutory underpinning, as it has been pretty much ready for some time. How long would the regulation-making process further delay our start? How many more Scottish people would be waiting to have their needs met or would have them poorly met because of high turnover and chronic staffing shortages? Care workers are continuing to struggle to make ends meet, despite being highly skilled and qualified key workers who do really demanding work.

Our request is that we not wait for legislation. We have a model that is ready to go. You have heard a reference to agenda for change and the progress that other national collective bargaining models have been able to make in improving terms and conditions. We do not need the legislation to be in place to improve pay and terms and conditions for the rest of the workers in the sector; we can move on that now.

Emma Harper: That answers what my next question was going to be, as I was going to ask about what else could be prioritised.

The Minister for Social Care, Mental Wellbeing and Sport, Maree Todd, has spoken about

"the Scottish Government's long-standing commitment to the principles of Fair Work, and more specifically, enhancing the experience of Scotland's social care workforce."

We know that the social care workforce is skilled. When I visit local care organisations and speak to the staff, I hear that they are doing a lot—even more than their equivalent healthcare support workers would be doing in a secondary care setting. I would be interested to hear how further funding of fair work initiatives would help make improvements, and whether that should be focused nationally or locally.

Lesley de Jager: Part of the remit of a consensual negotiating body—with all the stakeholders around the table, on an equal footing—would be to discuss where the money is best spent to have the best impact. For the past three years, the Scottish Government's working group has been working on a tripartite model, with the unions, employers and the Scottish Government, as the funders, around the table. Those three parties would work on an equal footing to negotiate consensus on sustainable and meaningful settlements that would deliver fair work for social care workers. The remit would be beyond purely pay; it would also look at other aspects that should be focused on to deliver fair work.

11:00

The legislation describes something that is a bit different, which is a tripartite body that would negotiate in the absence of the Scottish Government and would have the ability just to make recommendations. It is important that we do not lose sight of the fact that having all three parties around the table is important in ensuring that they are aligned on the priorities.

The working group's model, which is the one that we propose, is also democratic, as each group would appoint its own members, and the chair would be appointed jointly by the group. The member organisations would consult and take notes from their members, and the body would set its own remit, agenda and priorities. That democratic power would mean that the parties in the negotiating body could take note of their members' views, whether they were employers or workers, and understand what was important to them and what would have the best impact.

If it was enacted as written, the legislation would risk undermining some of that. Under the model that is described in the legislation, ministers would appoint members and the chair and would set the group's remit and direct its priorities, which would be far less democratic. In our view, it is less likely that that approach would address the key issues in the sector, because the quality and strength of voice in the sector would not be represented.

Importantly, we have been developing a voluntary model. All three stakeholders would be there consensually, because of their commitment to a common purpose. As we set out, and as Karen Hedge has alluded to, that purpose is about having parity across the sector for workers, whether they are in the third sector, the independent sector or are working within the national health service or local government. All those parties would have parity of esteem and parity of value in the way that they would be treated.

The legislation as it is currently written describes stakeholders being put together by regulations for purposes that are set by ministers, so a common purpose would not come out of the collective agreement of the group; rather, the purpose would be set by ministers. To your point about addressing the broader fair work principles, we think that it is really important that any model that is put in place is truly collaborative, consensual, and voluntary, and that all parties, including the Scottish Government, the unions that are representing workers and member organisations that represent employers, participate on an equal footing.

Karen Hedge: I have been in my role for almost eight years. During that time, I have been involved in the discussions about fair work in social care with Scottish Government colleagues and yet, despite our discussions, the rate of pay for care workers in Scotland who work in the independent sector has dropped. To me, that shows that there is a requirement to put fair work principles on a stronger footing. Having only voluntary conversations will not make a difference. Care workers used to receive above the living wage, but they now receive the living wage, which is wholly unacceptable.

Clearly, the current financial circumstances are challenging, but care workers' pay has consequences for staff retention and the other things that Lesley de Jager has already spoken about. In the interests of time, I will not repeat what she has said, but I will raise some of the things that have been discussed.

The fair work in social care group has three sub-groups: one on the mechanism for the payment of the uplift, another on terms and conditions, and a third on effective voice, which the conversation about the negotiation body would relate to. Funding relates specifically to the terms and conditions sub-group. Providers and those who work in the sector who are represented in that group have raised SSSC registration fees, access to better sick leave policies, better access to flexible working, and issues such as maternity and paternity pay. Work has been done to cost some of that and find out what it would mean for the sector, but, again, nothing was implemented, even though that group got to the end of that work, which evidences that we need something to put such work on a stronger footing, such as a negotiation body.

Dave Moxham: Your question started with funding, which I will address, and some of the answers moved on to the potential impact of agreeing the LCM based on the current arrangements that are being negotiated, so I will try as quickly as I can to deal with both of those issues.

On the funding, to be frank, it does not really matter whether you use UK legislation or Scottish procurement legislation, because, if the funding does not follow, it does not work. It does not matter whether you are talking about reserved UK legislation or devolved Scottish procurement legislation, if you ain't got the cash, it is not going to get funded, Government is not going to be at the table and it is not going to work.

The second question that the discussion moved into was more about whether agreement to the LCM impacts the current architecture that is being negotiated. That is where there is a difference of opinion. My view is that Government always holds the trump card. In a sense, the Government can create—either through procurement legislation or

other legislation—any negotiating machinery that it wants to, and every indication that we have is that the Government is committed to the tripartite, voluntary model that we have been talking about. The LCM confers on the Government the power to introduce that. Indeed, depending on the progress of the Care Reform (Scotland) Bill, it may already have introduced that before the Employment Rights Bill is passed.

The question is, what changes? Before the amendments that provoked the second LCM, our major concern was that the power of Scottish ministers was going to be limited, as the provisions of the UK act would apply in Scotland and Wales, too. That would have been a genuinely limiting factor and it would have failed to align the power of the Scottish ministers in relation to procurement and the delivery of social care with the conditions of the workers.

From our perspective, there is full commitment to the same process that we have heard about here, but we do not take the view that conferring on Scottish Government ministers the power to ensure that that happens diminishes that in any way.

Emma Harper: The Employment Rights Bill is speeding through the UK Parliament. There was not really any broad consultation on it by the Scottish Government, owing to when it was introduced by the UK Government. Is the fact that it wasnae really consulted on widely in Scotland going to be an issue? Does that impact on devolved social care infrastructure, for instance? We have already started to talk about that.

Karen Hedge: Absolutely. The delivery of social care in Scotland has a local nature. The populations living in our urban areas and those living in our rural and remote areas require different things, particularly with regard to those staff in rural areas who work in home care and have to travel long distances. There is concern that, because the legislation is being pushed through at such a rate in Westminster, without consultation with those living, working and employing people in those conditions, there might be a lack of understanding of their needs and the way that services are commissioned and procured in Scotland.

We have a lot more collaborative working in the social care sector in Scotland than is the case down south, and there is a question about whether the legislation would allow for a model such as that used by the Granite Care Consortium, with care workers and care organisations sharing route planning and back-office functions. When legislation goes through Parliament, we need to ensure that it enables the system to continue to flow and flex to meet the needs of local people in Scotland. We need consultation to happen here, but we also need it to be done by Westminster, to take account of that.

On the financial aspect, we know that fair work requires fair commissioning and procurement. Work that has been done around the Care Reform (Scotland) Bill has looked specifically at fair commissioning, and the Scottish Government is now looking into fair procurement. Those issues will not sit within the bill, but the fact that the Scottish Government is taking that work forward is particularly important and will relate to whether the sector is able, in reality, to then pass on those fair work terms and conditions. Without cognisance of both settings, the bill could fail.

Emma Harper: Okay. Thank you.

David Torrance (Kirkcaldy) (SNP): Good morning. What are the challenges for the adult social care sector in relation to establishing a national negotiating body? What are the implications and potential risks of the provision that is contained in the LCM?

Lesley de Jager: The challenges in establishing a national negotiating body for the sector are in the fact that the sector is very disparate. There are lots of providers with lots of specialisms delivering lots of types of care and support. It is not homogeneous at all. There is a huge amount of variety in the sector. The challenge for us, as membership organisations, is to ensure that we adequately engage with providers across the sector in positioning where we want to move to and that we take views from different parts of the sector to make sure that our position in that negotiating body is well informed and reflective of our membership and the variation in it.

There are a number of risks. There are risks to our organisation as a membership body, including what the proposals mean for how we operate and the types of service that we deliver to our members. There are also risks in setting up a negotiating body altogether. One of those is around industrial action. I hope that we can learn from other sectors. For example, Colleges Scotland released the comprehensive Strathesk Resolutions report in 2022. The sector had experienced seven rounds of industrial action over the first 10 years of efforts to put in place a national negotiating body. We have looked to take into account a number of learnings from that report in the design of the body that we propose. A key reflection that I have taken away from that is that the design absolutely needs to be tripartite, with the Scottish Government sitting round the table.

The Strathesk Resolutions report states:

"A significant influence here seems to be the way that the threats and actuality of industrial action have been used

to lever last-minute ministerial pressure to reach a settlement.

This has ultimately undermined the credibility of both negotiating teams, seriously disempowering the negotiating process itself. In consequence, a cycle of negative expectation has arisen that foresees a break down in pay negotiations as inevitable, followed by strike ballots, probable industrial action, and a settlement eventually reached with some form of intervention from SG."

We do not want to end up with a similar situation in the social care sector, so we need to make sure that we take on board the learnings from that. The set-up for Scottish colleges was a bipartite arrangement, and they were not empowered to make those decisions, because the Scottish Government was not sitting round the table with them. Let us make sure that we do not make that mistake again. We have sought to take on board other recommendations, such as independent chairing of the negotiating body, in designing what sectoral bargaining could look like so that it operates successfully in social care.

Karen Hedge: I wish to raise the challenge that we have as a sector with low union membership. Given that situation, how do we enable the sector to have an effective voice? There is also a need to further explore the work that the Scottish Government has been doing in the fair work in social care group to enable that to happen. For instance, we have two very large employee-owned organisations in Scotland that have different mechanisms for ensuring an effective voice in that space. We know that some care workers are using food banks right now, so how do we make sure, using an effective voice, that the funding of their union membership is covered so that they can be members of unions should they choose to be?

That needs to be part of the negotiation. It is a bit of a chicken-and-egg scenario; we know that unionisation is likely to lead to care workers having better terms and conditions, but they cannot necessarily afford to do that in the here and now. That needs to be considered when we move to the proposed legislation.

On the back of what Lesley de Jager said about the tripartite model, last week I met the Welsh Cabinet Secretary for Health and Social Care and other members of the Welsh Government. They are also working on a tripartite model because they see that, based on the evidence that Lesley discussed, it is an effective mechanism.

11:15

It is worth exploring why we are proposing that model. It is because, over the years, we have had discussions between commissioners, purchasers and providers but we have not been able to deliver on the ground—not everywhere, although there have been areas where we have been able to deliver. However, understanding how the money flows from one end of the system to the other requires the presence of the Scottish Government in that space.

Our organisations will need to build in mechanisms to canvass our members to make sure that they are represented effectively in the body. I know that the CCPS has been working towards that, and Scottish Care already has a mechanism for the national care home contract, which we would look to extend to cover our other members that deliver different forms of social care. So, I suppose that that is a note to the committee to say, "We're on it."

Dave Moxham: The original question was about what the difficulties are. They are manifest; added together, they are not as important as the shared goal of achieving the respect, consistency and security that care workers need, but they are manifest.

As we have talked about, two bargaining units are already established. There are enormous regional disparities. There are three models of delivery: private, third sector and direct. There are also definitional issues. There is a big lump of things to deal with. The point was made, so I will address it: we look forward to working with employers to increase trade union density in a sector in which it is quite hard to organise, because of its disparate nature. We are pleased to hear that the benefits of union membership and negotiating are recognised.

I return to the fact that the model that we are talking about—the one that is being developed—is the best way to do it. I remind the committee and everyone that there is a broad consensus on that. As far as we are concerned, there is nothing in this LCM that should prevent it from happening, and happening immediately. There is nothing in the process that should slow down the discussions that are taking place on the creation of a constitution for the negotiating body.

David Torrance: It was mentioned that services are delivered locally and, in many cases, as Karen Hedge said, in remote areas. Will there be any conflict with representation from union reps at the local level? Would they be missed out of negotiations and would it be difficult to bring that local element into negotiations?

Dave Moxham: One might look at other bargaining arrangements, even though, in many ways, they are different. The local government settlement is agreed by COSLA with the unions involved. However, there is a whole set of other negotiations that take place council by council so, for example, the terms and conditions in Dundee might look different in many ways from the terms and conditions in Edinburgh. They will be

underpinned by certain things that are agreed as part of the national framework for agreement, but other things will continue to be negotiated by unions where they are present and staff representatives where they are not. Those would not be touched by a central collective bargaining agreement. The only question is what is in play and what is not.

From a trade union perspective and, I think, an employer perspective, a central agreement would not remove a range of other matters that are subject to local discussion and negotiation.

Karen Hedge: Several care providers already recognise trade unions and negotiate with them locally. Similarly, providers work closely together—for example, in Midlothian, they established a block contracting model for providers which enabled them to offer set hours for care workers. That had consequences of better staff retention and so on. It is an excellent model.

A national negotiation, however, would enable the minimum standard to be worked from, built on and flexed locally as and when required—it would not matter whether it was in a local area or specific to one organisation. In addition, and fundamentally to this process, the tripartite model—if it is that one—would hold all partners accountable for the flow of the funds.

Carol Mochan (South Scotland) (Lab): The discussion is really helpful. The element of the barriers to trade unions is important, because there is no doubt that, in our regions, we come across employers who put up barriers to or bring up fears around care sector workers being active in the trade union movement, which is totally unacceptable. It is good to hear about that from witnesses such as you. We hope that people will approach us about anything that we can do to help.

My question relates to the agreement that seems to be in place but has not actually gone anywhere, which is frustrating. First, what are the barriers and what can our committee do to try to move that forward? Secondly, would getting the LCM through the Parliament nudge the agreement closer and allow us to get it done?

Lesley de Jager: On the first part of the question, as far as I know, the barrier at the moment is the Scottish Government. I was part of the drafting group representing employers who have been developing the constitution for the proposed body. We have pretty much reached agreement on what it should look like, and it has gone in for ministerial review. It has been several months now and we have not had feedback on whether it has approval and whether we can move forward with it.

Reading between the lines, my understanding is that the introduction of potential legislation and the need to see how it flows through might have put the brakes on the process. I get the sense that the introduction of legislation has slowed down the progress. However, we do not need the legislation to be in place to get the process going—we only need ministerial approval. As employers and as unions, we are all ready to get round the table—we only need the Scottish Government to say, "Yes, we are going to get round the table with you and engage."

Dave Moxham: I will be slightly cautious, because, as I am sure the committee knows, three unions are involved in those discussions. It is an on-going negotiation and I will not jump ahead of it, although I do not dissent from anything that I have heard in the previous contribution, if I can put it that way.

I could see why the period between the publishing of the bill—in particular, around November and December when it was involved in first reading—and the clarification on the powers of the ministers, which appeared in the amendments and is now subject to this second LCM, might have caused a problem, because you are potentially looking at a situation in which UK legislation would say, "You cannot do that any more."

However, the proposed UK legislation, as tabled and now amended, does not say that. Therefore, any impediment that might have existed—I underline the word "might", because I do not know—should not exist now, because the bill, which is overwhelmingly supported in the House of Commons and by the majority of the parties in the Scottish Parliament, looks likely to pass. If this LCM is passed, the Scottish Government has a clear trajectory and there should be no impediment to making progress. Were there to be further impediment, it sounds as if the responsibility would lie at the Scottish Government's door.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): COSLA's submission says that COSLA would request that all directly employed local government employees in the sector be removed from the scope of any negotiation arrangements. How would that work in practice? Thinking about the parity of esteem and everything that has been sought, could removing local government employees working in social care from the negotiations work? What would be the consequences? I know that from COSLA's perspective it is about the job-matching processes in local authority areas. Could we explore that a bit?

Lesley de Jager: As I mentioned, we have been developing an underpin model. We are

looking at the idea of setting minimum sets of terms and conditions across the sector. However, clearly, some parts of the sector—local government and agenda for change—already have collective bargaining on a national basis in place.

We debated long and hard about how those could or should interact. Where we landed was that the gap is so big that it is not an issue that we need to worry about now, but it could be in the future. We are aiming to close that parity gap between the public sector and workers across the rest of the sector.

We have proposed language that says that the negotiating bodies for agenda for change and for local government should pay due regard to what is happening in the sectoral bargaining arrangement when they go into their negotiations. That does not necessarily mean that they would be bound by it, but they should look across, ask what was agreed and say, "Let's take that into account when we look at how that would impact on our bargaining arrangements." They can sit alongside each other.

Karen Hedge: That raises concerns for me about the timeliness of the procedure. We already know how long it takes for agenda for change to settle, and that has implications, particularly for the care home providers who offer nursing, because it is difficult to calculate the pay differentials. You do it in advance, but it does not necessarily add up, so you set your budgets before you know how much you will be paying your staff. Given the financial constraints on the sector and the number of providers that have closed, even just this year, there are huge concerns about the viability of the sector. Whatever happens, we need to consider the timeliness and how organisations in the sector can be sustainable and viable on an on-going basis.

In relation to COSLA's submission—I am sure that I have said this to the committee before—I wonder about how this relates to job evaluation. The work that a care worker does now is very different from what they did several years ago. The work is moving into the space of undertaking more tasks that were previously considered to be health-based tasks, and many more specialist tasks such as percutaneous endoscopic gastrostomy—PEG—feeding, the use of stomas and support for people who have advanced neurological conditions and dementia. The clinical sign-off aspect that is required now is much different from what it was even three years ago.

I wonder whether there is a requirement for local authorities to undertake job evaluations, which would significantly increase the pay, terms and conditions that care workers should be entitled to. That would throw things out of kilter and create fiscal challenge.

As Lesley de Jager said, there is already a significant gap between local authorities and the independent sector. Funding the closure of that gap poses big questions for the Government. We should remember that, if that care was not happening in care homes or in people's homes, it would be happening in clinical settings, but we do not have the capacity to do it there, nor should people have to have it there when they could have it where they live.

Elena Whitham: That is helpful.

Dave Moxham: I associate myself with those comments, particularly Lesley de Jager's point. The day that the outcomes of our negotiating body begin to put pressure on direct sector pay—we will deal with that problem when we come to it—will be a very happy day, to be quite honest.

11:30

Sandesh Gulhane (Glasgow) (Con): I refer to my entry in the register of members' interests. I am a practising NHS general practitioner, a current British Medical Association member and a former chair of the GP trainees committee.

At the moment, what is the difference between what a local authority pays itself for a care home resident compared to what it pays for a resident who is in a private care home?

Karen Hedge: I assume that you are asking about what it costs the local authority to deliver care, in comparison to what it would pay a private provider to deliver the equivalent care. At the moment, local authorities pay a care home just under £1,000 per week per resident. It costs three times that for a local authority to deliver the care, although we do not know for sure what the figures and statistics are. It would be helpful to have that information but, given how busy things are in social care, we have not put in a freedom of information request, in order to spare them that challenge.

Some local authorities, such as Ayrshire, have recently published information on their costs, as has NHS Highland. Recently, the Liberal Democrats prepared a report on Highland with more detail on local costs. We know that it costs in the region of three times as much for local authorities to deliver care, but it would be helpful to do more work in that space.

Sandesh Gulhane: Let us just say that we are looking at around three times as much. Is it fair to say that we know that terms and conditions are better for staff who work in local authority care homes?

Karen Hedge: Pay and pension are both higher, so that is fair.

Sandesh Gulhane: That comes with costs that are three times higher. We all agree that social care staff need better pay and terms and conditions, but if we were to create bargaining that would, I hope, at least create parity of esteem with local authorities, or possibly raise the overall standards, how would that be affordable without proper funding for the private care home sector?

Karen Hedge: Proper funding is required, hence the need for a tripartite model that would follow the funding from source to the execution. One of the great things about the independent care sector is that innovation happens and we can consider new models of care. It fosters entrepreneurship, which is what is required to ensure that we move at the pace that the social care sector requires if we are to deliver what people are looking for in this century when they access care and support.

The independent care sector offers the ability to flex as well as to make savings in other spaces and places. For instance, the uptake of new technology has been higher in the independent sector than in the statutory sector, which has enabled people to deliver more care and support and focus on the streamlining of back-office functions. That is how we can continue to offer greater savings in the sector.

When it comes to what we offer our staff, funding must be provided. At the moment, we know that the national care home contract does not offer funding lines for technology. For the sector to be able to adopt and use technology, the funding has to come from those who are paying privately, not from Government-funded residents. There is a huge need to open the conversation around that can of worms.

Sandesh Gulhane: To clarify what you have just said, are residents who are paying privately to be in a care home subsidising statutory local authority patients?

Karen Hedge: That could well be the case. The model of care is currently based on the national care home contract cost model, which does not include funding lines relating to all the care and support that is delivered for people who are living in care homes. That suggests that there is a gap between Government funding and what care homes are required to deliver, including technology as well as meeting building guidelines and requirements from the Care Inspectorate, along with the changes that have been made post-Covid on infection prevention and control measures—there is a list of 18 things. I am sorry; I cannot remember them all, but I can get them to you if you would like them.

Sandesh Gulhane: If you could, that would be wonderful.

Karen Hedge: Yes, of course.

Sandesh Gulhane: I want to open up the questioning. In a scenario in which money is very tight—which is where we are right now; local authorities are consistently saying that they have no money—if more money is not given to care homes in the independent sector, how can there realistically be a significant improvement in pay and conditions? How can that happen if we do not level up what a local authority pays the independent sector compared to what it pays itself?

Dave Moxham: There are two points to make there. First, I do not have the figures to hand, but I would suggest having a little caution. I think that Karen Hedge implicitly accepted that point when she assumed a ratio of 3:1 between the costs for direct public provision and those for private provision. It would be quite a feat to achieve that while also paying shareholder profits, including for people who live in tax havens. So, I am not sure that I accept the premise.

Sandesh Gulhane: Forgive me, but if shareholder profits did not exist—and even if a local authority paid itself only twice as much as the independent sector—would there still be enough money? If we took away every single penny of profit, would there really still be enough money for the independent sector to pay people the same as local authorities do?

Dave Moxham: You are inviting me to make my second point, which is that, whatever the nature of provision, more money needs to be put in the system. That is a matter of absolute unity between us.

The premise that I do not accept is that money being tight is the answer to the question. Money is tight because we choose that money will be tight in this area rather than in another; we choose to raise a little bit less in tax than we might to give dignity to patients and workers.

My point is less about the comparison being made and more about the fact that the system needs to be adequately funded, whatever the model of provision, to provide decent levels of care and decent pay in the system. I think that that is a point of absolute unity among the three of us.

Karen Hedge: On the back of what Dave Moxham has said, I will forward to the committee a copy of our “Myth Busting Compassion in Crisis” report, which was published last week and provides updated figures on the amount of profit that the care sector has made. The profit is less than half of what a bank thinks that it should make to be financially viable. We also have to consider that those funds must be reinvested into the care homes, the capital infrastructure and training and development for staff. The reality is somewhat

different for Government-funded residents than the picture that Dave Moxham has painted, so I am happy to share that report.

I should say that the report's contents are taken from other reports by independent organisations; we have just put all the information into one place to make it easy to read. It is not information that Scottish Care has put out—it is information from other organisations.

Sandesh Gulhane: I have a final question. What has been the impact of the national insurance rise?

Lesley de Jager: It has been pretty catastrophic.

Karen Hedge: It is devastating.

Lesley de Jager: "Devastating" and "catastrophic" are the two words that I would use to describe the impact that it has had on our members. The latest estimate is that there will be £34 million of additional costs for the non-profit sector. Local authorities are telling our members that there will be no increase in payments to fund the national insurance increase, and, as a result, our members are being sent in to have what are very difficult conversations with their boards. They are projecting loss-making years ahead as well as major deficits, and they are having to use reserves just to keep the wheels turning and to keep providing care and support to the people we support. It is an extremely worrying time for providers, who are worried every day about how they will keep the lights on and keep providing the care and support to the people who so desperately need it and who are some of the most vulnerable people in our society.

Dave Moxham: We recognise the figures that have been published by the cabinet secretary on the impact of the rise on the Scottish public sector and the degree to which that has been compensated through the Barnett formula mechanism. It looks to us that, across the whole public sector, there will be a shortfall of around £300 million. Therefore, the figures that Lesley de Jager has put forward seem accurate.

Karen Hedge: For the independent sector, which incorporates the not-for-profit sector, the shortfall figure is sitting at around £84 million. This financial year, we have already seen a number of small care homes intimating that they might close. That poses a real risk to the local community, with people now having to move two hours away from their home, their family and the community that they grew up and worked in. The impact on the sector is absolutely huge, and I am incredibly worried about what is going to happen.

I will say that the Scottish Government has responded incredibly positively and has stepped up with a viability group, which meets every week with Scottish Care and COSLA to look at mitigating factors for some of those risks. We will push things as far down the road as possible, but, given that we are already seeing closures, the reality is that we will see a tendency to move from smaller care providers to larger ones.

What we are seeing for our home care providers is a change in the eligibility criteria in local areas, which is resulting in fewer people being able to access Government-funded care and support. It means that there are fewer commissioned hours from care providers. It is difficult for people to see the impact of that. People can see the impact of the closure of a care home on a community, but they do not necessarily see the same when it comes to home care providers. What happens is that a home care provider delivers less care and support, and what that means on the ground is that they are hiring fewer people. The impact is hidden to a certain extent, but the reality is that fewer people get a service and fewer people have employment in the local area.

Lesley de Jager: On the issue that we are here to talk about today, which is the terms and conditions for workers in the social care sector, the ability of providers to give any kind of meaningful pay increase or to improve terms and conditions for people has been completely obliterated or, at least, severely challenged by the increased costs. In fact, the first industrial action in social care in 10 years is to take place in a couple of weeks.

Brian Whittle (South Scotland) (Con): Good morning. I thank the witnesses for their evidence so far, which is painting a picture of quite a disparate social care sector. One thing that they have talked about is the lack of parity of esteem between public and private social care, which is growing. As the independent sector has limited control over costs and how it can deliver social care, it does not have the same potential to flex that local government has. Following on from my colleague Sandesh Gulhane's questions, I wonder how the national negotiating body might affect or impact commissioning or procurement decisions.

Karen Hedge: That, fundamentally, is why we need a tripartite model—to make sure that there is an understanding of the flow of the funds and resources that are required to enact and enable whatever is negotiated within that body. We need to remember that new models of care and support, which would actively go a long way towards freeing up some of the barriers in those local areas, could be part of that conversation, too. At the moment, decisions are made but it is sometimes difficult to see the funds coming through at a local level, and that is what a tripartite model would enable in that space.

Dave Moxham: I have, to one extent or another, been involved in this discussion for around 20 years, and it has always been understood that it is not only the quantum but the models of commissioning that matter. One of the factors in that respect is potential security and certainty for those delivering the services; even if some of the factors do not fall within the immediate terms of reference of the negotiating body, they are nevertheless bound to be conditioning factors. For example, if I were a voluntary sector provider, or a representative thereof, I might want to say how much more easily it would be for me to deliver X or Y, based on the fact that I had more certainty in my funding stream. There is an undeniable interrelationship between models of commissioning and the ability to reach agreements on a national level, and that is bound to be part of the conversation.

11:45

Brian Whittle: Perhaps I can develop that slightly. In any negotiation—and I think that we all agree that the terms and conditions of our care sector need significant improvement—there are going to be cost implications for the private and independent sectors. If there is no further investment, there will be more closures in the independent sector. Can you explain the impact that that will have on the sector as a whole?

Karen Hedge: You are absolutely right—if money does not come in to cover the costs, there will be closures. The same would happen if I went to the supermarket and paid less for a loaf of bread than it cost the supermarket to provide it. Such a situation would no longer be sustainable and, at some point, providers would close down.

Other risks are that some of the staff become self-employed, which is more likely to happen in home care. There are questions about the legality of that, as it would remove people's access to employee rights, with adverse effects that would be the opposite of what we are trying to achieve through the negotiation. There are two routes down which that could go: either they would find a different way to pay staff less or they would offer less in their terms and conditions.

We need to get a handle on that to enable sustainability. If we do not have access to the right terms and conditions and pay for our staff, and if they get less, we will see what we are seeing at the moment—a very transient workforce. It makes it difficult to hold on to our workforce and it means that people leave the sector to undertake other roles. I have nothing against hospitality, but people working in that sector are currently receiving the same rate of pay as those working in the social care sector, and you get tips if you work in hospitality. It brings into question how we, as a country, value people who require access to care and support, if we value that sector more.

As I have said, if a care home closes, it might mean people having to travel for up to two hours to visit their loved ones. One of my colleagues, who has just joined our board, told us that one of the residents in her care home is the librarian who helped her when she was a kid, and one of them is one of her teachers from school. We would lose the community connection and the ability to give back to the elders who were there for us in our younger years. That community relationship and sense of community would be lost, and that would be a failure for Scotland.

The Convener: We are running over time, so it would be appreciated if you could keep your questions brief.

Brian Whittle: I will not ask my next question, then.

The Convener: Okay—thank you. If the panel could be succinct in their responses, too, I would be very grateful.

Gillian Mackay (Central Scotland) (Green): Good morning, panel. I will try to stick some of my questions together, given that we are running short of time.

Should any national negotiating body include staff who work in children's social care services? Also, given the number of professionals in that area, how easy is it to define and understand that workforce? If you feel that they should be involved in that body, how do we approach their potential inclusion to ensure that they have a meaningful voice?

Dave Moxham: I am going to keep taking this back to the LCM and the legislation, instead of speaking more generally.

There is a strong case for that power to be devolved to the Scottish Government. What form any consequent negotiating body, or offshoot of that, might take, it would take too long to say and I might not be the right qualified person to do it.

However, what you have suggested makes sense, given that, at the moment, child social care pay rates flow from adult social care pay rates—or at least the minimums do. The average council will say, "This is what has been decided as a minimum for adult social care—we will apply that to children's care." Clearly, there is some form of interrelationship there, so there is something to deal with. There is a case to be made for child social care to follow the same route as adult social care, but we do not have time—and I might not have the expertise—to say exactly what that should look like.

Gillian Mackay: Thank you. Do any other witnesses want to come in?

Lesley de Jager: Our members have made it very clear that a national body must include the ability to negotiate for workers in the children's sector, too. There is no clear delineation, particularly in the third sector, between providers who provide support and care to adults and those who provide support and care to children—indeed, many organisations do both. People do not suddenly turn from being a child into an adult overnight; there is a difficult transition, particularly for people who are vulnerable, and to carve out a distinct policy sector and say that it will be treated differently does not take cognisance of the fact that these are human beings who are moving through different stages of their lives. We need to ensure that equal provision is in place, whether staff are supporting someone who is 17 or someone having their 18th birthday.

Karen Hedge: Our members provide care to adults only, so I will abstain from giving detail. However, with reference to challenging transition periods, not only is there one in the transition between children and adult services, but there is a similar challenge at about the age of 65, when there is a significant drop in the funding available to individuals.

The Convener: Do you have any further questions, Gillian?

Gillian Mackay: No, thank you. I am all good.

The Convener: Thank you for being so succinct.

I have another question about the social care workforce and last week's announcement from Westminster about the immigration cuts in relation to social care workers. Lesley de Jager talked earlier about a shortage of workers being one of the most challenging things for the workforce in a key sector. Do the witnesses have any final comments on that?

Lesley de Jager: It is another blow to the sector from Westminster. I would also reflect that Scotland is already a bit more progressive in social care than England is. It is not perfect—indeed, it is far from perfect—but at least it is aspirational. The language that we are hearing from the Scottish Government is much more supportive of the sector than the quite shocking rhetoric and language that we have been hearing from the UK Government, and we were pleased to hear the minister rebut such rhetoric when she spoke on the matter a few days ago.

I urge us to think more aspirationally and progressively instead of saying the things that Westminster is saying. We can make a change in spite of UK Labour legislation, not because of it or thanks to it. We have a way forward; we do not need to rely on what the UK Government is doing and, actually, Scottish people deserve better than what the UK Government is putting in place for us. The change to immigration legislation is another blow to what is an already very stretched sector.

Dave Moxham: As a matter of principle, I refuse to combine anything that I say about migration with anything about the labour force or anything on economistic grounds. I remind people of the enormous contribution that migrants make to our wider cultural wellbeing.

However, if we are talking about the direct impact on the sector, I think that it will be very grave. Arguably, it could be even more grave in Scotland, because—and this brings me back to the point about the labour market—there is a generalised case to be made for migration in Scotland that might not prevail in the same way across the UK. That underlines our view that migration powers should be devolved to Scotland so that we can meet our particular cultural and labour market needs.

Karen Hedge: Scottish Care will be releasing the results of the report that we have produced on the back of the response to the immigration challenges and the announcements by the Westminster Government. We can send the committee a copy of the report tomorrow, once it is available. In fact, I understand that there will be a meeting this afternoon with the First Minister on the report, an embargoed copy of which the Government is receiving. If I were to tell you that we made the survey available, I think, late last Thursday—or maybe Friday morning—and that, by yesterday evening, more than half our members had responded to it, it might show the evidence of the feeling from the sector.

At the time of the Brexit negotiations, we were involved in discussions about a devolved set of responsibilities for immigration for Scotland. Our position on that has not really changed. The requirements for Scotland are often different, particularly for care homes. We find that one member of a family will move here to work in a care home, and they will then bring other members of their family, who will work in that care home, too. For that reason, changes to current visas will affect not just an individual; we will see whole families being uprooted from communities, and it will have a huge impact.

Brian Whittle: On that particular point, have we, through immigration, been using cheap labour just to keep costs down? That is my only caveat about continuing to have such immigration—that the pay level is sustained.

Karen Hedge: That is a very good question, and it is good to be able to respond to it; it is the

benefit of the work that we have been doing with the fair work in social care group. We have a commitment to pay the living wage, and it applies to all social care staff. I will still say that the pay is not enough, and that is the case for all social care staff, regardless of where they are from. However, the commitment that everyone is paid equally remains.

Dave Moxham: I recognise the economic reality that lies behind what you have described. Indeed, we have always argued that increased powers for Scotland over migration go hand in hand with increased powers over employment, regulation and the mechanisms that we are talking about, because of the risk that is being highlighted. The truth is that the negotiating position of a completely decimated social care workforce might increase as a consequence of a labour market crisis, but that is not something that any reasonable person would want to happen, given the need to care for so many people in society.

The Convener: I thank the witnesses for their attendance and their evidence, which has been very helpful to the committee's scrutiny of the LCM. The committee will just continue with its work, but the witnesses should feel free to leave, if they wish to do so.

Subordinate Legislation

Human Tissue (Supply of Information about Transplants) (Scotland) Regulations 2025 [Draft]

11:57

The Convener: The third item on our agenda is consideration of a negative instrument. The purpose of the instrument is to create a duty for relevant clinicians to notify the Human Tissue Authority if they are made aware that their patient has received a transplant outside the United Kingdom or if they have a reasonable suspicion that specified offences under human tissue or modern slavery legislation might have been committed.

The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 13 May 2025 and made no recommendations in relation to the instrument. No motion to annul has been received.

Emma, do you wish to make a comment?

Emma Harper: I just want to identify the purpose of the instrument, which seems to be about supporting our being better able to procure data on organ transplantation, organ recipients and out-of-country transplantation. I am a former liver transplant nurse, and I have experience of kidney and pancreas transplants, too. We know that people move around the planet, and they might come to Scotland as the recipient, quite rightly, of organ donation, so I am interested in finding out how the instrument will support better information gathering.

The Convener: Do you have a proposal, Ms Harper?

Emma Harper: My question is whether we should write to the Government to ask for clarification on the instrument's purpose and the ability to gather information and to ask how we support clinicians to ensure that they are aware of it.

The Convener: Is the committee content to write to the minister on that basis and to postpone consideration of the LCM?

Members *indicated agreement.*

The Convener: I suspend the meeting briefly to allow for a change of witnesses.

12:00

Meeting suspended.

12:04

On resuming—

Right to Addiction Recovery (Scotland) Bill: Stage 1

The Convener: The last public item on our agenda is continuation of the committee's stage 1 scrutiny of the Right to Addiction Recovery (Scotland) Bill. We will take evidence on the bill from Neil Gray, Cabinet Secretary for Health and Social Care, and his Scottish Government officials, Laura Zeballos, deputy director, drugs policy, and Morven Davidson, who is a lawyer in the legal directorate. We will move straight to questions, starting with Brian Whittle.

Brian Whittle: Good morning. I have an initial framing question about your understanding of the bill. It is incredibly difficult for somebody who is caught in a loop of addiction to decide to ask for help. The whole point of the bill is that, if that help is asked for, it is forthcoming timeously. Is that your understanding of what the bill is trying to achieve?

The Cabinet Secretary for Health and Social Care (Neil Gray): Yes, it is. It is important to set out at the outset that, although the Government is neutral on the bill at this stage, while we await your good work and the further evidence being collated and compiled, it is fair to say that we support the intention of the bill, which is to ensure that there is timeous access to support when people request it. There are measures in place to support that in a broad sense, through the medication assisted treatment standards and various other elements that are already in train, but the general principle of the bill that Mr Whittle sets out is also my understanding of it.

Brian Whittle: Given that, are there any barriers in relation to the Scottish Government's ability to secure delivery of the rights as set out in the bill?

Neil Gray: Could you frame that question again, please?

Brian Whittle: Does the Scottish Government's perspective anticipate any barriers in relation to its ability to secure delivery of those rights?

Neil Gray: Through the bill?

Brian Whittle: Yes.

Neil Gray: Yes, and those issues have come through in the evidence that has been provided by the likes of Public Health Scotland and the Royal College of General Practitioners. Some of those who have contributed evidence have suggested that an unintended consequence could be those rights becoming exclusionary for only those who are able to follow a particular path.

We are very clear, as Mr Whittle set out in his opening question, about the challenge for somebody who is in a situation where they have a substance dependency. They will probably have had varying degrees of interaction with statutory, community or voluntary services, and their decision to come forward to seek help is in itself a momentous one that we should support and embrace. However, we must make sure that a GIRFE—getting it right for everyone—approach is taken at that point. It should be person centred, and there should be a recognition that an abstinence-based approach at that initial stage of seeking help is not for everybody. There are other ways of getting people to a point of finding their own recovery, which could include going through residential rehab or various recovery treatment options. The MAT standards already provide for the timeliness of how that should be delivered, which is within hours of the first presentation.

The most recent quarterly data shows that the 90 per cent target is being exceeded at the moment. That is not to say that there is not more work to be done there—there is, because there are gaps in certain parts of the country—but the work that has been done through the national mission over recent years has certainly improved the picture on people accessing support and help when they ask for it, which is the point that Mr Whittle raises.

Brian Whittle: Thank you for that. Given that the bill is at stage 1, would any amendments be required to enable its successful implementation, from a Scottish Government perspective?

Neil Gray: I cannot comment on that at this stage, because we have taken a neutral position on the bill and we are reserving our judgment until the conclusion of the committee's work. We will obviously rest on the work of the committee and the expert opinion that comes through in evidence in order to arrive at the Government's position thereafter.

Brian Whittle: I will leave it there just now, convener.

Elena Whitham: Good morning. I am interested in exploring some issues relating to the "National Collaborative Charter of Rights for People Affected by Substance Use" that was developed by the national collaborative and everyone who played a part in it. More generally, I am also interested in the enforcement of individuals' rights and how all that interplays with the bill. The cabinet secretary will be very aware of the launch of the charter of rights, which states:

"Once the proposed Scottish Human Rights Bill becomes law these internationally recognised rights"

as set out in the charter of rights

"will also become enforceable in our tribunals and courts".

Evidence from the Scottish Human Rights Commission noted that some of the rights that the charter of rights sets out are not yet enforceable in domestic law, because they have not been incorporated, while Audit Scotland noted that people are still facing significant barriers to getting support. We know that that is due to stigma and limited access to services in rural areas, for example. How would the bill as set out complement the charter of rights for people who are affected by substance use, or could it come into conflict with it?

Neil Gray: I will bring in Ms Davidson to provide more detail on that in a second. Ms Whitham is correct in her assessment of the intended direction of travel of the charter and legislation. Along with the First Minister, I was at the launch of the charter, which is an internationally recognised piece of work that further embeds service users' understanding of their rights to access treatment and services and the greater support that those things should provide. I cannot take a position on the potential impact of the bill, but the committee has heard evidence that suggests that it has the potential to conflate some the elements of rights and the treatment that is available. Should the bill be enacted, I believe that it would be the first time that a right to a treatment would be provided in legislation. That is not incorporated in any other aspect of health and social care. In and of itself, that is a potential challenge.

Morven Davidson (Scottish Government): On how the bill would interact with the charter of rights, the charter does not create new rights as such. It draws together existing rights that are already available internationally and domestically. The purpose of the charter is to make those rights more accessible and to enable service providers to adopt a human rights approach. There is no conflict between the charter and the bill in a legal sense, as the charter is not a legislative instrument and it and the bill would sit side-by-side. The charter draws on existing rights that are already available in the drug and alcohol treatment sphere.

Elena Whitham: If the bill were enacted, how might it align with any future human rights bill in Scotland? The proposed human rights bill has been delayed and will not be enacted during this parliamentary session. The current Scottish Government has promised that it will tick over into the next parliamentary session and that it will be lodged then. I am interested in understanding how this bill might align with a Scottish human rights bill.

Neil Gray: As there is legal interaction on the matter, I will defer to Ms Davidson.

Morven Davidson: The Scottish Human Rights Commission's evidence to the committee touched on that. The basic legal position is that legislation is capable of incorporating international human rights. States are given a wide margin of appreciation for how they can incorporate human rights into domestic law. The question of whether the bill is an appropriate vehicle to do that or whether it would achieve effective incorporation is a question for the member in charge of it.

Elena Whitham: The last area that I will look at is the enforcement of rights. Thinking about the current situation rather than a hypothetical one, although we do not have a crystal ball, let us assume that a Scottish human rights bill will be lodged in the next session of the Parliament. I would be interested to hear what steps the Scottish Government is taking to ensure that people who experience substance use are able to realise their existing rights in the absence of this bill, as it is proposed, and in the absence of a Scottish human rights bill that would underpin and make those rights enforceable. We hear that people are not always able to realise the treatment that they seek in their local areas. Right now, there is an enforcement gap in the system, as people are not able to challenge decisions effectively or do not know the routes that are open to them.

12:15

Neil Gray: We strongly believe that we are compliant on a human rights basis with the services that are being provided. There is more work to be done, which I set out in my initial response to Mr Whittle. The charter provides us with a greater basis from which we are making sure that those who are seeking to access those services understand what their rights are and where they can turn in order to access the services on a human rights basis. Making sure that the charter is grounded in that position was a central focus—as Ms Whitham will know from her previous experience—of the work of the national collaborative, and it has garnered international recognition as a result. However, I will turn to Ms Davidson on where we are with enforcement at the present time.

Morven Davidson: Do you mean the enforcement of current rights that are available in law?

Elena Whitham: Yes.

Morven Davidson: It might be helpful if I talk a bit about what those rights are and how they are accessed. There are a number of international and domestic human rights that are potentially relevant to the treatment of drug and alcohol abuse. Some examples are article 2 of the European Convention on Human Rights, which protects the "right to life", and article 3, which protects individuals from torture and inhuman treatment. Those are rights that are currently enshrined in our

domestic law and they are enforceable through our domestic courts.

You touched on international obligations. The one that is most relevant here is article 12 of the International Covenant on Economic, Social and Cultural Rights, which protects the right to

"the highest attainable standard of physical and mental health."

That right has not yet been incorporated into our domestic law. Although states have an obligation to comply with that right, there is currently no route to enforcing it in the domestic courts.

Elena Whitham: I have a final question on this. At the moment, how are individuals able to challenge the treatment that they receive or that they are not receiving but would like to receive? What redress do they have just now? How do they realise their existing rights in domestic law?

Neil Gray: There are various avenues open to them. The most obvious ones are the statutory providers' complaints processes. As MSPs with constituents, we would all have interaction with those processes, in relation to ensuring that the principles and the law that Ms Davidson has set out are being applied.

As I said, the MAT standards that we have set our local delivery partners the challenge of meeting in the last quarter demonstrated that we are beyond the 90 per cent target. That shows that there is still work to be done to make sure that we are delivering a system that meets the expectations of the MAT standards and that we are seeing timeous support and treatment being provided. However, it also demonstrates my expectation regarding the broad and supportive culture for people who are in the situation that Mr Whittle outlined in the first instance in relation to being able to access treatment and support at the earliest point of interaction with services.

Should that not be the case, there are various mechanisms through which people can seek redress, the most obvious of which is a health board or an alcohol and drugs partnership's complaints process.

Elena Whitham: Thank you.

Sandesh Gulhane: I declare an interest as a practising NHS GP.

Cabinet secretary, the Scottish Government has legislated for cancer treatment times. Why can we not do something similar for drugs and alcohol?

Neil Gray: What we did not do with the cancer waiting times was legislate as to what the treatment would be. My understanding is that the bill sets out what the treatment should be, which, as I said earlier, is a significant departure from the rights that people have in other aspects of health and social care. As I said in response to Mr Whittle and Ms Whitham, we have already set out the MAT standards, which set clear expectations around treatment times, on which we are seeing good performance, although there is always room for improvement.

I do not take a position on what the bill is legislating for. I have already set out that we are neutral on that, but I am in agreement, in principle, on the intention of supporting more people towards treatment. It is for the member in charge of the bill to address Mr Gulhane's point about legislation for waiting times or treatment elsewhere in health and social care. I believe that this would be the first time that we would be specifically legislating for a right to a particular treatment—a right that is not available elsewhere.

Carol Mochan: I am interested in the national service specification for substance use support services that the Government has committed to publishing. Is there any idea when that might happen? How will the impact of the service specification be monitored? What contribution will implementation of the service specification make to meeting the intended outcome of the bill?

Neil Gray: We do not have a timescale for that at this stage. Work is under way to review not only the national mission on drugs and drug-related harm but where we are with alcohol services. We have had a number of sessions with a wide variety of stakeholders, including those with lived and living experience of substance dependency—alcohol and drugs—to look at the areas that Ms Mochan is interested in. Our intention is to set out our plan at the conclusion of the national mission, which will be at the end of this parliamentary session. We are cognisant that the work is demonstrably not complete and that we still have much work to do. Although the national mission is coming to a conclusion, there is still work to be done. We are embarking on a review of the efficacy and performance of various aspects of the national mission, as well as our alcohol interventions. We will set out our plans for both before the end of this year.

Carol Mochan: How would the use of such support services link with the bill, if it is passed?

Neil Gray: I do not think that there is a lot that I can add to that, given the Government's position on the bill at this stage. I cannot comment on the specifics of the bill. All that I can set out is the wider work that we are doing at the minute, which I described to Ms Mochan in answer to her first question.

We need to ensure that we have coherent support in place for those with a drug or alcohol dependency. We must take further action, because the drug and alcohol-related harms in

Scotland are far too high. Progress has been made, but my interest is in ensuring that we go further with the social infrastructure that is available and the destigmatising of access to support services. That needs to be done in a co-ordinated way that works for individuals and how they wish to access services. Demonstrably, certain interventions will not work for everybody, so we need to ensure that we have breadth of intervention as well as depth of availability. That is what the work that is currently under way is seeking to address.

Gillian Mackay: The bill would place significant decision-making responsibility on a single health professional, but current practice emphasises that a multidisciplinary approach, involving social work, care staff, ADPs and a load of other professionals, should be taken. Given the importance of multi-agency and multidisciplinary input in recovery care, how does the Scottish Government assess the risk that the bill's current framing could undermine existing collaborative practice and care planning?

Neil Gray: Again, I will not comment on the bill in and of itself, but the committee has heard evidence on the importance of the multidisciplinary team. As I said in my responses to Mr Whittle and Ms Whitham, we want to ensure that we get it right for everybody and that we provide services in a way that destigmatises the process and makes it as easy to go through as possible. Providing various opportunities for interaction is critical to that. The multidisciplinary team is fundamental to ensuring that we have that breadth and depth, as I referred to in response to Ms Mochan's question about where we go next. I am clear that we need to meet people where they are, as opposed to where it is easier for us to deliver services, and that is what we are seeking to do.

Gillian Mackay: On the point about meeting people where they are, the bill would require diagnoses and treatment plans to be made in person with a clinician. Given the work that the committee has done on remote and rural healthcare, is the cabinet secretary concerned about people having to travel for those in-person appointments rather than accessing services in the way that they are currently delivered?

Neil Gray: It is for the member in charge of the bill to discuss some of those elements rather than for the Government to take a position on them at this stage.

I have read with interest some of the evidence that has been taken. Concerns have also been expressed about the need for a diagnosis to access services, as opposed to those services being available for anyone seeking help. I stress the importance of making sure that we get this right for everybody. We want to meet people where they are—I return to that phrase—and make services accessible, rather than exclusionary, at all points. Those points have already been made in evidence to the committee.

Gillian Mackay: Thank you.

Emma Harper: Gillian Mackay made a good point about the rural situation. I am always interested in rural issues and challenges in healthcare. We have some really good third sector organisations as part of the multidisciplinary team, such as WithYou in Stranraer, Dumfries and the Borders.

Does the bill omit anything that needs to be included to support or enhance care for people in rural areas? For example, I know that there are challenges with implementing the MAT standards in rural areas and that there are confidentiality issues with rural services. I am picking up on Gillian Mackay's point by asking whether anything needs to be added.

Neil Gray: I cannot comment on what should be in the bill, but, as somebody who grew up in an island community, I recognise the challenges of rural service delivery.

Ms Mackay talked about recognising the importance of the multidisciplinary team, and that importance extends to the community and voluntary sector groups that Ms Harper referenced. A number of organisations in rural and island communities can be the first point of interaction and can provide the first opportunity for engagement on a recovery pathway, so it is important that we continue to ensure that that breadth of opportunity for engagement exists through support for community and voluntary organisations. That point has certainly come through in the round-table discussions and stakeholder interaction that I talked about in response to Ms Mochan's question. That work will continue over the coming months.

I will bring in Ms Zeballos at this point.

12:30

Laura Zeballos (Scottish Government): We understand the importance of there being a range of opportunities for interaction with regard to local service delivery. We know that local services offer digital engagement, home visits and routes of engagement that recognise particular constraints. An assertive set of activities go on to ensure that we provide the support and treatment that people need in a way that does not create artificial barriers.

Joe FitzPatrick (Dundee City West) (SNP): Good morning. Cabinet secretary, you touched on the bill's requirement for a medical diagnosis. We have heard in previous evidence sessions some

concern about that formalisation. The Government's written evidence addresses the issue, but can you say a bit more about the Government's concerns in that regard and address the concern that one of the unintended consequences of that requirement could be a challenge to existing services that do not require a formal diagnosis?

Neil Gray: I have seen that point being raised in other evidence sessions. For the reasons that Ms Zeballos set out in response to Ms Harper and were set out in my written statement to the committee, we have a concern about that issue. Some people who have given evidence have said that the approach could be exclusionary. I know for a fact that the last thing that the member in charge of the bill would want is for there to be any unintended consequences that would result in people feeling excluded or being practically excluded. It is important that we have due regard to that.

Ultimately, it is for the member in charge to discuss that matter more substantively, and the Government will take a more formal position once the committee has completed its work.

The Convener: I declare an interest in that I am employed as a bank nurse by NHS Greater Glasgow and Clyde.

I want to ask about the reporting requirements. In your written evidence, you noted that section 5 of the bill would require ministers to report to the Parliament with a range of information, and you invited the committee to consider whether there were any issues in relation to the general data protection regulation and the Information Commissioner's Office that would impact on the aims of those reporting requirements. Can you say a bit more about the potential issues or unintended consequences that could arise for the Government as a result of that section, if the bill were enacted?

Neil Gray: In response to Ms Harper, Ms Zeballos and I stated that we recognise that services that are provided in rural and island communities are often provided to a very small number of people. The confidentiality issues that arise from that, which those who represent or have come from rural and island communities will recognise, are a concern for us.

A significant amount of regular reporting on harms as well as deaths, particularly on the drug side but also on the alcohol side, is done by the Government, Public Health Scotland and others. We are considering whether that can be strengthened and increased as part of the review of the national mission.

Other than expressing the concern that we expressed in the submission that we provided, there is nothing more that I can say about the bill itself.

The Convener: Are you able to say whether the reporting requirements that are set out in the bill would be sufficient to enable the extent to which the bill met its intended outcomes to be monitored?

Neil Gray: That issue should be explored with the member in charge of the bill. I do not think that I can go beyond what I set out in my written evidence. I have provided a bit more clarity on where the concerns arise—one such area relates to rural and island communities. If the bill is agreed to at stage 1, we will, in responding to the committee's report, take a stronger position on those aspects, as we will on the wider bill.

The Convener: It is worth noting that, even in more urban areas, there are still small communities, where confidentiality and familiarity with friends and neighbours could have an impact.

Neil Gray: That is correct.

Sandesh Gulhane: Through the bill process, it has become clear that some changes need to be made to the bill. Would the bill benefit from more time, which would involve its being agreed to at stage 1 and coming back to the committee at stage 2 to be amended, so that it can have the impact on people that those on the front line have said is necessary?

Neil Gray: I hope that Mr Gulhane and the rest of the committee will forgive me for restating that we have taken a neutral position on the bill. We will return to our position on whether it could or should be amended—and, if it were, whether it would meet our expectations—after the committee has done its work and we have seen the totality of the evidence that has been provided.

I have already pointed to issues that have come through in evidence that, as I have set out in my written submission, cause me concern, but we will base our final judgment on the work that the committee does.

Sandesh Gulhane: If changes were to be made to the reservations, I assume that the Scottish Government would be happy with the bill.

Neil Gray: Again, Mr Gulhane will need to forgive me. He has tempted me to take a position, which I cannot do at this stage. The Government is neutral on the bill. I have set out the various areas that we have concerns about, which are areas that the Government has policy on and in which a significant amount of work is being done.

Our response to the bill will be informed by the good work of the committee and by the evidence that the committee has gathered. We will take a

position on that basis, once the committee has reported and before stage 1.

Sandesh Gulhane: I would like to return to my previous question. The bill does not specify what treatment someone who is asking for help should receive. There are myriad options, as well as others that are not listed. Any treatment could be provided, but the fact is that the person has asked for help and would be guaranteed treatment within a certain period of time, in a similar way that people would be guaranteed treatment in other areas.

Why is there such a difference between the legislation on drugs and alcohol, which the bill would be part of, and the legislation in areas such as cancer care?

Neil Gray: I have set out my position in that regard. The bill specifies a particular treatment pathway. I will rest there.

Sandesh Gulhane: My final question is about the number of people in Scotland who use substances. Does the Scottish Government have reliable and up-to-date information on the number of people who use substances, beyond opioids and alcohol? Is the Scottish Government looking to ensure that that unmet need is met?

Neil Gray: By its nature, it is difficult to establish that data set with certainty. Based on Mr Gulhane's professional engagements, he will be familiar with why that is the case. People have various engagements with health professionals and others, which helps to provide a level of data, but other people do not, so such data is more difficult for us to substantiate.

In Glasgow, part of the Thistle's success is that people are, for the first time, interacting with that service and the wider services that are offered in the centre, such as those relating to housing support, social work and education. We are capturing information that shows that many people who engage with the Thistle have never engaged with any statutory service before, and that intervention is giving them the opportunity to have a recovery pathway for the first time.

That illustrates how challenging it is to get the fuller and more accurate picture that Mr Gulhane is looking for. It is challenging to get accurate data, because of the complexity of human society and the fact that people will be at varying stages of recovery, with many, understandably, hiding their situation not only from statutory services but from their family members, loved ones and wider social groups.

Public Health Scotland reports on various elements that Mr Gulhane referenced, but getting the data is a challenge, as I am sure he will understand.

Brian Whittle: For a number of years, you and I have been around this particular crisis, which has been much talked about. In fact, one slogan that came from those watching our discussions was, "You keep talking, we keep dying." Despite the whole Parliament's strong desire to make significant improvement, it has not been made. Although we accept that it must be amended, could the bill be a mechanism for the significant step change that we need but have failed to realise over the past decade?

Neil Gray: I recognise that the bill's intention is to do that, and it is a shared objective. However, given what I said about the Government's neutral position on the bill, I have to reserve my position on whether it could be such a mechanism. Through the committee's work, a significant amount of evidence has been gathered, which I look forward to seeing a compilation of. We will, in part, take our position based on that, as well as other considerations.

We clearly and demonstrably have more work to do in relation to alcohol and drugs. Too many people are losing their lives or being harmed by their substance dependency, and we need to do more to support them.

Progress has been made, and I point to one area, above all else, that has changed during the national mission, which is the level of stigmatisation of people who seek to access services, particularly drug-related services. I say that on the basis of my interaction with families who have, sadly, lost a loved one to drug dependency and those who are currently seeing their family members battling that issue. I recognise that some of the evidence is anecdotal and not necessarily empirical, but it is clear to me from my conversations with those loved ones, particularly those who have lost family members, that had the services that are available now been available then, and had the stigma been reduced as it has been now, their loved ones would have been able to access services in a different way.

12:45

I recognise Mr Whittle's point that there is clearly more work for us to do, and it is right that we consider the potential way forward that the bill gives us. A significant amount of work is on-going that is supporting and changing lives. I point to stigma as one particular area of improvement, because I am told consistently by family members that there has been a demonstrable shift due to the national mission.

We need to do more. As I referenced to Ms Mochan, we are demonstrably not at the end of the journey. We still have more work to do, which is what the Government is currently reviewing. We

are not waiting until the end of the national mission; we are doing that work now. We are keeping the bill's potential under consideration and are reserving our judgment on it while the committee does its work.

The Convener: I appreciate what you have said about the Scottish Government's position—you have a neutral view and cannot make specific comments on the bill—but could the bill's intended outcomes be realised, or are they being realised, without the need for primary legislation?

Neil Gray: Yes. I set out the work on the MAT standards, which is well established. We are making progress in other areas when it comes to broadening the availability of treatment support, such as the work to expand publicly funded residential rehab capacity. The Government is now meeting its commitment, and we need to sustain that support and potentially expand it.

As I said at the outset, my firm view is that no one particular area will resolve the issue for everybody. We need a multitude of options to be available to people via various organisations—statutory, community and voluntary ones—to ensure that we respond to people in a way that meets their needs. The national mission's breadth and depth help to provide that, although we clearly have more work to do.

That does not take away from the fact that far too many people are tragically dying from alcohol or drug dependency, and we are committed to continuing to support people to find a route to recovery, which has to be multifaceted and multidisciplinary. We have to reach people in all communities, and we are committed to delivering that aim.

The Convener: I thank the cabinet secretary and his officials for their attendance and for helping the committee to scrutinise the bill at stage 1.

At next week's meeting, we will conclude our oral evidence as part of the committee's stage 1 scrutiny of the Right to Addiction Recovery (Scotland) Bill by hearing from Douglas Ross, the member in charge of the bill. We will also continue our scrutiny of the supplementary LCM for the Employment Rights Bill by taking evidence from the Minister for Social Care, Mental Wellbeing and Sport.

That concludes the public part of our meeting.

12:48

Meeting continued in private until 12:49.

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