HEALTH AND COMMUNITY CARE COMMITTEE

Tuesday 30 January 2001
(*Afternoon*)

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HEALTH AND COMMUNITY CARE COMMITTEE
4th Meeting 2001, Session 1

CONVENER

*Mrs Margaret Smith (Edinburgh West) (LD)

DEPUTY CONVENER

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

COMMITTEE MEMBERS

Dorothy-Grace Elder (Glasgow) (SNP)
Janis Hughes (Glasgow Rutherglen) (Lab)
*Mr John McAllion (Dundee East) (Lab)
*Shona Robison (North-East Scotland) (SNP)
Mary Scanlon (Highlands and Islands) (Con)
Dr Richard Simpson (Ochil) (Lab)
*Nicola Sturgeon (Glasgow) (SNP)

*attended

WITNESSES

Isobel Allan (Carers National Association)
Mrs Ann Anderson (Coalition of Carers)
Martyn Evans (Scottish Consumer Council)
Sebastian Fischer (Coalition of Carers)
Bryan Healy (Glasgow Council for the Voluntary Sector)
Ms Margaret Hendry (Coalition of Carers)
Ingrid McClements (Glasgow Council for the Voluntary Sector)
Liz Macdonald (Scottish Consumer Council)
Alan McGinley (Carers National Association)
Graeme Millar (Scottish Consumer Council)
Ena Murray (Carers National Association)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Joanna Hardy

LOCATION

Committee Room 2

Scottish Parliament

Health and Community Care Committee

Tuesday 30 January 2001

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:06*]

Fresh Meat (Beef Controls) (No 2) Amendment (Scotland) Regulations 2000 (SSI 2000/449)

The Convener (Mrs Margaret Smith): Good morning. Our first item concerns a piece of subordinate legislation, the Fresh Meat (Beef Controls) (No 2) Amendment (Scotland) Regulations (SSI 2000/449). The papers were circulated to members on 9 January and no comments have been received. As the Subordinate Legislation Committee has no comments to make and as no motion to annul has been lodged, the recommendation is that the committee decides not to make any recommendation in relation to the instrument. Is that acceptable to the committee?

Members *indicated agreement.*

Regulation of Care (Scotland) Bill: Stage 1

The Convener: Agenda item 2 is the continuation of our evidence-taking on the Regulation of Care (Scotland) Bill. Our first set of witnesses is from the Carers National Association. We took evidence from the organisation during our inquiry into community care and quoted that evidence copiously in our report—Isobel Allan would have done quite well if she had been paid a fee every time we used her words. I am sure that what we hear this afternoon will be used just as much. I ask our witnesses to make a statement, to be followed by questions from the committee.

Alan McGinley (Carers National Association): We are pleased that the bill is now before the Parliament. We have followed the bill's progress since the publication of "Aiming for Excellence: Modernising social work services in Scotland" and the policy paper, "The Way Forward for Care". We want to talk about the general principles at this stage, rather than the technicalities, which are outwith our orbit. In particular, we want to bring evidence to bear on the issue of values.

We believe that the Regulation of Care (Scotland) Bill is part of a broad process of change that involves social services and health services. It is important to see the bill not simply as a stand-alone piece of legislation, but alongside developments such as the upcoming bill on long-term care, which is likely to include new provisions for carers arising from the findings of the carers legislation working group that has met during the past year. It is also important to view the bill in relation to the Millan report, which came out last week. The report will have significant implications for the way in which carers are understood in relation to other professionals and for how the people whom carers look after are cared for by the formal sector. Also relevant are the Adults with Incapacity (Scotland) Act 2000 and the joint futures programme.

The bill is more than the sum of its parts and reaches beyond the commission and the council that it seeks to set up. It has been said that, just as the Social Work (Scotland) Act 1968 set out 30 years of social work procedures, the Regulation of Care (Scotland) Bill will set out the framework for the next 30 years—perhaps some members of the committee are young enough to be around to see the legislation that will be introduced in 2030.

The Convener: Not if we carry on in this job.

Alan McGinley: The elements that I have outlined present a tremendous challenge for the Scottish Parliament, for social work services and for the users and carers who will benefit from the change. As our submission states, we think that carers are key partners in the delivery of care. That fact needs to be built securely into the bill and its outcomes. We therefore welcome the proposals in the schedules that explicitly identify carers as one of the five key interest groups—we did not mention that in our written submission, but we believe that it will play a major part in ensuring that the bill does what it is supposed to do.

The Convener: In general, do you agree with the bill and believe that it is necessary? At stage 1, the committee must decide whether it agrees with the bill's general principles and whether the consultation process has been satisfactory and effective. What is your opinion?

Alan McGinley: We agree with the bill's general principles and believe that the provisions for the commission and the council are necessary. Good consultation has taken place, but we suspect that some of the consultation may not bear fruit and that, because of that, the resultant act may not have the best chance of delivering what it is meant to deliver.

The Convener: Could you expand on that?

Alan McGinley: We fear that the training component for social workers and social care workers will have no significant carer content. We foresee some problems with the development within the council of the functions of the Central Council for Education and Training in Social Work and the Training Organisation for the Personal Social Services. In particular, we foresee problems with the timing, given that the council is to be set up by the end of this year.

The Convener: Your submission says that concerns have been expressed about

"possible tokenism in TOPSS related work".

Could you expand on that?

Isobel Allan (Carers National Association): My understanding of TOPSS is limited, so please forgive me if I get some of the dates and so on wrong. Although TOPPS, which recently produced a submission for the committee, came into operation in 1997, carers and users have been invited to join the TOPPS committee only since September last year.

I am one of two carers on the committee and I can say that joining a committee that has been established for a while is difficult. We identified papers that had come through TOPPS and read massive amounts of paperwork as part of our commitment to the process. We identified instances in which carers had not been consulted at prior stages and committees. Historically, carers have not been involved in TOPPS but, as it seems to be the end of the various committee stages, that should no longer be the case. Consultation with carers should always be meaningful and on-going.

It is possible for a committee without carer representation to interpret consultation with carers incorrectly. I suggest that any committee with responsibility in this area should have to involve users and carers at every stage. If we are all partners in care—I believe that we are—that seems to be a good way in which to operate.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): What do you consider to be the main implications of the bill for carers and users?

Alan McGinley: The setting up of the national care standards will be a key component. Carers are focusing on that, as it will give them rights of access to the complaints procedure and will help them to understand what they should be getting back from services and what they should be putting in. The commission element of the bill has the most meat for carers. The council will reprofessionalise the work force, enhance its status and boost its morale, which should have benefits for carers.

The bill also incorporates carers as one of the five key stakeholders. We regard that as meaning that they will be part of the whole culture and ethos of the service rather than that they will simply be invited on to the odd committee to put in the occasional tuppence-worth to perhaps get a result at the end of a consultation period. Carers' involvement must be deep and systematic. The bill provides the opportunity to deliver that, but it is important to translate the proposals into something that will stand up on its own and in which carers can have confidence.

14:15

Isobel Allan: I do not know whether this point is relevant but, as a carer, I can say that for most carers the most important item on the agenda is respite. The bill does not spell out provisions for respite and I had great difficulty finding out where respite would slot into the system. I wonder whether further provisions or clarification could be added to the bill in an amendment at a later stage. It is important that the elements concerning respite be defined more clearly so that they can be interpreted more positively.

Carers must be meaningfully involved in consultation and discussion, which is why I thank members for the opportunity to be here today. We all have important perceptions of the situation and we all want to offer the best service possible. Where there are users, there are carers, whether they are in residential or respite care. I am particularly concerned about standards in respite settings. Although the bill will cover that, I want the bill to be more explicit. Support services and home care services are mentioned, but I had to tease out where respite would be dealt with—perhaps my mind was a bit woolly when I was reading the bill.

Margaret Jamieson: Where in the bill would you like respite care to be written about explicitly? Should there be anything else in the bill?

Isobel Allan: I do not want to pre-empt what will be said later, but I think that there are great differences between respite care and residential care. The soon-to-be-replaced inspectorate, which visits residential units with respite units attached, does not have a mechanism for accessing carers' feelings about respite units. The criteria are geared to the person in residential care. Carers are never consulted or involved. Even if they were, the mechanisms that would be used would not apply to carers. Something new needs to be devised.

Margaret Jamieson: Does not the setting of national care standards offer an avenue for allaying your organisation's fears?

Isobel Allan: Yes.

Alan McGinley: The bill addresses care homes and support services. Because terms such as "respite" are not used, carers are concerned that those services will sink. It is right to say that care standards will be the key. However, although the national care standards committee is doing some great work, concern remains that residential or home care respite will be added on at the end of a process that deals with standards of residential care. The consultation on the second tranche may address that concern, however, so I do not want to be critical at this stage.

Margaret Jamieson: You are putting down a marker.

Alan McGinley: Yes.

Margaret Jamieson: Does your organisation have a view on the creation of two separate bodies, the Scottish commission for the regulation of care and the Scottish social services council? Should there be just one body?

Ena Murray (Carers National Association): It is an excellent idea to have two bodies. I have high hopes for the bill. Carers have been sidelined for far too long. Since the establishment of the Scottish Parliament, we have gained a better image and have been brought to the forefront. The bill and the national care standards will ensure that that continues. It can only be good if carers are consulted, because we have been sidelined for many years and often still are, especially in relation to domiciliary care and hospital care for users. I will be very disappointed if the bill and the standards do not improve the situation greatly.

Alan McGinley: Our organisation does not take a position on this question. I think that there should be two bodies. Social care staff need the new council to address work force issues; care standards and the regulation of care are slightly separate from those. The Scottish commission for the regulation of care has the potential to steward future care provision, operate as an ombudsman and represent consumer interests, so it would not be helpful to conflate the two bodies. The right approach is being taken.

Mr John McAllion (Dundee East) (Lab): I want to ask about something to which you do not refer specifically in your written evidence. As you know, from 2004-05, the activities of the commission and the council will be self-financing, through the fees that they will charge for the services that they provide. What implications will that have for carers and the services to which they have access?

Alan McGinley: We did not address that point in our written submission because we are not service providers and had other matters to deal with in our three-page paper. There are concerns about who will pay for the costs of regulation and whether those costs will be passed on to service users and families. That question is linked to the debate on the Sutherland recommendation on free personal care. To some extent, the ability to pass on costs may be limited by the expansion of free personal care. People in service delivery, and in particular voluntary organisations, will be concerned because they will not want to upset service users by increasing bills. There will be serious discussions with the local authorities and other funders to determine how the costs will be soaked up. The requirement for the council and the commission to be self-financing will raise the unit cost and ultimately will have implications for the cost of services.

Mr McAllion: Is the definition of personal care that is contained in the bill significant?

Alan McGinley: I do not want to be responsible for any further definitions of personal care. The bill gives an open enough definition to encompass the Sutherland recommendation. That is helpful at this stage. Many of us will question—if not meet with hostility—any attempt to contract that definition. At this stage, the definition is not a problem. The problem that the member outlines is simply that costs will rise and somebody will have to meet them. If local authorities have to pay, they will have to recover the costs from charges or from the grant from Government. If they do not find the money from those sources, they will have to raise it elsewhere or limit services.

Mr McAllion: What are your views on the provisions for national standards? I am not clear from your earlier answers whether you suggest that standards for areas such as respite care should be stated in the bill or whether you are happy with the proposal in the bill that ministers should set down care standards for those things that are defined as care services in the bill. Should the bill be amended or should we wait for those issues to be addressed by the long-term care bill?

Alan McGinley: I do not want to make policy on the hoof. The national care standards committee is doing the work on standards. The concern is what would happen if the national care standards committee produced standards that did not apply to residential and home care respite provision. When the care standards are known, carers will be confident that the process will deliver the standards of respite provision that they want met. Care homes and support services may each encompass respite care, but that is not spelled out. Isobel Allan was asking an open question. Perhaps respite care should be addressed explicitly, but we need to know the outcome of the work of the national care standards committee before we can make that judgment.

Mr McAllion: Is there a particular problem with the regulation and inspection of home care services?

Alan McGinley: Yes.

Mr McAllion: It is difficult to set and ensure the application of standards for the care of people who are being supported in their own homes rather than in a residential home.

Alan McGinley: The standards will apply to the agencies and are therefore at least once removed from the experience of the service users. Systems need to be introduced to detect sensitively what services are received by users and their families and carers.

I am on the national care standards committee and know that, although home care is being dealt with sensitively, it is the most difficult area in which to set standards. Work on standards for some other areas is moving forward comfortably. It is important to get the definitions right and to be confident that setting standards for agencies will set standards for the delivery of home care.

Mr McAllion: Is it suggested that inspectors should visit people in their homes to speak to those receiving the services and their carers?

Alan McGinley: I would rather that the carers answered that question.

Isobel Allan: I would be happy to be consulted by inspectors on my views as a carer. My daughter has used a respite service for more than 10 years but I have never been approached by an inspector.

Mr McAllion: Is that view common among most carers?

Isobel Allan: I can answer only for myself. I know something about the system, but carers are not always aware of their rights. For example, one has the right to a copy of an inspection report, as it is a public document. It is all about information. There is so much in the system that is good and meaningful—past guidelines as well—but we must liaise better and communicate with each other. The service providers should make carers aware of their rights and of such documents. I would be more than happy to be involved with an inspectorate, as long as it did not invade my daughter's privacy or mine. Inspection would have to be conducted sensitively.

Mr McAllion: By agreement.

Isobel Allan: Absolutely, and not just with my agreement, but with my daughter's.

14:30

Alan McGinley: We do not want an inspection of premises.

Mr McAllion: You mean a sudden inspection, when an inspector just turns up at the door.

Alan McGinley: That is right—when the dishes might not have been done.

The Convener: No one would want that.

Shona Robison (North-East Scotland) (SNP): I do not know whether you are aware of the intention to reduce the number of inspections of care homes from two to one a year, or whether you have any experience of relatives or others going into care homes—you might know carers who have such experience. Do you feel that there has been a rapid decline in the confidence of carers and the public in the quality of such establishments and that too much time might elapse between inspections? Do you think that inspections should be announced or unannounced?

Isobel Allan: Two inspections a year are undertaken, of which one is announced and one is unannounced. As a carer, I feel that, after such inspections, carers should be made aware—whether they are using residential or respite care—that such an inspection has taken place, so that they can access the inspection report.

I offer that as a personal view. An inspection had been carried out of my daughter's unit, which highlighted serious irregularities of which I was totally unaware. It was a fluke that I picked up on them in an inspection report, because the unit did not inform me of the inspection. Inspection reports are very important. I would like the two inspections to remain announced and unannounced, especially in residential establishments that offer residential or respite care.

Shona Robison: Do you think that there should be only two inspections a year?

Isobel Allan: I am speaking as a carer. I hope that this is not my cynical side coming out, but I think that an inspection is more meaningful if the inspector arrives unexpectedly. Apart from the inspection, there must be a mechanism to access everyone's views—not just those of the residential users, but those of the respite users as well. If the respite users cannot offer that input because of their vulnerability or through lack of communication, the matter must be referred to the carers. That is not happening at the moment.

Ena Murray: I have not for many years had the experience of a relative being in respite care, but carers have come to me and asked what they can do about what they consider poor care in residential or nursing homes. I have asked them to lodge a complaint with the registration and inspection bodies, but they have been loth to do that because it might have an effect on the person who is being cared for.

It would be bad to reduce the number of inspections each year—two is not enough. There should be at least one announced inspection and there could be more than one unannounced inspection. The unannounced visits would pick up on poor care standards and bad practice.

The Convener: Are you content with the complaints system that is proposed in the bill?

Ena Murray: Yes. I like the fact that a complaints system is being proposed.

Alan McGinley: Isobel Allan and Ena Murray are talking from direct experience. There is always a fear that the number of inspections will be reduced, but we need to be careful that inspection does not become a kind of punitive arrangement. That is not what inspection is about. If good feedback systems are in place and they feed carers' and others' input into the system, some of the territory can be covered that might result from the loss of one of the annual inspections. I am not saying that the number of inspections should be reduced to one, but that there might be a more thorough inspection. I do not have any evidence to show whether the way the inspections are carried out is good, bad or indifferent—that is down to the experience of the carers—but we do not want inspection to become a punitive exercise.

Isobel Allan: The problem is not just the inspection, but the feedback to carers of information from the inspection. A difficulty also arises when a carer lives in one local authority area and the person whom they care for accesses a respite unit in a different local authority area. I know that the system may change, but at present the inspectorate does not always provide inspection information to a different local authority. Mechanisms should be in place to ensure that the feedback of inspection information is as comprehensive as possible.

Margaret Jamieson: Your submission talks about placing greater emphasis on user and carer feedback and involvement. How might those factors be taken into account and link into the announced inspection?

Alan McGinley: Putting carers in the balance of interests nationally will help immensely. It has the potential to change the culture and is a terrific starting point. Locally, we would not want to be prescriptive, as there are lots of good ideas about how to get feedback and conduct consultation, but we need to determine best practice. Whether that is lay inspection or carer panels—similar to the user-panel model that exists in Fife—we need to be aware of the potential of such exercises to develop feedback.

We do not want an industry of consultation to be built around inspection. Carers will walk away from talking shops if they feel that they have been dragged into them to fulfil a systematic need. What we need is good, meaningful input from carers. If we can harness the national picture of carers being part of the five key interests and the local picture, bearing in mind good practice and the kind of exercises that are going on that are more than token gestures or filling the empty chair at the table, we will have a much better chance of making that a reality.

Margaret Jamieson: Do you think that if a minimum requirement is laid down at a national level there will be a greater chance that people in authorities that are poor at consulting users of services and carers will be encouraged to participate at a local level, because they will know what the playing field is like before they start?

Alan McGinley: Yes, but the bill should not be about setting minimum standards. It should be about setting standards that are achievable and goals that people can move towards over time.

Ena Murray: A member of the inspection board would be welcome in most people's houses, although they would not go in without the householder's permission. On domiciliary care, the main concern among carers and many users is that no one listens to them. They are told what they are going to get, but they are not asked about what is needed.

The Convener: On the related issue of user feedback, a number of people have raised as a potential problem the proposed structure of no more than about five or six regional offices, although people may work from home or in smaller satellite offices. There will be a national care standards umbrella but five or six regional offices, rather than people working locally. We understand that, at present, there are local advisory committees and people are able to build up local experience and relationships with the health board, local authorities, care homes, carers and so on. Do you think that about five or six regional offices is a suitable number, or would you prefer a larger number?

Alan McGinley: I know that Ena Murray has a view on that.

Ena Murray: There should always be a local link; otherwise, the service could become too centralised. Service users need a local link—a local contact—with someone who knows the local area.

Shona Robison: Have areas been omitted from the bill that you would like it to include?

Alan McGinley: At this stage, we are concerned about definitions and about whether the system has the capacity to link to the long-term care bill that may appear in the next two or three months.

Isobel Allan has concerns about the definition of support services and about care homes and their capacity to incorporate respite care, although those issues are not necessarily omitted from the bill.

We talked about the definition of carer and we are a little uncomfortable that that definition is not as full as it might be. The bill tends not to use the word carer, perhaps because it is used to describe professional groups as well as individuals. We would like to reclaim the word. That may be an omission from the bill. Beyond that, there is nothing that falls within our remit at present. When we come to consider the bill in detail and to submit suggested amendments, we might have further views, but at this stage, as Ena Murray said, we have high hopes for the bill. The consultation on the care standards, when they are published, will give us an indication of whether those high hopes are likely to be fulfilled.

The Convener: I thank the witnesses for their contribution and for the written submission that they gave us in advance.

We now move on to our next set of witnesses, who are from Glasgow Council for the Voluntary Sector. Good afternoon. Thank you for coming to the Health and Community Care Committee and for giving us your thoughts on the Regulation of Care (Scotland) Bill. You may give a short statement, if you have prepared one, and then my colleagues and I will bombard you with questions. From what you have heard already, you will have an idea of the flavour of the questions and issues that we will want to pursue with you.

14:45

Ingrid McClements (Glasgow Council for the Voluntary Sector): I will start off.

We have tried to examine the four issues that you highlighted in the letter you sent us. I will do a bit of scene setting and will talk about the consultation processes. Bryan Healy will talk about some of the key issues that we raised in our written evidence.

I am the deputy director of Glasgow Council for the Voluntary Sector, which is an umbrella organisation in Glasgow for voluntary organisations and community groups. I am also chair of the west of Scotland voluntary agencies training forum, of which Bryan Healy is the development officer. We thank the committee for the opportunity to give our views.

The relationship between the GCVS—I hope members will not mind if we use those initials, because saying Glasgow Council for the Voluntary Sector every time is an awful mouthful—and the voluntary agencies training forum—I will call that the forum from now on—is that the GCVS hosts the forum. The GCVS has more than 400 members and the forum has more than 60 members—some are members of both organisations. The GCVS has a wide overview and makes links between its members, while the forum focuses on social care and social work issues.

Membership of the forum is made up of a wide cross-section of voluntary organisations, from the Church of Scotland board of social responsibility through to medium-sized organisations such as Cosgrove Care and smallish organisations such as the Ruchill Youth Project. We work closely with the other three training forums in Scotland, which are in the north of Scotland, Tayside and Lothian and Borders. Some of our remarks will reflect much wider views, as we have collated the views of hundreds of voluntary organisations.

We are particularly concerned that the voice of smaller voluntary organisations should be heard. In national and local consultation exercises, it is often the voice of large, national voluntary organisations that is heard. That is fine, but smaller organisations often do not have the opportunity to contribute to the consultation process. We have listened carefully to the small organisations that work close to the coalface with service users and carers.

Your letter asked us what we feel about the consultation process on the bill. We welcome being integrally and intimately involved in that process. Both Bryan Healy and I worked with the reference group that considered the bill almost line by line, paragraph by paragraph.

The voluntary sector is often seen as the poor relation, although people do not put us into that box deliberately. Local authorities often have greater clout, although they may not realise it. As members know, the voluntary sector is providing more care services in creative ways throughout the country. We were happy with the consultation process and did not feel like a poor relation.

We discussed these issues for more than two years—the bill has been a long time in the making. It was over two years ago that we called big meetings of lots of wee organisations in Glasgow and beyond to talk about some of the issues that led to the bill. Our comments reflect the views of that wide variety of agencies. We were also able to feed into in the consultation exercises on the codes of practice.

Bryan Healy will talk about some of the key issues. Many voluntary organisations have told us to tell the decision makers and law makers to work towards an inclusive register. When the bill was proposed, a platform of protection of the public was considered important. We feel that there has been some shift away from that idea. The inclusiveness of the register is tied up with the protection of the public. Time scales for achieving that must be adopted.

Bryan Healy and I know only too well the complications that are involved. The social care work force—I use that term globally—includes not only social workers, but other categories of worker. Registering that work force is not like registering doctors, nurses or teachers, whose roles are more focused. Social care has a wide scope. We must pay greater attention to the time scales for achieving an inclusive register.

We are concerned about financing and we do not make too many apologies for raising the issue. Sometimes, people in the statutory sectors get a bit fed up when they think that the voluntary sector is always going on about money, but we remain concerned about the funding, especially as many voluntary organisations receive only year-on-year funding. When our funding regimes are precarious, it is difficult to plan ahead. We cannot plan as local authorities can.

I hope that my introduction was not too lengthy.

The Convener: No, it was fine. Do you want to add anything before we question you, Bryan?

Bryan Healy (Glasgow Council for the Voluntary Sector): Yes. I believe that committee members have copies of our submission. I would like to highlight some key points in it that have been raised during our consultations with agencies over the past couple of years. You may want to question me on some of the issues.

The voluntary sector has always felt that it would be better to have two bodies—a commission and a council—rather than one. Although there is a clear relationship between service standards and the regulation of staff, we think that there is enough of a difference to keep the two matters separate. We also believe that there is some potential to obtain a better service for users when those who develop the care standards and those who develop the occupational standards approach their tasks from different directions. That allows them to work towards an articulated model that might give the best variety of care. That is the main reason why we consider it crucial to have two bodies.

The voluntary sector has always wanted the register to be inclusive. I will return to that issue.

I presented the information on issues and consequences in our submission under the separate headings of the commission and the council. Section 2(13)(b) defines how care will be regulated according to the number of hours for which it is provided. The consultation suggested that the delivery of service was more important than its duration. If a care service to groups of children ran regularly, we would feel that it should be regulated, even if it lasted for two hours or less a day. That is an example of the theme that the delivery of service is most important.

On the increase in fees and the ultimate transfer of the cost of the commission to those involved in delivery, no one in the sector felt that the Executive had any right to withdraw from continuing to fund the commission and most bodies feel that there is a duty on the Executive to continue to do that. It is not that we believe that people should not pay a fee for the regulated service, but the Executive, the commission and the providers are working in partnership. Moreover, anything that prevents the costs from landing on service users must be good.

We recognise that, under some of the current regimes, a service can be registered before it is delivered and may not be visited until one year after it has begun. It will be important to tighten that system up so that any new service might be visited within three months of starting. A service should not be able to gain its certificate then not be visited for a year.

The inspection staff may examine the financial viability of services. As Ingrid McClements said, a small voluntary organisation may not know until the 11th hour whether it will be funded for the next year. We hope that the inspectors will appreciate that and take such matters into account when considering a service's viability in deciding whether to grant a certificate.

We appreciate the need for the council to subsume TOPSS. That is probably a good change. However, there is some concern in the sector about how an employer-led body will fare in a structure that answers to a minister. Another wee concern is that we are unsure to whom the body answers. It may deal with the Department for Education and Employment, rather than the Scottish ministers. That issue may need to be clarified, or perhaps there is clarity that I have not yet noticed.

The Convener: As we understand it, the lack of clarity concerns which Scottish minister the body should answer to. There is still a lack of clarity, but it is different from the lack of clarity that you described. A lot of that is going round.

Bryan Healy: Thank you; that still helps.

The financial memorandum was light on the council's implications for the voluntary sector. The hope was suggested that two thirds or more of the work force would be registered by 2006. We do not know how many people that would mean, because adequate work force analysis studies have not been conducted. However, if we are talking about a qualifications-based register of up to 60,000 people, there is no way that such a target can be met. It takes too long and too much intensive work to set up the Scottish vocational qualification assessment system to meet such a target. The cost alone would go beyond what most voluntary organisations can afford.

The four training forums have campaigned for many a year for a comprehensive and cohesive strategy for care training in the voluntary sector—instead of the shifting and shuffling about, hoping that charges can be raised to cover costs. Many voluntary organisations are good at investing in staff training, but they do that without adequate support. CCETSW gives some support, but most comes from organisations' own resources. In some areas, the bodies are doing very well and much better than the statutory sector, but the major problem remains: how will we fund a qualifications-based register?

The voluntary sector always wanted a fully inclusive register as soon as possible because we want professional standards to be raised and we want the public to be protected from all care services and workers—if there is a question over their quality.

The Convener: Before we start asking questions, I warn everybody that a fire alarm test may occur. Unless the committee wants to, there will be no need to evacuate the building.

I will paraphrase slightly and deal with a couple of questions that we would have asked if your introduction had not fully covered them. You agree with the general terms of the bill at stage 1. You outlined your concerns about the financial implications for the voluntary sector and you mentioned training issues. Are there other implications for the sector?

Bryan Healy: From the training perspective, the areas in which I have been working and consulting are most pertinent to the people whom I have been talking about. Agencies have different concerns—every time I talk to somebody from an agency they give me a different perspective on the bill. In responding to the committee, we have tried to raise as much interest as we can. I hope that many responses have come in; if so, I ask the committee to look to those responses to find out which issue each service sector feels is the main issue for it.

15:00

Mr McAllion: My impression—from reading your submission and from what you have said so far—is that you are concerned about the idea of a qualifications-based register, not only because it will cost money and will take longer to produce than the Executive thinks, but because it will somehow threaten voluntary organisations, which might find themselves falling outside such a concept. Are you in favour of a qualifications-based register?

Bryan Healy: We are not against a qualifications-based register, but what came across in the consultation process was that people wanted a fully inclusive register. The major concern was that there might be pockets of care that were, for some reason, never included on the register. Care staff might operate unregistered for many years, simply because they belong to a small and innovative service area that will not be covered by the register and which might have to be brought under regulation later on.

My job is to promote education and training in the voluntary sector. I work with many agencies to try to get them involved in vocational qualifications, professional awards and post-professional awards. We want the work force to be fully qualified and the sector wants a fully inclusive register as quickly as possible and—in time—a fully qualified work force.

Ingrid McClements: We are not trying to say that the voluntary sector would not support the highest quality training for its staff—if that was the impression that we gave, it was not what we meant. We do not want to be seen as some sort of second-grade service.

Mr McAllion: Are you concerned about the practicalities of a register, how quickly it will be done and how much it will cost?

Ingrid McClements: Yes.

Mr McAllion: You made it clear that the cost of regulation and inspection should not be passed on to those who are involved in the delivery of services. Is that because you are concerned that they will pass it on to the users?

Bryan Healy: Yes. I am not saying that any of the providers would want to pass on the cost to service users, but if there was no other mechanism to meet the costs, that might be the end result.

Mr McAllion: You indicate clearly that you think that the Executive should take responsibility—at least in part—for the finance of the two new bodies. What should be the ratio between increases in fees and Executive funding direct from the Scottish block?

Bryan Healy: The projections for the increase in fees seem very high. The fees seem to be set to rise way beyond the rate of inflation for the next few years. Some kind of link between inflation and the cost to providers of registration would be fairer.

Mr McAllion: So, you would rather peg the increase in fees over the next period, and ask the Executive to find the money to fund the whole operation—

Bryan Healy: The bottom line is that I hope that the Executive will fund it all, but given that that is unlikely—

Mr McAllion: That is very unlikely.

What are your views on the national standards and how they will apply to smaller voluntary organisations, in particular? Is there a threat that the standards will put some of them out of business?

Bryan Healy: We are mainly concerned that the care standards committee will be more reflective of the thoughts of the very large providers—that is partly to do with the structure of the committee and who was invited on to it. We have always been concerned that the smaller providers need a voice in the system. A small local provider might not be able to achieve what can be achieved through the Scottish Association for Mental Health and Enable—there is a need for balance.

We hope that the same care standard could apply right across the board, but given that—at the end of the day—the standard of care relates to providers' resources, some small providers are a bit concerned. I do not want to go as far as to say that such small providers would have to go to the wall over it, but that will depend on the cost implications of the final version of the care standards.

Mr McAllion: How serious is the problem that you highlight about the financial viability of a service being part of the inspection certificate? Is that, because of the nature of their funding, a threat to some services?

Bryan Healy: Concern about such matters has been described to us by some organisations. They might not know until late March—sometimes later—what their funding will be from April onwards. Generally, such services are funded. Often things go wrong and there can be cuts in services—a lot can depend on what part of the country the services are based in. However, there is a more general fear about a new system in which financial viability will be considered more closely in relation to certification. If a provider cannot prove that they will still be around in April and May, will that be taken into account?

Mr McAllion: All councils in Scotland will move to three-year funding. Is it your proposal that the voluntary sector should also have—as the minimum—three-year funding?

Bryan Healy: Absolutely.

Margaret Jamieson: What are your concerns about the composition of the boards?

Bryan Healy: What is contained in our submission was not a proposal on boards, and I apologise for wording it as such in the submission. Any suggestion of change to the make-up of the boards is a result of the problems of the Scottish Qualifications Authority. We feel that it is important to have an inclusive system in which service users, carers and providers can be involved in the work of the council and the commission. We appreciate that there must be sound financial management of those bodies, but we are concerned about losing out if we move to a system in which people are picked because of their managerial ability rather than their competence and in-depth knowledge of care.

We recognise that change is needed—we cannot stick with the same models. Boards of 25 people can sometimes be unworkable—we have always been concerned about the size and composition of boards, and about how they can be flexible enough to involve all stakeholder interests. We hope to comment on the models that are drawn up and we hope that the final model will be good enough to allow all stakeholder interests to influence the workings of the council and the commission in ways that are appropriate for care, not just for finance.

Ingrid McClements: We very much identify with what the Carers National Association said about tokenism in relation to service users and carers on boards. We have seen such tokenism quite a lot in the past few years; it is well-meaning tokenism but it is, nevertheless, tokenism. A service user or carer may be involved in a committee but they do not have the same sort of support mechanisms as other people on that committee. There is sometimes no attempt to demystify jargon for users and providers, and they may not have attended the pre-meetings that other committee members have attended. They cannot operate equally. We have to consider other mechanisms for stakeholder input into boards.

Margaret Jamieson: I see no reference in your submission to the proposal that there should be five regional offices for inspection teams. Does your organisation have a view on that?

Bryan Healy: There must be some kind of regional system. As the carers who spoke earlier said, local links are important. My understanding was that the local link would be with the inspector, if not the regional office. There is the possibility in future that there might be home-based contracts for inspectors who work in certain areas. We still hope that there will be an opportunity to have local links and local relationships. At some stage however, the size and shape of the regional offices must be rationalised.

There is a lot of talk about coterminosity among the various bodies. That probably needs to be examined across the whole field of regulation—including local authorities, health boards and other bodies. There is a need to pull their jurisdictions into sensible, cohesive wholes.

Margaret Jamieson: Do you think that—with the reduction to 5 regions from the 32 local authorities and 14 health boards that currently have responsibility for registration—the inspectors will become more distanced from those who are being inspected and from members of the public who might wish to complain?

Bryan Healy: They might; I cannot say that that would not happen. A lot will depend on how the regional bodies operate. I hoped—this was my understanding—that the local link would be with local inspectors and that there would be continuity. Local providers would know their local inspectors and would understand how the system worked. Margaret Jamieson might have a point—I would certainly not argue against having more regional offices.

Shona Robison: You said that one inspection visit a year might be too infrequent. However, you state in your written evidence:

> "Annual inspection is appropriate if the six monthly self evaluation system is properly planned."

Could you expand on that? On which side do you fall as far as the level of inspection is concerned?

Bryan Healy: First, we hope that new services would be inspected within a year—they should not operate for a full year before an inspector's second visit. I beg your pardon, Shona; could you repeat your other point?

Shona Robison: I want to find out whether you believe that once a year is generally sufficient for inspections.

Bryan Healy: That has been a concern. There was a lot of discussion about it during the consultation exercises. There was a fear in some areas that, if people had not managed two visits per year under old systems, and if there was a change to one visit per year—with work being expanded to fill the gap—that new arrangement might start to slip. People voiced that concern, although I hope that that would not happen.

The plan for self-assessment relates to local relationships and to inspectors' understanding of the services with which they are involved. If inspectors are alerted to potential problems, or if there seems to be a lack of clarity about how information was submitted at six-monthly intervals, that should perhaps prompt a wee visit. We still believe that it is possible to devise a system that is adequate for the needs of the public and which includes annual visits and six-monthly submissions.

Shona Robison: Should that one visit be announced or unannounced?

Bryan Healy: It should be an announced visit, but clearly the opportunity should always exist to visit unannounced. I have worked in private care in other parts of the United Kingdom, and was quite shocked by the way in which some companies used to be able to keep two different sets of books on how many staff they had and on who was on duty at various times. I am not suggesting that that has ever been the case in Scotland, but it reminds us that unannounced visits can help address any such problems. If inspectors could turn up and ask to see the books and the staff on duty, and could understand the staff's qualifications in relation to their roles and tasks, unannounced visits would be a necessary part of a robust regulation regime.

Shona Robison: Are there any omissions in the bill that you wish to highlight?

Bryan Healy: No. I do not think that there are many omissions, although I am sure that other agencies will have other views on what they would like to see included. Given that the intention is to have legislation that will stand for 30 years, the bill represents a good attempt at striking a balance between being too prescriptive and being too loose.

However, a wee bit more work could have been done on the definition of personal care—although I appreciate that that is difficult. Its provision is certainly something that we have campaigned for all along.

The Convener: We can safely say that more work will be done in that area.

For members' information, I had a discussion with the Deputy Minister for Health and Community Care yesterday. I asked him whether he remembered that there was a definition of personal care in the bill. I expect a response from the Executive on that at some point. I also expect that amendments, addenda or additional parts will be suggested in the Executive's report on the Health and Community Care Committee's community care report.

15:15

I want to pick up on a point in the GCVS's written submission, on the need to have an inclusive register as soon as possible. We are working our way through the matter; various tranches of staff are coming forward to discuss it. We all want to have a fully inclusive register as soon as possible, but do you think that the balance has swung too far from the protection of the public—which is what I believe you understand the key concern to be—to the professionalisation of staff?

Ingrid McClements: It is difficult to assess the extent to which that pendulum might have swung. We are concerned that there should be professionalisation of staff, but we do not want that to be the main plank of the legislation. The backdrop to the bill must be protection of the public.

We are concerned that there should be momentum among several organisations. It is in everybody's interests to get the proposals going. We are worried that the momentum might slow, and that inclusiveness might take forever to achieve. We are realistic: we know that everything cannot be in place on day 1. However, a lot of attention needs to be paid to achieving inclusiveness of the register, within a time scale.

Mr McAllion: You suggested that registration would be possible before a given service came into being and that you think that the first inspection should take place within 12 weeks of initial registration. Why 12 weeks?

Bryan Healy: That is a good question. I suppose that the answer is that 12 weeks seems better than six months. I learned of the case of a nursery service that had been registered on the basis of its staff's qualifications and its equipment, but not on the basis of the quality of care that was being delivered. The inspector was not due to return for a year. I felt that that was not right, and that an inspection within 12 weeks was necessary. Perhaps that is the right time delay; perhaps it is wrong. In any case, an overview should be given as soon as possible after a service starts running to establish whether standards are being met.

The Convener: Are you happy with the complaints procedure as set out in the bill?

Bryan Healy: Yes. A lot of detail is still required on how accessible that should be, on how it might work and on how the phone lines would work, among other things. However, the proposed procedure represents a move in the right direction. Anything that opens the door to people who want to discuss their feelings about the service that is provided for them or their family must be a good thing. Whether that takes the form of a complaints procedure or of a suggestion box, the main consideration is that people have their say.

The Convener: Thank you for coming and sharing your views, and for your written submission. It was helpful to receive that in advance.

15:19

Meeting adjourned.

15:30

On resuming—

The Convener: We will now take evidence from the Coalition of Carers, whom I wish a good afternoon and thank for their written submission and for coming this afternoon. If you would like to make a short statement, please do so. We will then ask questions.

Sebastian Fischer (Coalition of Carers): Thank you for this opportunity to comment on the bill. I would like to introduce Margaret Hendry and Ann Anderson, who are both carers. They will also make some comments.

The short period during which the coalition has had to consult its 50 or so member organisations and carers has made things quite difficult, but we feel that we have got a fairly representative response from throughout the country. That response has informed the five main points from our written submission that we wish to discuss today. All carers have greatly welcomed the bill. Some have said that it really shows how the Scottish Parliament is working. People have been appreciative of the content of the bill, of how the system is working and of how they have been involved in it.

Many of the comments that we have received have come from the coalface—from carers who have experience of a variety of care packages and support for the people whom they care for. We have tried to link those comments to the bill, because many carers did not feel especially comfortable about considering the implications of the bill.

An important issue for carers and carers' organisations is the recognition of carers as partners in the provision of care. The bill still seems to consider carers as clients or service recipients. We ask the committee to reconsider that in the light of the reclassification—or reconceptualisation—of carers. Carers should be considered as providers of care—indeed, the evidence is that carers make up the largest body of providers of care. Consideration of carers in that way would affect the ways in which some services are considered. In effect, some services merely substitute care; they are not services for the carer. Under current human rights legislation, services for carers should be considered differently. If services are of benefit to the cared-for person, they should be recognised as such and not as services for the carer.

Carers have also made points about the role of carers as partners. If carers are to be recognised as partners in the provision of care, they should also have a more clearly defined role in helping to implement provisions that flow from the legislation and in monitoring services and standards. Carers feel that the bill as drafted is not clear enough and does not acknowledge that role. Margaret Hendry will say something about the role of carers as partners in the provision of care.

Ms Margaret Hendry (Coalition of Carers): I am Margaret Hendry. I look after my mother, who will be 94 in April. I have been looking after her for about six years. She cannot now really do anything for herself, so 24-hour care is needed. I do the vast majority of that, but I need to have other carers in to let me have a bit of respite. Quality and continuity of care is absolutely essential; in fact, there cannot be quality without continuity. One might have the best carer in the world, but if that carer is not there regularly, the relationship can be broken, when instead somebody different comes and there is a need for the cared-for person to meet somebody new. Quality and continuity go together—I assure members that there cannot be quality without continuity.

Carers have a great role to play in monitoring and implementation and I would be happy if they were consulted. Carers deal daily with other carers; they know the strengths and weaknesses of the support care system and of the agency workers who replace them. They must often be the people who communicate for the cared-for person. They must often interpret, as I do—my mother can no longer speak and can see very little. The carers are the people who really know what is happening and they can impart what they have learned, having seen the strengths as well as the weaknesses of the system.

Sebastian Fischer: Throughout all the points that we have made, the carers have focused on the standards of services that are provided in the home. That is a clear priority for carers and everybody sees that as the most likely area of growth in services. Carers have made the point that the quality standards for carer support that have been discussed and agreed in England have not yet been discussed and agreed in Scotland. They hope that they could be added either to the bill or to the development of care support standards more generally.

On registration and training of staff, carers have said clearly and unanimously that they hope that all staff will be registered. They feel that it is especially important that care workers who provide services in people's homes should be registered and that training facilities should be strictly defined and monitored. Carers experience hugely differing quality of service. They are aware of some very good practice, but they are also outspoken about the importance of finding methods of monitoring the standards of care that is provided in the home.

The point about complaints is relevant in that context. Carers very much welcome the proposals for a stringent complaints procedure. We have explained that there can be feelings of vulnerability and fears of recrimination if people complain about what might be the only service that is available or affordable.

A number of carers mentioned that a system that includes continuous assessment, customer satisfaction surveys or some other way in which service recipients are asked to regularly provide feedback would be less threatening. Simply to rely on a complaints procedure puts the carer in a situation in which they are perceived as a nuisance—carers are sensitive to that.

Those are the five main points that we wanted to bring to the committee's attention. They have been agreed unanimously by all the people we spoke to.

The Convener: Thank you. So, generally speaking, you are in favour of the bill. Do you believe that the consultation so far has worked well, or could it have been better?

Sebastian Fischer: Carer organisations and professional staff, who were more aware of the consultation than were carers, felt that there was a long lead-in time and that it was an appropriate and satisfactory process.

Margaret Jamieson: What are the main implications of the bill for carers and people who use services?

Sebastian Fischer: Could you repeat the question?

Margaret Jamieson: What are the main implications of the bill for carers and people who use services?

Ms Hendry: I am pleased with the bill, particularly on registration, implementation and standards. That is nothing but positive. The issue is how to make progress. There will need to be a lot of innovative thinking, particularly about care in the home, which is very diverse and needs many skills and types of people to provide services. Care in the home is a delicate matter because there is one person and one carer. The bill fits well with residential and day centre care, but many people will be cared for in their homes. The frail elderly are staying in their homes. I am sorry, I have probably gone on too long.

Margaret Jamieson: Are you advocating that the bill should be extended to encompass individuals who receive care in their own homes?

Ms Hendry: Does the bill not refer to that at all?

Margaret Jamieson: It is not as specific as that.

Ms Hendry: I am not talking about the care that is given as basic support, such as the care that I give; I am talking about care that is brought in from an agency, local authority or voluntary organisation. I am sorry if I did not make that clear.

Margaret Jamieson: That is fine. You are talking about the care that individuals receive in their homes.

Mrs Ann Anderson (Coalition of Carers): May I pick up on the care that is supplied through agencies? I would like to be assured that local authorities—which in my opinion will have to increase their use of agency workers because there are not enough social home care workers in local authorities—will have responsibility for the training and supervision of agency workers. Local authorities should not be able to say that it is the agencies' responsibility to ensure that their workers have the relevant qualifications and supply the kind of care they are paying for. I would like to be assured that agency workers will be supervised in the same way as local authority home care workers.

15:45

The Convener: Our understanding is that agency workers will be bound by the same regulations and code, through the Scottish social services council, as everybody else, depending on what tranche they are in. We have to bear in mind the fact that there will not be a big bang: we will not have an unregulated service one day and then, the next day, a regulated service. Things will not happen that quickly. However, agency workers will be covered by regulations and there will be no difference in that respect between agency and local government workers. The important thing will be the professionalism of the individual member of staff.

How can we develop effective regulation of home care services? There will be a range of different home care services and we have touched on the three key ones: the situation where the main deliverer of care is a carer, who more often than not is a family member, and who is getting support services and perhaps making use of respite services; the situation where agency staff are used; and the situation where care at home is supplemented by support from local authorities. What will be the most difficult problems to resolve in the effective monitoring of services that are delivered to people in their own homes? How can we regulate something so diverse? That is the killer question.

Mrs Anderson: We would love to know the answer—especially in the case of an elderly person or, indeed, any person who is in receipt of care and lives alone. Those people have to speak up for themselves, but they may not fully understand the mechanisms for complaint if they are not happy with the service. If there is a resident, non-paid carer—usually a relative, or a friend or neighbour—that person is the voice for the person who is receiving the direct care and that person makes decisions about any problems. I am concerned about people who do not necessarily have that regular contact with a live-in carer.

I do not know what the answer to your question is, but I am concerned. I had an experience recently with an elderly person whose home help did not turn up for three days. She did not know who to contact and nobody contacted her. Situations such as that bring home the fact that the best system in the world on paper can fall down very easily.

Sebastian Fischer: I would like to add a couple of points that carers have made to try to resolve this problem. Much hinges on the recruitment and employment conditions of agency staff. Carers often say that they come across a transient work force—people who may come to a city such as Edinburgh or Glasgow for three or four months, sign up with a care agency, do a bit of work and then move on. Some agencies are so desperate that they will take on staff on the basis that, whenever those staff have time, they will ring in and say that they are available.

Margaret Hendry spoke about the consistency that is required to allow care staff really to get to know the person who requires the care. Once a staff member is trained and really gets to know a person, that staff member will be reliable and will stay for a long time. Carers have pointed out that the pay and employment conditions of agency staff leave a lot to be desired. It is not surprising that some agencies have a big staff turnover. However, we are aware that this area is a difficult one to regulate with this particular bill.

Ms Hendry: I agree. The problem is that the work force is so diversified. There are multifaceted tasks and the work force includes people of different ages and experience. The first step should be to regulate it in such a way as to establish a better way of doing things at the start.

It is necessary to consider where there are weaknesses. For instance, who sees a person from an agency working with the person who needs care in their own home? Only the carer and the person who needs care. Mechanisms should be put in place before someone comes into a home to provide care. Senior agency staff should go to see people working in the home. All sorts of measures could be introduced.

We cannot start regulating once everything is in place; we must start at the beginning. I could go into more detail.

The Convener: You mentioned the transient nature of the work force. In previous evidence sessions, we have discussed the fact that the national care standards are not only about medical care; they are about quality-of-life issues. One of the matters that you would consider in a care home would be turnover of staff. You would be worried if there was a significant turnover of staff, yet you are saying that when people are being dealt with in their own homes there is significant staff turnover. It may be worse, because there is one carer there and possibly another member of staff. A large turnover of staff in a care home may be two or three people in a large staff.

Shona Robison: Margaret Hendry has put her finger on the button about how difficult this is going to be. Customer satisfaction surveys are of limited utility. When I was a home care manager, my experience was that when our department sent out a survey, the response was, "My home help is lovely; could she come more often?" There may have been a fear behind that—that if they said the wrong thing they would lose their home help—or they may have been grateful for what they received although it might not have been up to the quality that it should have been.

Unannounced inspections in the home would be the best way to find out how good the service is, but that leads to the problem of intrusiveness. We must consider this issue closely. Rather than surveys, senior staff should—as Margaret Hendry suggested—spend more time with the person who is receiving the service and talk through it. You get a lot more back about what someone really thinks about the service by asking questions that way.

The Convener: Would you like to ask your other questions?

Shona Robison: It has been suggested that the bill might be in danger of being out of tune on carers. You covered the point thoroughly in the introductory statement when you said that the definitions need to be changed and that the role of the carer is as a service provider rather than as a service recipient. Do you have any further comments to add to that? I think that your comments were quite clear.

Mr McAllion: The key role in the bill lies with the inspectors and how they work. I detect that what you are saying is that if the inspectors go to the council or the agency and check the books, qualifications and how many people are on the rota, they will not really find out what the service is like. Although they could not go unannounced into people's homes, they could arrange to meet carers in their home to discuss the service from their perspective. Are you suggesting that that mechanism should be written into the bill?

Mrs Anderson: Yes, definitely.

Sebastian Fischer: When we talked to carers about an inspection of their home, some of them laughed and said, "Think about how often other public services are inspected—perhaps once a year. What chance is there of ever seeing an inspector in my own home?"

We are strapped for services and local authorities and other agencies generally cannot afford inspections. Could more thought be given to a self-regulatory mechanism whereby the carer is regarded as an active partner in inspection? Carers already consider the quality of the service that they receive and are not likely to leave the house until they can be assured that a minimum level of service is in place.

Such a mechanism is what we meant when we referred to a customer satisfaction survey. We should consider the role that carers and family members in the home can play in assisting the inspection of services. A visit from an inspector is not necessary, but the inspectorate should invite carers to comment in writing. Carers feel that there are additional ways in which carers can participate in a service that assures quality and compliance with standards—I hesitate to use the term "policing".

Mr McAllion: You are saying that the proposals in the bill to involve carers, such as ensuring that they are represented on the commission and the council, do not go far enough and will not guarantee that there will be quality monitoring on the ground.

Sebastian Fischer: The ways in which quality monitoring will be guaranteed are not spelled out clearly enough.

Mr McAllion: You would like something to be specified in the bill.

Sebastian Fischer: Yes, if that is appropriate for the bill. Carers have said that it would be good to specify that there should be carer representation at every level in the commission and in the inspection mechanisms. In a nutshell, carers would welcome the incorporation in the bill of a stronger and more defined role for carers as partners in the provision and regulation of, and compliance with, standards. Carers would like to make a contribution to that.

Mr McAllion: Maybe there should be a statutory duty on regional offices to consult carers in their area on services. If you can suggest something better, please do.

Sebastian Fischer: There should be something like that.

The Convener: Following on from Shona Robison's point in response to what you said about continuous assessment, the question is how to involve carers and service users in the most effective way. One could claim to have fulfilled a statutory duty by sending out forms once a year and asking people to fill them in. However, Shona Robison is right: people have to be made aware of why they are being asked for their input. That should be done as part of a continuous monitoring service so that it is not regarded with cynicism and fear. There could be a mechanism by which a senior member of staff sits down with people and takes a more verbal approach.

Are you happy that a greater level of involvement does not need to be specified in such detail in the bill, but could be included in appendices to the bill and form part of the ethos of the commission and the council? Is that a fair reflection of your position?

Sebastian Fischer: Yes. That is what I meant when I said that carers are not always sure whether our concerns would most appropriately be addressed in the bill or in the mechanisms that will follow, such as the guidance notes or local arrangements.

Shona Robison: Are there any omissions from the bill? There do not have to be any.

Sebastian Fischer: No. This gives us another opportunity to say that it is clear that carers thought the bill a very comprehensive piece of work.

Mrs Anderson: I have a question about section 4, on information and advice. The bill says:

> "The Commission shall provide information to the public about the availability and quality of care services."

Does that suggest that, for example, when people are looking for services, there will be some kind of report or office that they can approach to get a league table? At the moment, reports of care homes are compiled when inspections have taken place and people can refer to them, but the bill promises something new.

Currently, if someone is looking for a place in a care home and is self-funding, they receive no advice other than from friends and people who have had the experience. The social work department is not in a position to give that advice; if someone is self-funding, it is up to them to choose. The proposal in the bill seems to be an excellent way of assisting people who are in that position to make a decision. Am I correct in thinking that?

The Convener: You are correct in your assumption: the meaning of section 4 is clear. However, we can seek clarification from the Executive on how it envisages that advice being delivered locally. That would be of assistance to the committee, as well as answer your question.

Your colleagues from the Carers National Association of Scotland made the point that although section 2 talks about support services, in the context of care services it does not explicitly mention respite care. Would you prefer respite to be mentioned explicitly, or are you happy that it is covered under support services?

Sebastian Fischer: That was not an issue when we consulted carers and care organisations and no alarm was raised over it, but if there are ways of further clarifying the fact that respite services are included in the bill, the opportunity should be taken to do so.

The Convener: We will ask for clarification on that point as well.

Ms Hendry: I read recently that the agencies that currently supply a great deal of the care are not regulated at all, although they will be coming under regulation. Am I right in thinking that?

16:00

The Convener: I am advised that that is a fair reflection of the present situation. As I said earlier, the introduction of the council is intended to professionalise the services across the spectrum of social care almost irrespective of whether someone works for an agency or a local authority. Whether a nurse is working for an agency or for the national health service, she is a nurse, and to practise as a nurse she has had to do certain things and is thereby a professional. The general aim of the bill is to ensure that that approach is taken in the social care sector. It is not about social workers as a defined group, but about the wider spectrum of social care providers.

Ms Hendry: It is a wide spectrum, ranging from a nurse through to a young person who is just learning.

I return to the issue of implementation and monitoring. If this is the beginning of the regulation of the agencies, note should be taken of the structures that are being put in place. For example, the contract that is given to an agency for someone's care should be very detailed and everyone who is involved should have a copy of it. Right away, there is something that can be referred to when monitoring is required. When an inspection is made, the contract can be examined to determine whether the appropriate care is being given. To my knowledge, that is not being done.

I suggest that the structures for implementing and monitoring social care should be put in place at the beginning of the regulation process, because they are not in place at the moment. The bill provides the ideal opportunity to do that.

The Convener: We are at the beginning of the process—we are at stage 1, during which we consider the general principles of the bill and whether relevant groups and individuals have been consulted in the most effective way. A lot of work remains to be done at stage 2, when we will get into line-by-line consideration of the bill. The Executive tends to take on board some of the issues raised during stage 1, including the lead committee report, which we will prepare. Three other committees of the Parliament are also considering the bill, so the Executive will be bombarded with lots of good ideas. Your evidence will form part of that process.

Thank you for sharing your thoughts with us and for your written submission.

We now move on to our final group of witnesses, who are from the Scottish Consumer Council. Good afternoon and thank you for coming to the Health and Community Care Committee. You may start off by making a short statement. We will then ask you questions based on that statement and on your written submission.

Graeme Millar (Scottish Consumer Council): Thank you, convener.

I am Graeme Millar, the chairman of the SCC. Liz Macdonald is our health and community care policy officer and Martyn Evans is the executive director of the SCC. I hope that we will be able to answer most of your questions—I do not guarantee that we will be able to, but we will try.

Members will have received our three-page submission. I have no intention of going into that submission in great detail. During my presentation, I will pick out some of the highlights and then I will ask my colleagues to fill in some of the gaps. I consider myself to be more of a generalist.

The SCC welcomes the bill and is delighted that this area is being tidied up and that some common sense is starting to enter the system. We were also pleased to be represented on the aiming for excellence reference group, which brought us to this stage.

I will not labour too much on the first page of our submission, which talks about the history of the situation. In some respects, the regulation of this environment by the health boards, the local authorities and the social work services inspectorate was all over the place. There are some holes in the system—some people are not being regulated. I noted the point that was made earlier: regulations in those areas should be tidied up during this process.

The SCC argues that there should be both a Scottish commission for the regulation of care and a Scottish social services council. As we say in our submission, those bodies should be

> "authoritative, independent, transparent, accountable, and involve service users and their carers, as well as representatives of the public interest"

in their work.

We will draw to your attention the five aspects of the work of the bodies that are listed in our submission. I will deal with the composition of the commission and the council first. As we note in our submission, both paragraph 3 of schedule 1 and paragraph 3 of schedule 2 contain the interesting expression

> "provide a proper balance between the interests"

of five categories of people, but there is no explanation of how that balance is to be achieved and whether that is to be done through membership or whatever.

We express concern that perhaps there should be statutory guidance on the size of the bodies and how that "proper balance" is to be achieved. Whatever environment we work in, we all aspire to produce a "proper balance" and I know that it is difficult to achieve a balance by using the number of members and criteria for membership. A lot of thought has to go into that and some statutory guidance may be useful, otherwise we could end up with organisations in which there is an imbalance.

We also suggest that there should be another category: that of the public interest representative. The five categories that are already listed in the bill could clearly be categorised as interested parties or stakeholders. We think that there is also an opportunity to bring on to the group other people—patients, carers and service users—who can give an objective point of view and voice, just as we are in the early stages of encouraging public input into the health service.

The independence of the bodies and the strength of that independence will centre on the fact that the majority of members will not be service providers. It will not just be organisations' members that sit around the table determining the standards. Parliament would want be reassured that that would not be the case, and we reinforce that view. The greater the input from lay people who have no background in that environment, the more independent the view will be. That must be in the overall interests of the users of the service and of their supporters and carers.

An organisation or regulatory body must go beyond the ability to report annually to Parliament on the activities in that sector. It must be able to take a strategic view, identify areas in which there are problems and bring to the attention of Parliament those areas in which the social care system may need to be amended. Such a body should not be just a check-and-balance inspection organisation, but one that contributes to the strategy that is to be developed on a continuing basis in the social care system.

There are regulators and regulators, depending on what sector they are dealing with. Some get close to managing the sector rather than actually regulating it, but there must be flexibility to allow the regulators to make judgments and pass their opinions on to members of Parliament and others, especially in areas of market failure, which we know exist in the care sector. Regulation is essential for the safety of the people who are being looked after and for allowing their families to retain their sanity, knowing that there is a protective regulatory mechanism.

The process of inspection is interesting. I had some personal involvement with inspection in my previous life at Lothian Health, but I am not so well aware of how it works in other sectors. There is not a great deal of detail in the bill about how those inspections will be conducted. There is expertise among the existing staff who will be transferred, but there is now an opportunity to apply a national standard all over Scotland, rather than standards and their application varying between health board and local authority areas. Inspection without regulation with some national guidelines would be a halfway house and could therefore be ineffective.

When it comes to the relationship of the commission and council to other parts of the regulatory structure, there are so many different organisations that have one toe, a foot or even a whole leg in this environment—we have identified five or six of them—that there is an opportunity to get some clarity on how they are involved and how that involvement can be articulated so that the new commission and council know exactly what their remit and role is.

More important, the users should be able to identify the route map through the respective roles of the various organisations. I am not suggesting that it is time to tidy things up, but it is certainly an opportunity for clarification. I know that GPs, who are advocates in this environment, have some difficulty understanding the respective roles of those bodies. However, they hope that, as we progress towards producing a commission and a council, we will get some clarity.

We welcome section 6, which requires the commission to set up a complaints procedure about service provision. We also welcome the facility to complain against the council and the commission themselves, as we must ensure that there are checks and balances in the system. However, we strongly recommend that the principle must be that the service provider should be impressed upon to solve the complaint at the earliest possible stage. That also applies to private and independent health care.

I have given a brief outline of the issues. My colleagues may want to make other points.

Liz Macdonald (Scottish Consumer Council): I would like to add to what Graeme Millar has said about the inspection process. The new system will offer an opportunity to reconsider that process. A particular point in our paper concerns the use of lay people in inspecting services. Good role models are out there, for example, the school inspections, the work of which is paralleled in other inspectorates in different ways. As a matter of principle, we feel that not only professional inspectors should be involved in inspecting care provision.

Mr McAllion: Who would those lay people be? I presume that parents would be involved in inspection of a school, but how would you get a list of appropriate people for inspections?

16:15

Liz Macdonald: The schools inspectorate advertises for anyone who is interested in becoming a lay inspector. Those people do not have to be parents.

Mr McAllion: So inspection of care provision would be open to whoever put themselves forward?

Liz Macdonald: Yes.

Mr McAllion: Rather than just to carers?

Liz Macdonald: Obviously there is a place for carers and service users, who very likely would be interested. However, I think that we would argue that it should be open to anybody.

Mr McAllion: Would the list be under the control of the Scottish commission for the regulation of care?

Graeme Millar: Yes.

Mr McAllion: So people would apply to the commission, which would then either approve the application or not? Is that an additional role for the commission?

Martyn Evans (Scottish Consumer Council):

Carrying out inspections using lay inspectors would be quite common and, yes, the commission would have control of who was chosen.

Mr McAllion: I would like to ask about your ideas on annual reports. How are they different from what is suggested in the bill? In the bill, people have to report every year to the minister and things have to come before Parliament. How is your annual report different?

Liz Macdonald: The section that deals with the annual report says that the commission and the council will have a duty to report to the minister on the carrying out of their functions. I know that other parts of the bill talk about a wider information role, but we are saying that the annual report is a tool for providing a strategic overview of the way in which service provision is working.

Mr McAllion: Would you like section 4 to be beefed up? Should it say specifically that an annual report should be made available to the public and to the Parliament, giving a strategic overview of the quality and availability of care services across Scotland? That could lead to an annual debate.

Martyn Evans: We are not saying that there should necessarily be an annual debate, but the annual report should contain formal proposals—from the commission or the council to the policy makers and the purse-strings holders—about changes that they envisage following their inspections. The report would not simply be saying, “We have done this.” It would be saying, “We have done this, and we think that these things should change.” That may be implicit in the bill, and we may have missed it, but we would like it to be more explicit.

Graeme Millar: On the positive side, where good practice is identified, as it often is in certain sectors in certain areas, the annual report could be used as a communication tool to the whole sector, pointing out the good practice that we have identified and recommending that others start to work to those standards. Using the report as a tool would allow the sector to become more dynamic.

Mr McAllion: Would taking on those additional roles—vetting the lay inspectors and producing an annual report—involve extra expense for the commission? How would that impact on the proposal that it should be self-financing through fees?

Graeme Millar: I would expect any annual report to be a report of the sector at one moment and to reflect good and bad practice. I therefore do not think that our suggestion would involve any increased cost; nor do I think that there would be a great deal of expense in involving lay members. They are often willing volunteers who may have been carers in the past and who may have experience to offer.

It is difficult for us to take a view on costs. Clearly, they should not be prohibitive. If the cost is passed on, or charged per bed in a particular environment, we will have to be careful that people who are disadvantaged in any way do not find themselves out of the loop. We must avoid the possibility of unscrupulous proprietors in some establishments taking advantage of any new system. That must be part of the regulatory inspection role.

Mr McAllion: Should the commission and the council be funded purely through fees, or through fees and direct funding from the Scottish Executive?

Martyn Evans: We have not taken a view on that.

Graeme Millar: In the past half-hour, we have discussed whether we have a view, but we have not taken a view. If the bodies are to work, they must be adequately funded. The income may be a balance of the sources. We do not have a policy on that.

Margaret Jamieson: In regulating care and the work force, the inspectors will have legal obligations as to how they report their inspections. If standards are very bad, the matter will have to be dealt with in court. How does a lay inspector fit into that system? They would not have the same legal obligations and would not be charged with ensuring that national standards were applied throughout Scotland. Surely their report would be rather subjective.

Liz Macdonald: I have not given that issue a great deal of thought. I am unsure why care inspections should be any different from school inspections. In the school inspection model, a team that combines professional and lay inspectors normally conducts the inspection.

Margaret Jamieson: Would the lay inspectors be part of the team, not separate?

Graeme Millar: Yes. The lay inspector would not be an amateur. They would be well informed about what they were looking for. Lay inspectors would receive a fair bit of induction and training. They support the professional inspectors, who must consider issues in a certain way. The lay inspectors provide a broader perspective in the inspection team.

The Convener: I do not remember whether it was the minister or another witness who suggested to the committee that some inspections might be conducted by one inspector, once a year. An inspectorate team is not planned.

I take your point about a lay inspector in a team of school inspectors. When I was a councillor, a lay school inspector questioned me about the local school for which I was the councillor and to which one of my children went. They asked me different questions about the school community, the environment and the community outwith the school from those that the professional person from Her Majesty's inspectors asked of the teachers or the head teacher. At that time, the inspectors were pulling together different aspects of the story about that school. Would an inspection that was conducted by only one inspector be adequate? Would the inspection be adequate if it were performed not by a professional but by a lay inspector?

Graeme Millar: The answer to both questions is no. In my experience, it would be difficult to find an individual who could manage a full inspection across the social work and medical field of a nursing home. I would expect more than one individual to do an inspection. However, even if only one inspector were used, lay involvement would be more likely when the inspector had identified a problem and needed a team to examine it. I am just thinking of the issues as I sit here. I would be surprised if the total responsibility were placed on the shoulders of a true lay inspector.

Shona Robison: You are probably aware that it is proposed to reduce the number of inspections in care homes from two to one. Will that afford consumers adequate protection? Should the inspection be announced?

Graeme Millar: We have considered that, and we think that it is reasonable that there should be a minimum of one announced inspection and one unannounced inspection. In some cases, you may have to have unannounced inspections month after month until a problem is resolved. Having unannounced inspections would be sensible. Organisations would get a formal, tick-the-box type of inspection each year, but if concerns were expressed, it would be up to the inspector to decide whether to go in unannounced to find out if there was a problem. It may be that two formal announced inspections in a year are too much, because it is rare that the environment in homes changes rapidly. However, there should be an announced inspection and an unannounced inspection in no more than 18 months.

Shona Robison: Just to be clear, are you saying that there should only be an unannounced inspection where a problem has been highlighted, or should there be an unannounced inspection regardless?

Graeme Millar: There should be two inspections per year, one announced and one unannounced.

Shona Robison: For everybody?

Graeme Millar: Yes. That would keep managers on their toes.

The Convener: You say in your submission that potential complainers should be encouraged. I do not know if we agree with you, having sat through our surgeries. Are you satisfied with the complaints procedure as outlined in sections 6 and 45 of the bill?

Graeme Millar: We welcome what is in those sections. We are not recommending that people complain, but if they do, we recommend that they complain in a sensible, logical way, and do not rant and rave and whinge. A complaints mechanism is also an assessment of the quality of the service that is being provided. As I said earlier, we would always encourage service providers to stop complaints at the front end of care delivery, however that manifests itself.

Liz Macdonald: We welcome the complaints procedure. In our responses to earlier consultations we said that it was important that there was such a procedure, because in some circumstances it is difficult for service users, particularly disadvantaged service users, to complain to those who are providing services, so providing another channel for complaints and feedback about a service is welcome. It is important that once somebody has made a complaint, through whatever system, it is dealt with by the right person in the right way. It is also important that there are good links between professional regulatory bodies.

The Convener: You suggest that there should be public interest representatives on the Scottish commission for the regulation of care and the Scottish social services council. How would that work in practice? Can you give us some examples of the kinds of people or organisations that you have in mind for such posts?

Martyn Evans: So far, the list of representatives is a list of stakeholders. One of the purposes of regulation, particularly with regard to the Scottish commission for the regulation of care, is to increase public confidence in care services. You can advertise and encourage people who have a general interest in the area but no particular stake in it to be represented on the commission. Such people, who are used in other forms of regulation, do not have a particular stake, but they have a general interest. They can be encouraged to act in a fairly disinterested way, and they add to the balance of the regulatory mechanism. They would increase public confidence in the system.

The Convener: So you are talking about people who would be like non-executive directors of health trusts. Is that the kind of representative that you are talking about, as opposed to local councillors, MSPs, the Scottish Consumer Council or the Carers National Association?

Martyn Evans: Yes. I mean somebody who is encouraged to come on board by public advertisements, and who knows that they are there in the public interest. That does not exclude any of the groups that you mentioned, but representatives should be drawn from a wide group. The list of stakeholders consists of those who deliver services, and those who receive services and their carers. Public confidence would be improved if you had a category of people who were there in the public interest. They are not there because they provide or receive services, but because they have a general interest in maintaining public confidence in the regulation of care.

Graeme Millar: Our other point is that the majority of representatives should not be service providers. That stance has been adopted in other sectors, such as the Clinical Standards Board for Scotland and the Financial Services Authority, so that they are perceived to have a degree of independence.

16:30

The Convener: Would you like the bill to lay down that there should not be a majority of service providers?

Graeme Millar: Yes.

Martyn Evans: We say in our submission that at the moment it is up to ministers to give advice on the balance of members. That is an onerous task, and will be subject to criticism. It would be appropriate for the Parliament to give a broad view on what the balance might be, and for that to be implemented by the Executive.

The Convener: There are many areas that will require a lot of background to be filled in after this bill is passed. If we are saying that it is a fundamental point that there should not be a majority of service providers, that could be laid down in the bill, and the precise balance could be worked on in the background.

Graeme Millar: That is a fundamental point. It would help to increase confidence in the bill in the eyes of the public and service users.

The Convener: Do colleagues have any other questions? I have one final question. Are there any omissions in the bill, or are you happy with it? Is there anything else that you wish to say before we finish?

Graeme Millar: We discussed that, and we would be stretching ourselves to find any omissions at this stage.

The Convener: Please do not stretch yourselves. It is the end of a long day, and you have stretched yourselves enough.

Graeme Millar: It has been a longer day for you and your colleagues.

The Convener: Thank you.

There is one other thing before we bring today’s session to a close. Does the committee agree that I will act as a reporter to the committee, and go on an inspection visit with Peter Cassidy to see for myself what is involved in the inspection of a care home? The intention is that I will do that in Fife in the next few weeks. Is that agreed?

Members *indicated agreement.*

The Convener: Thank you, colleagues, and thank you to the Scottish Consumer Council and to all our victims today.

Meeting closed at 16:32.

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