HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 7 February 2001
(*Morning*)

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HEALTH AND COMMUNITY CARE COMMITTEE
5th 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

THE FOLLOWING ALSO ATTENDED:

Ben Wallace (North-East Scotland) (Con)

WITNESSES

Mrs Rosalind Carr (Scottish Care)
Annie Gunner (Community Care Providers Scotland)
Nigel Henderson (Community Care Providers Scotland)
Jim Jackson (Community Care Providers Scotland)
Jim Proctor (Scottish Care)
Ms Doreen Stephen (Scottish Care)

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

Wednesday 7 February 2001

(*Morning*)

[THE DEPUTY CONVENER *opened the meeting at 10:01*]

The Deputy Convener (Margaret Jamieson): Good morning. We need to consider whether to take items 4 and 5 in private. Those items are on increasing the effectiveness of committees and consideration of the motion for our committee business in the chamber next week.

Do members agree to take those items in private?

Members *indicated agreement.*

Subordinate Legislation

The Deputy Convener: The first instrument is the Feeding Stuffs (Scotland) Regulations 2000 (SSI 2000/453). The Rural Development Committee considered the regulations at its meeting on 30 January and had no comments to make. The Subordinate Legislation Committee commented on the Executive's failure to meet its European Community obligation and the fact that Scottish ministers have no powers to defer implementation—as is proposed—if to do so would be incompatible with EC law.

The time scale does not allow the committee enough time to reconsider the instrument while it awaits further written comment. However, the committee could still express its concerns to the Executive. No motion to annul has been lodged. The recommendation is that the committee makes no recommendation in relation to the instrument. Is that agreed?

Members *indicated agreement.*

The Deputy Convener: The next instrument is the Specified Risk Material Amendment (Scotland) Regulations 2001 (SSI 2001/3). The instrument was circulated to members on 16 January. No comments have been received from members. The Subordinate Legislation Committee had no comment to make and no motion to annul has been lodged. The recommendation is that the committee makes no recommendation on the instrument. Is that agreed?

Members *indicated agreement.*

The Deputy Convener: The next instrument is the Specified Risk Material Amendment (Scotland) Regulations 2001 (SSI 2001/4). The instrument was circulated to members on 16 January. No comments have been received from members. The Subordinate Legislation Committee had no comment to make and no motion to annul has been lodged. The recommendation is that the committee makes no recommendation on the instrument. Is that agreed?

Members *indicated agreement.*

The Deputy Convener: The next instrument is the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2001 (SSI 2001/6). The instrument was circulated to members on 16 January. No comments have been received from members. The Subordinate Legislation Committee had no comment to make and no motion to annul has been lodged. The recommendation is that the committee makes no recommendation on the instrument. Is that agreed?

Members *indicated agreement.*

Regulation of Care (Scotland) Bill: Stage 1

The Deputy Convener: We shall now hear further evidence on the Regulation of Care (Scotland) Bill. I welcome representatives of Community Care Providers Scotland, who have already submitted written evidence and who are here to give us further oral evidence. Would you like to begin with an opening statement?

Annie Gunner (Community Care Providers Scotland): First, I want to thank the committee for the opportunity to give evidence. The bill's proposals are of enormous significance to voluntary sector care providers and we are grateful for the chance to come and say our piece about it.

I emphasise the fact that CCPS members have consistently supported the principles and essence of the proposals since the publication of the white paper nearly two years ago. Our support is largely for two areas that are covered by the bill. First, the proposals iron out some of the anomalies and unfairness of the current regulatory system. Private and voluntary sector care are regulated very differently from local authority care, but regulation will become much more even-handed. The system will be independent and there will be national standards, rather then different standards in different parts of Scotland.

The second area of our support relates to the fact that the white paper's vision for care services encompassed a regulatory system that would be based more on the experience of service users and less on the fabric of the accommodation in which services were provided. The provisions of the bill are less about establishments and premises and much more about the quality of life that service users experience.

Having said that, we have some concerns about the bill. Looking at the bill, we see that there will still be very much the same kind of registration and inspection system as exists currently, rather than there being a new era for services. The current system concentrates on establishments, fit persons and premises; we are slightly concerned that the bill will give us more of the same. We cannot quite see how the vision is given expression by the bill, except that the big difference is that we will pay a heck of a lot more. Our other major concern is the resource implications of the bill for the voluntary sector.

We have sent in a paper listing our specific concerns and I hope that members have had a chance to look at it. The committee asked us to comment on the consultation exercise that was conducted by the Executive. It would be fair to say that it has been one of the most extensive and open consultation processes that we have experienced. We are grateful to the Executive and to the project team. We have been given extensive opportunities to say what we think about the bill and to put our point of view across. We are represented on the ministerial reference group, the national care standards committee and associated working groups. We will meet the Deputy Minister for Health and Community Care and senior members of the project team have come out to meet our members. We have nothing but praise for the consultation part of the process.

That said, the concerns that we express today are the same concerns that we expressed on the day that the white paper was published. Although we have had lots of opportunities to put our views to the Executive, that has not made much difference to what is in the bill. That is a small caveat to our praise for the consultation process.

Nicola Sturgeon (Glasgow) (SNP): My first question was answered during Annie Gunner's opening remarks, so perhaps it would be better to move on to the more substantive questions.

The Deputy Convener: Okay. You indicated that you have been actively involved in the development of the bill and the consultation process, but you countered that by saying that your views do not appear to have been taken into consideration. What sort of matters did you highlight during the consultation process that you believe have not been taken on board?

Annie Gunner: The resource issue was our principal concern. The proposal that, by 2004-05, the commission for the regulation of care will be self-financing has enormous implications for the voluntary sector. We have tried to put that view across on a number of occasions. I believe that most of the other parties that were involved in the process said broadly similar things. We could go into more detail about what the resource implications are for us if that would be helpful. Jim Jackson has some information on that.

Jim Jackson (Community Care Providers Scotland): We have estimated the cost for our members of meeting the new requirements to be some 3 per cent to 4 per cent of expenditure. There will be additional costs on existing fees and in other cases, such as home support services, there will be new fees. There will be increased costs to meet training requirements, either for the care workers or for the managers of the services. There will also be additional costs for Scottish Criminal Record Office checks and to meet standards as defined by the Scottish commission for the regulation of care. Organisations such as the Scottish Association for Mental Health have estimated that they will need an extra £32,500 to meet the costs of increased registration fees

alone.

It is suggested that voluntary organisations might be able to absorb those fees, but that will not be practical. Each year, we have the devil's own business in our negotiations with local authorities to gain inflation costs on the fees that we are paid. The thought of having to negotiate an extra 3 per cent or 4 per cent from local authorities on top of an inflation-linked rise concerns us greatly.

If we are not able to negotiate that increased cost, what will be our alternatives? We could reduce the level of service or we could reduce the conditions of service and wage levels of our employees. Those options go against the intention of the bill, which is to improve the quality of services. We are concerned that we do our best to ensure that our employees are given a decent rate of remuneration because they deliver the care. If we squeeze wage levels more than they are already squeezed, especially at the lower end of the scale, that will have an impact on quality. A third alternative would be to use our charitable sources of income, but that is not practical because some of our services are for unpopular causes, for which it is more difficult to raise money than for, say, children's services. We do not think that it is right that charitable income should subsidise the provision of basic care services in Scotland.

Our final point on funding is that, although it seems sensible to have some sort of charge for the registration and inspection of service providers, that will inevitably lead to the creation of a new bureaucracy. Why should the new commission have to have staff to send out invoices and check that payments have been received? If the new structures were funded totally by central Government, the need for some of the additional bureaucracy would be avoided.

Those are the reasons why we are cautious about some of the issues that are attached to the resourcing of the initial proposal.

Janis Hughes (Glasgow Rutherglen) (Lab): You have highlighted the fact that one of your main concerns about the bill relates to its financial implications. What will be the bill's implications for care providers in the voluntary sector?

Nigel Henderson (Community Care Providers Scotland): We welcome the idea of the single-care home and the merging of the current residential and nursing home services. However, given that the voluntary sector runs registered accommodation on a domestic basis—with perhaps four or five people sharing an ordinary house—we are concerned that we might have to increase the number of staff or have different types of staff at different times, to meet the care needs of people as they get older or become more physically dependent.

In the sector in which I am involved, people's mental health can fluctuate rapidly, and our ability to respond is not yet clear, given the contracting situation. Although we welcome the idea, we have concerns about how local authority commissioning will be able to respond to our needs. Given that we are the registered care providers and are ultimately the people who will be held accountable, we are worried that someone else in the chain might cause us to be deregistered.

As we have said consistently, we believe that there is a need for standards on commissioning as well as on care. The proposed Scottish commission for the regulation of care will be able to take a general view on the question of how services are commissioned. That is at the heart of the reason for the bill's introduction. If the bill is to address outcomes for service users and quality of life, the way in which services are delivered must start with the commissioning process.

10:15

Dr Richard Simpson (Ochil) (Lab): Should the commission be responsible for supervising commissioning arrangements? It will be responsible for setting, or at least inspecting, the standards by which the sector must operate, but somebody else will decide what that is worth. For the voluntary, independent and charitable sectors, it seems to have been difficult to square that circle. Who should monitor the ways in which local authorities commission from you and how they commission their own services? It has been pointed out to the committee that there are different standards in commissioning. From the service user's point of view, services that are provided by the voluntary, independent and charitable sectors are not commissioned at the same level as the same service provided by a local authority.

Nigel Henderson: Our opinion is that the commission should play a role in examining how contracting and commissioning of services are carried out. I cannot think of another body that might appropriately do that.

Jim Jackson: I wish to add a point about not only commissioning, but purchasing. The issue is not only about new services, but about existing, continuing services. We fear that the voluntary sector and, no doubt, the private sector will be given the poisoned chalice of having to deliver services to new standards—which we welcome—without sufficient resources to do so.

Dr Simpson: Do you really think that there should be a uniform system? Irrespective of who the provider is—whether a public sector,

charitable, independent or voluntary organisation—should there be a similar bracket of income for services of a particular standard and quality?

Annie Gunner: In our comments on the consultation paper, "Draft National Care Standards: First Tranche", which was published last summer, we floated the idea that, if there are national standards, there should be national indicative costs to accompany them. We hesitated to recommend that outright because, in our experience, when indicative costs have been set, they have been set unrealistically from the outset and frozen indefinitely thereafter. In some cases, therefore, indicative costs can prove to be more difficult to deal with than individual negotiations. Our key point is that there must be a way to marry the facts that one body sets the standards and other bodies decide how much provision is to cost. Otherwise, the providers will get caught in the middle.

Dr Simpson: I should probably declare again my involvement as a director of an independent nursing home company that operates in England and Wales. It is not directly relevant, but I wanted to declare that interest again.

Nigel Henderson: Given the bill and the way in which voluntary providers provide services, services are much more person-centred now. Ultimately, purchasing should be based on the needs of the individual, rather than on those of the service.

The issue is less about setting commissioning standards for certain types of service, and more about allowing commissioning to be flexible enough to enable us, as a provider, to call in a local authority when a situation arises regarding a specific individual, to ask whether we can invoke plan B, which will have already been prepared. The local authority could then give us the go-ahead to employ extra staff or to make other arrangements fairly quickly. Commissioning needs that kind of partnership, not the them-and-us relationship that we have with local authorities at the moment.

Dr Simpson: That will be a natural consequence of the abolition of the difference between nursing and residential care. The service will in future deal with individuals' care plans, which will need to be costed individually.

Nigel Henderson: The current system leads us to think that some services might not be viable if we must meet people's increased needs without the added support of better commissioning.

Janis Hughes: Your submission mentions your disappointment at the fact that the bill does not spell out its purpose and principles in its introduction, and you cite the Standards in Scotland's Schools etc Act 2000 as an example of legislation that does that. Do you accept that, although there may be a certain amount of vagueness in the bill, the policy memorandum and explanatory notes explain further the principles of the bill? Is not that satisfactory?

Annie Gunner: In some ways, that might seem to be a cosmetic issue. However, what is important to our members is the vision for care services that the bill is trying to introduce. It is not just tinkering with the system or centralising an existing local regulatory system; it is ushering in a new era of regulation, which will lead to additional benefits for service users. Our members feel strongly that the bill should begin with a statement that spells that out forcefully so that—when they examine the bill 15 years from now—people will be able to see that that is what the bill was supposed to be about and they will measure its performance against that aim.

Janis Hughes: You must accept that the principles of the bill are contained in the explanatory notes and policy memorandum, and that their absence from the introduction—where you would like them—is a cosmetic issue.

Annie Gunner: The white paper has more to say about the vision for care services than the policy memorandum. It contains a chapter that talks about a competent and confident work force, high standards and services that are based on the experience of users. The policy memorandum does not wax quite so lyrical.

Mr John McAllion (Dundee East) (Lab): You have expressed concern over the definitions in section 2 of what constitutes a care service. You highlight the lack of clarity concerning what constitutes a support service and the definition of a care home, which you say could have serious implications for service users, providers and funding authorities. Can you expand on that, and tell us how you would like those definitions to be improved?

Annie Gunner: We make two points about the definitions. First, we are not sure how far the definition of "support service" extends. We know that home care services will be brought into the system for the first time and that they will come under the heading of support services. However, voluntary services provide a lot of different services—befriending, advice, supported employment and vocational training—which we are not sure will be covered by the regulatory system. The biggest clue to that is whether standards are being set for those services by the national care standards committee. We know that, at the moment, standards are not being set for supported employment and other services, but the process has not finished yet. We are wondering where the line will be drawn between what comes

under the scope of the regulatory system and what does not.

Secondly, in relation to the definition of care homes and other services that include a residential element, our members are supportive of promoting the independence of users by not registering all supported accommodation as care homes. Once accommodation is registered as a care home, a whole funding stream is triggered and service users receive £14.75 a week, rather than having access to their full entitlement to rent and a tenancy.

At the moment we find that, because we can register and inspect only residential care homes, such provision is registered because that gives users the protection that is triggered by an inspection regime. Now that other services are coming into the scope of the system, that does not have to happen. Supported accommodation does not necessarily need to be registered as a care home. That promotes greater independence for the service users, who can have their own tenancies and so on. We are concerned that different registration and inspection units apply different criteria to decide whether a provision is a care home; identical types of provision in different parts of Scotland are treated differently—some are registered and some are not. That has serious implications for the degree of independence that can be enjoyed by the service user. Unless definitions are tightened up, it might in future be down to individual registration and inspection officers to decide whether a provision should be registered. We want a situation in which service users gain maximum independence.

The policy memorandum goes on to explain some definitions. If accommodation and care were delivered as a package in which they were inextricably linked, that would require registration as a care home. If someone can change their care service provider while living in the same place, the provision would not be a care home. We are broadly supportive of that. However, we wonder whether that should be tightened up in the bill, rather than just in the guidance.

Mr McAllion: It might be better for service users to live in supported accommodation because they get more benefits, which allows them to be more independent. However, if such accommodation were defined as a care home, that would not be beneficial to service users. Although they would be covered by better registration and inspection, they would lose out on the benefits that they are entitled to under current social security legislation. Is that right?

Nigel Henderson: Yes. However, our point is that existing unregistered supported accommodation will be brought under the registration roof, but will not be inspected at the—higher—level of a care home. The home care service will still be subject to inspection. The bill and accompanying policy information are not very clear on how services other than care homes will be inspected. There are still safeguards for those services.

Commissioning is important. The purchasing bodies have a role to play in safeguarding the service user because they are purchasing the service on behalf of the service user. Good contract compliance systems and quality assurance systems will contribute to safeguarding individuals. If we are going to have person-centred services—this goes back to the Griffiths report and the National Health Service and Community Care Act 1990—people should be able to live in their own home or in a homely environment. People see having a tenancy as paramount—it means that they do not have to move to get the services that they need because the services will come to them. We are concerned that too many services will get caught up in the care home definition—we prefer greater flexibility.

Mr McAllion: I was supposed to ask a question about the implications of the self-financing objective, but you dealt with that fairly comprehensively. The financial memorandum suggests that the fees for registration and inspection will increase over the next three years by about 10 per cent each year and that, thereafter, a judgment will be made in 2004-05 to make the system self-financing. Do you think that the financial memorandum contains a realistic estimate of what the increases will have to be?

Nigel Henderson: No. Having looked at some of the financial information last night, I noticed that 10 per cent is mentioned, but the financial memorandum goes further; it says that the fees will rise by £10 per year, which is about 15 per cent. This year, fees for registration increased by 44 per cent; from 1999 to 2000, fees went up from £45 per bed space to £65 per bed space. That was intended to soften the blow and to bring registered care homes in line with nursing homes. We have already seen significant percentage rises and we now face another 45 per cent increase over the next three years, followed by a possible 200 per cent rise. That is unrealistic. It might seem to be a small part of the overall cost of care, but the more administrative costs that must be paid, the more care is diluted.

Mr McAllion: You indicated some drastic implications for the levels of service, for wages and for workers' conditions. Is there not another option? Could you not just pass on the fee to funding authorities?

10:30

Annie Gunner: As Jim Jackson said earlier, we are not hugely optimistic about our ability to negotiate 3 or 4 per cent fee rises from local authorities. We understand that money will be given to local authorities as part of grant-aided expenditure to cover those costs. We also know from experience that not all of that money will get passed on to voluntary sector providers. We are not especially happy about that and we often make a fuss about it, but we know why it happens: local authorities have other responsibilities and care costs rise for them as well. We are therefore not at all confident that we would be able to secure that money from local authorities.

Mr McAllion: So that local authority money will not be ring-fenced? They can spend it as they wish?

Annie Gunner: Exactly. As I say, we often make a fuss about not getting inflation costs from local authorities. A number of services have been running on standstill budgets for years and years. We know why it happens and we are not happy about it, but we understand that local authorities have other things to spend money on.

Quite apart from all that, the current system seems strange to us. It does not make much sense. The Executive gives money to local authorities, who may or may not pass it on to voluntary sector providers. If they do pass it on, those voluntary sector providers hand it straight back to another public authority. We do not understand the sense of that. The value of the money will plummet on its journey from A to E, or wherever it goes.

Mr McAllion: If anyone understands the sense of that, please tell the committee, because I do not think that any of us understand it either.

Annie Gunner: I was hoping that you might be able to explain it to us. We have to ask, if this is a public service, and if we are talking about a regulatory system that is explicitly about protecting service users and raising standards, why does the Executive not just give the money straight to the public body, without it having to take that circuitous route, losing its value all the while?

Ben Wallace (North-East Scotland) (Con): Earlier, you mentioned the structure of the bureaucracy. What are your views on the creation of two new bodies—the Scottish commission for the regulation of care and the Scottish social services council—in the bill?

Jim Jackson: We think that having two bodies is sensible. There are two distinct functions: to regulate the quality of the service and to consider work force and training issues. Those functions are equally important, so we are happy with the proposals in the legislation.

Ben Wallace: I noted that you were concerned that, although the commission and the council have a duty to consult each other, that duty is not expressed strongly enough in the bill.

Jim Jackson: That is correct. We would like the bill's references to consultation between the two bodies to be strengthened. The bill occasionally refers to consultation at the discretion of the two bodies or of the Scottish Executive. We would like those parts of the bill to be strengthened as well. We could give committee members the references if that would be helpful.

Ben Wallace: Yes, that would be great.

Nicola Sturgeon: I would like to follow up on Ben Wallace's point. You have raised concerns about section 44, and I can understand those concerns. However, reading the section, I find it about as strongly worded as legislation ever is:

"The Commission and the Council shall . . . consult the other in every case in which it appears . . . that there should be . . . consultation."

If you do not think that that is strong enough, how could it be strengthened?

Annie Gunner: We thought that the duty to consult should specify the subjects on which the bodies should consult each other, how often they should consult each other, and under what circumstances they should consult each other. I do not know how that would work in practice.

One of our concerns is that the commission will be responsible for enforcing some of the rules made by the council—that is where the link is. The council does not have an inspectorial executive arm—the commission will be doing that for it—so it would help if the bill specified a little more of the mechanics of how consultation between the two bodies will work. We are aware that there have been proposals to have one body rather than two, but our members have always supported two bodies, because they have separate functions.

Ben Wallace: It seems that you are unhappy with the word "appears". That is an issue for stage 2. Under section 44, it is up to the bodies to decide whether they should consult. Is that what you are trying to tie down?

Annie Gunner: Yes.

Jim Jackson: Another example is found in section 5(2), which refers to Scottish ministers preparing and publishing national care standards. It states that

"they shall consult any person",

which sounds firm, but it goes on to say, "they consider appropriate." That is far too loose.

Dr Simpson: Consulting on the national care

standards is the issue that I was going to come in on. The problem is that if you list in the bill all the organisations that are to be consulted, you may leave someone out, or situations may change, and that would be a problem. What would you like to happen? Should there by a requirement to consult the Health and Community Care Committee, for example, on who should be consulted? How do you see this being changed?

Jim Jackson: I am sure that you could make your own representations. There should be a clear mention in the bill of the requirement to consult service providers, and also service users and carers. Those three groups could be mentioned in the bill.

Dr Simpson: So you want the broad categories of providers, users and carers to be included in the bill?

Jim Jackson: Yes. Much as we would be delighted to see our own organisation listed in the bill, we recognise that that is not practical.

Annie Gunner: In a couple of places the bill specifies, for example, that local authorities and health boards will be consulted in relation to the complaints system, so broad groupings are specified in the bill. We would like care providers to be mentioned throughout the bill, particularly in relation to the voluntary sector. The Scottish compact guarantees consultation between the Executive and the voluntary sector, but that does not appear to be honoured anywhere in the bill.

Dr Simpson: Do you have any other general concerns about the national care standards, which I believe you have been involved in drawing up?

Annie Gunner: We have a representative on the national care standards committee, and we have had representatives on most of the working groups relating to the services that CCPS members provide. We are supportive of the way in which the standards have developed, because they veer away from concentrating on establishments and premises and instead concentrate on the experience of individual service users, which is more appropriate than the current system.

The difficulty, of course, is how you inspect against outcome-based standards. We are pleased to have been invited by the Executive to participate in a group looking at inspection methodology and how we can measure performance against outcome-based standards rather than inputs and processes.

Dr Simpson: But presumably you will want to retain some processes and inputs?

Annie Gunner: There has to be a balance, but from the perspective of our members, at the moment it is far too input-based.

I draw your attention to section 5(3), on the national care standards. I am not sure whether other witnesses have raised this point, but we are slightly concerned by the fact that the section says that the standards will only "be taken into account" by the Scottish commission for the regulation of care. We are not sure why that should be, because the implication is that some services that do not meet the national care standards will still be able to operate. We do not understand why the standards need only "be taken into account", and not something stronger. There may be drafting reasons why that expression is used. That issue did come up in our discussions.

Ben Wallace: On a point of order, convener. We are dealing with stage 1 of the process, during which we consider the principles of the bill. Some of the questions that have been asked, including one of mine, have gone into specific issues. Will the committee invite the groups that have submitted evidence to us at stage 1 to submit specific amendments at stage 2?

The Deputy Convener: Amendments must be lodged by members.

Nigel Henderson: Another point on national care standards arises in section 5(1), which says that:

"The Scottish Ministers may prepare and publish national care standards"

We were concerned to see "may", rather than "will" or "shall". The wording is slightly ambiguous and implies that, at some future point, Scottish ministers might decide not to have national care standards.

Shona Robison (North-East Scotland) (SNP): I have a couple of questions on inspections, which we touched on earlier.

Could you say a little more about your views on the nature and frequency of inspections? I would also like to hear a little more about the more innovative methods that you want to see in order to avoid the one-size-fits-all worry, which is justified. What other possible methods have you thought of that could be put in place?

Nigel Henderson: Opinion on the frequency of inspections is mixed. People are not uncomfortable with the idea of one formal inspection a year—the bill does not specify whether that inspection should be announced or unannounced—because an inspection may not root out potential difficulties. A previous witness said that most of the issues that have come out into the open did so through soft evidence rather than through the inspection process. We whole-heartedly support unannounced inspections, which are important. There is a range of opinion within CCPS on whether we should stick to two

inspections a year or have only one.

On ideas for more innovative ways of inspecting, the Millan committee's recent review of the Mental Health (Scotland) Act 1984 suggested that, whenever possible, people should have access to an advocate. If advocacy services were provided, people could share concerns about their life and about what is happening to them with someone independent. One could gain a lot of information about what life is like in care settings through such a process as well as by consulting service users. Some people are less able to speak for themselves than others. It is important that those people have access to advocacy services and that their advocate is able to speak to an inspection service on their behalf.

Shona Robison: One would have to watch out for conflicts of interest, but would you suggest that responsibility for advocacy should be attached to the Scottish commission for the regulation of care?

Nigel Henderson: Whenever possible, advocacy services should be local and independent.

Shona Robison: So adequate advocacy services would have to be provided. At present, the provision of such services is a bit patchy.

Nigel Henderson: Yes.

Jim Jackson: I draw members' attention to section 6, which deals with the commission's complaints procedures, through which the commission will hear about possible poor or bad practice. The procedures should be enhanced by the encouragement of residents groups, carers groups and advocacy services, to which Nigel Henderson referred, and by the establishment of a helpline for whistleblowers. Those important services are not included in the bill.

Section 24 talks about the regulations that may be imposed on providers. I looked through that section carefully, but regulations on quality assurance systems were not included. One of the bill's challenges is to ensure that the standards work for service providers, the majority of whom want to improve services.

We should beware of focusing on the minimum standards and the problem of rooting out unacceptable practice. The bigger issue is how we can raise general standards. We think that that can be done through quality assurance systems, which have jargon phrases such as total quality management. We must get it into all the services that everyone–from the receptionists and basic care workers to the managers–has a role in improving the quality of those services. That is why we were so keen on the draft standards that have been published, which focus on outcomes for service users rather than on some of the more mundane mechanical bits.

10:45

Annie Gunner: The commission should be an enforcer and should root out poor practice, but we also want it to work in partnership with providers as a development agency. Providers would then have the kind of systems that would enable them to gather the soft evidence from users systematically, rather than having inspectors arriving once a year to gather that information for themselves. The inspectorial role is obviously important, but there has to be some sort of systems work that providers can do along with the commission to ensure that they are systematically measuring their own performance as well as waiting for the inspector to turn up. That is the kind of thing that we would like.

When the white paper came out, we wondered whether that was what was meant by inspections being complemented by self-evaluation, but there have been no further details about what self-evaluation might mean. We hope that it means that kind of quality assurance work in partnership with the commission, but there are no further details and I do not think that there are any references to it in the bill. We would like to explore that with the Executive to see how we can develop it.

Dr Simpson: One of the things that we have been discussing with other witnesses is how many centres there should be for the operation of the inspection teams. At the moment, it is suggested that there should be five centres, as opposed to 15 health boards, seven sheriffdoms and 31 or 32 local authorities—I can never remember how many there are. We are not quite sure of the logic of having five.

If there is going to be a collaborative arrangement under which inspection will be supportive as well as enforcing, there will also be a need for local arrangements for services such as pharmacy advice, which comes from the health boards at the moment. That service can be obtained from a health board quite easily, but the inspection teams may not place the same degree of emphasis on the wide range of areas in which such advice is needed. What is your view on the number of centres there should be and how the inspection arrangements should be managed?

Jim Jackson: We do not think that the number of centres is absolutely crucial. If you have a small number of centres, you could have local liaison arrangements below that. If you have a large number of centres, services would be linked to where those centres are based. We want to stress the importance of local liaison bodies—not necessarily advisory bodies, which have been

discussed. Current arrangements, whereby inspection and registration teams liaise with service providers in the voluntary and private sectors, have been beneficial. Where those liaison committees have also included representatives of service users, that has given a good voice to the people who are on the receiving end of services. We therefore support the continuation of the idea of having lay inspectors working in the system.

Shona Robison: Do you think that there are any important omissions from the bill that you have not already highlighted?

Jim Jackson: There is always the danger that we will remember something as soon as we walk out of the door. If that happens, we will write to you.

Annie Gunner: We have outlined our key points.

The Deputy Convener: Thank you very much for coming along this morning to provide us with evidence.

10:49

Meeting adjourned.

11:00

On resuming—

The Deputy Convener: We will now take evidence from representatives of Scottish Care, whom I thank for appearing. I apologise for delaying you slightly, but I hope that the delay helped you to get your breath back after your significant difficulties in travelling here this morning. You have submitted written evidence. Do you wish to make a statement?

Jim Proctor (Scottish Care): Yes. We would like to expand on some of what we said in our letter. We have a short opening statement that will give the committee an idea of where we are coming from.

The main thrust of the bill that affects our members is the introduction of the Scottish commission for the regulation of care. Scottish Care welcomes that initiative, which should help to reduce what has been a somewhat monopolistic influence from the local authorities. They were put in that position by community care legislation that a previous Administration introduced in the early 1990s.

As the committee is aware, that legislation gave local authorities responsibility for care of the elderly. That was a switch in emphasis from the NHS. At present, local authorities operate as direct providers of care services, regulators of care and inspectors of care, and, possibly most important, as purchasers of care services from independent sector care providers. Scottish Care welcomes the bill's removal of the regulatory function from local authorities, but the direct provider function, the purchasing function and, to a degree, the inspection function remain. The local authorities still have an onerous responsibility in a dominant position.

In their paymaster role, local authorities have put pressure on fees that are paid to the independent sector to effect below-inflation rises throughout the 1990s, until now, when the situation for independent providers has become serious. Scottish Care is concerned that the bill makes no provision to ensure that the implementation of regulations that are made under section 24 is accompanied by proper negotiating machinery that would facilitate a debate about a realistic fee for providing services. We are aware that discussions are taking place elsewhere, but the bill does not provide that machinery.

The committee's inquiry report of November 2000 said:

"A Public Service Agreement should be established between the Scottish Executive and COSLA on the allocation of community care monies. This should include agreement on minimum and maximum charges for services."

It also recommended that a

"single body should be given the role of budget holding".

In the past two years, central Government has allocated 8.9 per cent of funds to community care. The independent sector received 3.9 per cent of that. The question remains why. Despite two years of significant pressure on some overheads, the independent sector received only the percentage rise that the Treasury promulgated and the Department of Social Security minimum subsistence rates.

We welcome the aim, expressed in "The Way Forward for Care", that a commonality of care provision regulation should be established to replace the interpretative regime that is used throughout the 32 local authorities and 15 health boards.

We welcome questions.

Janis Hughes: In your written submission, you state:

"Scottish Care has been at the forefront in calling for . . . improving standards of care".

You go on to ask several questions, which perhaps demonstrate a degree of scepticism about some of the bill's proposals. Do you generally agree with the bill's provisions?

Jim Proctor: Yes. I said in my opening statement that we generally welcome the bill. We

are concerned that section 24 is possibly not strong enough—I believe that a previous witness referred to the use of the word "may"—to give us confidence that the conflicts of interests that we experienced in relation to local authorities throughout the 1990s will be helped. I emphasise again that we welcome the overall thrust of the bill.

Janis Hughes: Do you think that the bill requires several changes at future stages in order to meet some of your concerns?

Jim Proctor: There are one or two things that we would like to be addressed. In our submission, we discussed the registration fee element. We would like clarity on what that means and on what the amount of the fee will be. The point is made in "The Way Forward for Care" that the registration fee element is currently relatively small compared to total turnover. Its impact on users should be minimal.

However, we hear that the registration fees may rise considerably if the commission is to be self-funded. They may not be so insignificant, and could be from 0.5 per cent to 2.5 per cent or even 3 per cent. We are concerned about the effect on our businesses, which are already in a difficult situation in that regard.

Janis Hughes: What are your views on the bill's arrangements for consultation?

Mrs Rosalind Carr (Scottish Care): Jim Proctor was concerned about the consultation on the bill up to this point. Our consultation with the Scottish Executive on other points has been extremely thorough, but we have been a wee bit sceptical about consultation on the bill until now.

Janis Hughes: In what regard? Could you elaborate?

Mrs Carr: The amount of consultation we had on the bill up to this stage was minimal compared to the consultation that we are now involved in. That applies to standards and to every other aspect.

Janis Hughes: Are you happy about the proposals in section 44, which covers the "Duty of Commission and Council to consult each other"? We talked to the previous witnesses about that.

Jim Proctor: Generally, we are happy enough with the consultation that we have been involved in. Prior to the introduction of the bill, we were also involved in the consultation that led to the publication of the various documents.

Dr Simpson: On the implications of the bill for care providers in the independent sector, I understand your comments on conflicts of interests, but you also said that the local authorities would retain a provider role, a purchasing role and a placement role, and would also have some kind of inspection role. What elements of inspection will be continued?

Jim Proctor: I have concerns regarding assessment of and compliance with contracts, and I understand that local authorities will be continuing with their inspection teams. There is concern that that might lead to a continuation of the problems that have been experienced between health boards and local authorities, which involved differences of standards. That comes down to the question of whether nursing homes should be considered as clinical or social.

Dr Simpson: Will not the removal of the differentiation between those two categories eliminate such problems? There will be a single-care home category, and the division between nursing and social care will go. That is one of the main thrusts of the bill.

Jim Proctor: That is correct, but I am concerned that, if local authorities continue to consider contract compliance, there may be a tendency for a different thrust to be developed by the commission compared to that developed by local authorities.

Dr Simpson: Do you have any clear views as to how those relationships should be disentangled and the conflicts resolved? What role should be for whom? Should the commission have a role in determining minimal levels of fee income for the independent sector for particular types of care?

Jim Proctor: The commission should have a role. As I said earlier, I would have liked section 24 of the bill to include some reference to the commission having an input into the decision about the level of fee required to establish the standards of care that society is asking for. We have made clear for a while now that the fees paid are not enough for us to be confident about continuing to provide the level of care that we do. We are behind the standards of society and we wish to increase our standards. We cannot do that for minimal amounts of money. The commission should have a remit to enter into dialogue with the local authorities on the issue.

Dr Simpson: The powers of the commission will extend to deal with training. Are you quite comfortable with the commission requiring the independent sector to ensure that certain levels of training are undertaken?

Jim Proctor: Yes, we have no difficulty with that. I would add the caveat that we would need to have a reasonable remuneration to ensure that such requirements could be fulfilled.

Nicola Sturgeon: You have raised a concern that is new to me, although I may have missed its being raised by others. You say that, even after the regulatory framework is in place, local

authorities will have a continuing role of inspection that might overlap with that of the commission. No one else who has come before us has raised that concern. Where do your fears come from? Are they based on discussions that you have had with local authorities?

Jim Proctor: They come from first-hand experience of meetings with my parent local authority, Argyll and Bute Council, which told us, in a best-value meeting, that it intended to keep its best-value team going to examine contract compliance. That occasioned a debate on the day, but the council maintained that it was going to do that. The obvious concern was that the commonality of care that we want to be imposed on the country might be diluted.

Mrs Carr: "The Way Forward for Care" mentions the local authorities still having contract compliance provision. We are worried about having regional standards imposed rather than working to a national standard.

Nicola Sturgeon: I want to explore the implications of that. I understand that local authorities will want to have a role in ensuring that providers are complying with contracts but the standards for registration will be those that are being applied by the commission. I want to tease out whether there are grounds for fear that there will be a dilution of the commission's standards because local authorities will have a continuing role. I do not see how that follows.

Jim Proctor: There would not be a dilution. You probably used the wrong word there.

Nicola Sturgeon: You used the word a moment ago.

Jim Proctor: A better word might be "conflict". The debate with Argyll and Bute was around the fact that we thought that there would be a duplication of effort. Within that duplication of effort, there is obviously some room for confusion. There might not be a dilution of care, but if the local authorities continue to consider their requirements in a local context, there might be a continuation of the kind of conflict that we have experienced between health boards and local authorities. We contend that, if we are registered and the commission is happy with the standards that we offer, that should be enough. The bill says that local authorities should check whether we are registered. That would appear to be the end of the story, but some local authorities are talking about continuing their inspection regime.

Dr Simpson: We might be entering into an area of confusion between inspection and contract compliance. If I were a local authority, I might think that the commission's standards are a set minimum—although, as politicians, we hope that they will not be—and that, as part of the contract, I require certain enhanced services. I would be entitled to do that as long as I am providing the fee income to provide those services. If I have picked you up correctly, I understand that your concerns lie in the possibility that you will be asked to provide services above the commission's standard without having a fee income to provide those. Is that correct?

Jim Proctor: That sums up the situation.

Dr Simpson: It is helpful to have that clarified, as it would be worrying if there were two inspection teams. That would raise a different issue.

What are your views on the fact that two separate bodies are proposed—the commission and the council—with linking as set out in the bill and accompanying papers?

Jim Proctor: That is a positive move. It would generally be a good thing for a regulatory body to examine the social work side of things in liaison with the commission. We would welcome that.

The Deputy Convener: Are you happy that all your staff will be required to register?

Jim Proctor: Yes. We have no problem with the general thrust of the bill, although a little more remuneration would help to support the efforts to raise standards.

11:15

The Deputy Convener: Why do you suggest that there should be no charge for copies from the council register?

Ms Doreen Stephen (Scottish Care): If we are obliged to check staff, the idea seems to be that we will be able to get a reference from the council. Should we not be able to get that for nothing?

The Deputy Convener: I do not think that you would obtain a reference. You would obtain information saying that someone was a fit person to be registered and that they had complied.

Ms Stephen: What about the police checks?

The Deputy Convener: Those would be separate.

Ms Stephen: I do not think that we pay for them. What is proposed is just another cost, and we question it.

The Deputy Convener: Do you receive free copies of the register of the UKCC—the United Kingdom Central Council for Nursing, Midwifery and Health Visiting? When you request PIN checks for your nursing staff, do you not have to pay for them?

Ms Stephen: That is a good question. The service used to be free, but I think that there is

now a charge for it.

Mr McAllion: You have said that you would like more clarity over the future fees for registration and inspection. Do you know that the Executive intends that the commission will become self-financing beyond 2004-05? What do you think will be the implications for fees and for your organisations if that proposal goes ahead?

Jim Proctor: The implications are that we will face a significant increase in oncosts in relation to registration. I attended a Laing & Buisson conference at which a representative of Lothian Health talked about the possibility that we might be heading towards a fairly significant increase, which might take the current exposure of 0.5 per cent of turnover to more like 2.5 to 3 per cent. That would have a significant impact on businesses that are already struggling. I emphasise this point: we want to contribute to the balance of community care, which still requires a residential element, but we are concerned that measures such as registration fees will increase our costs significantly.

Mr McAllion: Can you spell things out in layman's terms? You say that the costs would increase from 0.5 per cent to 2.5 or 3 per cent of turnover. What would that figure be?

Jim Proctor: That would depend on the size of the nursing home. My establishment is registered for 27 nursing home places and has eight day care clients a day. The total exposure to registration fees is currently £2,250, but it is possible that that figure could rise to between £12,000 and £15,000. That is what I understood to be the implication of the Lothian Health contribution to the Laing & Buisson conference.

Mr McAllion: The Executive is suggesting that, between now and 2004-05, there will be a mixture of funding for the commission, partly through resource transfer from local authorities, partly through direct funding from the Executive and partly through increases in fees, which are estimated to be 10 per cent in each of the next three years. Even at the end of that period, fees are expected to account for less than half the cost of running the commission. Beyond 2004-05, there will be a really big increase in fees. Are those the kind of figures on which you are basing your estimate of a rise of between 2.5 and 3 per cent?

Jim Proctor: Yes, and on the implications of conference papers that I have heard. If we are able to negotiate our fees from the local authorities properly, it will not be a matter for concern, because those things can be built in. However, if we are not able to do so, any increase in costs will concern us.

Mr McAllion: So you intend to pass those costs on.

Jim Proctor: We cannot pass those costs on. Although we can pass them on to private consumers of our services, we cannot do so with local authorities because they absolutely refuse to negotiate.

Mr McAllion: So your biggest concern is the absence of negotiations with local authorities.

Jim Proctor: Yes.

Mr McAllion: Several times this morning you have said that you have no problem with the bill's provisions for national care standards. Are you quite happy with those provisions?

Jim Proctor: Yes, indeed.

Mr McAllion: And the question is how we pay for them.

Jim Proctor: Yes. We are happy to go along with society's needs and expressed views on how we look after our elderly. We are simply saying that we currently do not receive enough remuneration to implement these standards effectively.

Mr McAllion: Is this issue entirely separate from the impact of the commission's existence on fees? Are you saying that applying these standards across the sector will have huge financial implications?

Jim Proctor: I do not think that I said that. I said that, given the mooted increase in standards, the current level of remuneration is not enough to keep an average nursing home going.

Mr McAllion: What kind of increase would enable you to apply these standards?

Jim Proctor: Scottish Care's independently audited report "Elderly Care—Rhetoric or Reality" has identified that an increase of £50 a week is required for each resident. I think that the report was sent to every MSP, so I hope that you have all read it.

Mr McAllion: What does that represent as a percentage increase on current charges?

Jim Proctor: Well, it is £50 on top of £330. Are any maths teachers present?

Dr Simpson: That is a 15 per cent increase.

Mr McAllion: So you are talking about a 15 per cent increase in costs.

Jim Proctor: Yes. That figure is borne out by independent assessors of the marketplace such as Laing & Buisson, who have been saying for some time that, across the UK, the remuneration paid by the local authorities throughout the 1990s has dropped behind reality.

Mr McAllion: Have you put that to the Executive?

Jim Proctor: Yes. We sent the report to every MSP and local authority.

Mr McAllion: Did you get a response?

Jim Proctor: We have received some responses.

Mr McAllion: Have you received a response from the Executive?

Jim Proctor: Yes. I am sure that we have.

Ms Stephen: We have not had a response from the Executive.

Jim Proctor: We have not officially received a response from the Executive, but we are seeking meetings with ministers.

Ben Wallace: MSPs from all parties made clear the concerns of the independent sector about those fees during a debate on care in Glasgow. However, I cannot remember the Executive's response off the top of my head.

Dr Simpson: It would be helpful for the independent sector to indicate the likely level of closures if the new fees are introduced at the suggested levels. In other words, there should be some risk assessment of what will happen to the stock of available beds in the independent and voluntary sectors.

Mrs Carr: The Scottish Executive has instructed PricewaterhouseCoopers to produce a report on the implications of single care to the private sector. With the national care standards, single care will mean an increase of £50 a week for each resident, but PricewaterhouseCoopers will consider capital costs to allow us to take ourselves into the single-care market in 2002.

The Deputy Convener: Will you provide the committee with a copy of "Elderly Care—Rhetoric or Reality"? It appears that no committee members have had sight of that document.

Nicola Sturgeon: It has been circulated.

The Deputy Convener: Perhaps the clerks could get a copy.

Mrs Carr: No problem.

The Deputy Convener: That would be helpful.

Will you detail your concerns about the regulations relating to the care services, as outlined in section 24 of the bill?

Mrs Carr: We could understand the words "impose requirements", but we did not understand section 24(2)(i):

"impose requirements as to the financial position of a provider of care services".

The Deputy Convener: You are seeking clarification from the Scottish Executive on the meaning of that paragraph. Currently, you receive financial checks as part of registration and you do not have a problem with that.

Mrs Carr: That is correct.

The Deputy Convener: If that is what is meant, you would be happy for that to continue.

Ms Stephen: It depends which authority a service is registered under. Some ask for accounts, which many owners think unnecessary, and some ask for a bank statement to confirm that the business is viable and continuing to trade.

The Deputy Convener: Some people register with the local authority and the health boards, each of which has different ways of measuring financial viability. That might be different across Scotland.

Mrs Carr: It varies hugely. In East Ayrshire Council the number of joint provisions is huge. On various working parties considering single care, I am quite amazed to find that other areas have no provision for joint care. Under joint care, a business is asked for its financial details on a regular basis. In East Ayrshire Council that requirement has been imposed for a couple of years. The providers do not have a problem; they produce an abbreviated set of accounts. The differences throughout Scotland are huge.

The Deputy Convener: No one would have difficulty in providing such accounts if they were assured the confidentiality that is available to providers operating in the East Ayrshire Council area.

Mrs Carr: Back in the days of Strathclyde Regional Council, there were worries about why those accounts were being asked for—why our competitors were asking for our costs. However, providing a set of abbreviated accounts does not cause a problem.

Jim Proctor: There are also variations within local authorities. Local authorities have registration procedures, with which it is fairly easy to comply, but they also have approved user lists, which impose more onerous requirements in relation to financial details. The situation is confusing.

Shona Robison: What are your views on the nature and frequency of inspections?

Mrs Carr: I have quite a strong view on that aspect of the bill. One inspection a year would take care a step backwards. As providers, we cannot understand why it should go back to one announced inspection a year. Rather like the earlier witnesses, we think that there could be a more innovative method. There might be unannounced inspections that are minimal in that they are looking for certain things.

The announced inspection is very good. The

management must be present in order to provide the facts that cannot be gleaned in an unannounced visit. At the moment, a joint care home is subject to four visits a year and there is merit in that approach. The bill is suggesting that, by April, a single-care home will receive only one visit. Good providers do not see that as an improvement.

Shona Robison: What do you think the effect of that will be? Is it that those providers who have not made such an effort in relation to standards of care will be the winners, while those who provide a very high standard of care will be the losers?

Mrs Carr: On one inspection a year?

Shona Robison: Yes.

Mrs Carr: Good providers have a problem with a system of only one announced inspection a year. That is to say, we are inspected all the time, every day, by the families, doctors who come in and the staff who work for us. As far as a formal inspection is concerned, I cannot understand the thinking behind the bill, unless it is purely a cost issue. I know that we must try not to focus simply on bad practice; we must consider good practice too. However, Scottish Care does not understand the reasoning behind going back to one formal inspection a year.

Shona Robison: Thank you. You have made a couple of comments about the complaints procedure under section 6: you are seeking assurance that any agreed complaints procedure should apply equally to local authorities and mention that you had assumed that the independent sector would be included in the consultation process. Do you have anything to add to that? I take it that you are concerned that the complaints procedure will not be applied equally. Do you have evidence to suggest that that may be the case?

11:30

Mrs Carr: There is a history of issues such as best value, choice and needs-led, which are the background to our concerns.

Shona Robison: So you are seeking reassurance?

Mrs Carr: Yes.

Shona Robison: On section 45 your submission says:

"we presume that because the Complaints Procedure is to be exercised by the Commission and Council, there will be recourse to arbitration in case of dispute."

What have you been told about arbitration? Have you been given any assurances on that?

Mrs Carr: Not that we could see.

Shona Robison: You have had no feedback on that in your discussions with the Scottish Executive?

Mrs Carr: There was information on consultation and arbitration methods in the standards documents and the discussions of the working groups. However, there was nothing in the bill.

Shona Robison: Do you want that to be set out on the face of the bill?

Mrs Carr: Yes.

Shona Robison: Are there any important omissions from the bill that you have not mentioned so far?

Jim Proctor: No, there is nothing to mention beyond the points that we have already highlighted. Our overall comment would be that the relationship between "The Way Forward for Care" and the bill could be firmed up a little.

The Deputy Convener: Thank you for providing us with answers to our many questions. We look forward to receiving further information from you.

11:32

Meeting continued in private until 11:54.

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