

HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 14 February 2001
(Morning)

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HEALTH AND COMMUNITY CARE COMMITTEE **6th 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:

Pauline McNeill (Glasgow Kelvin) (Lab)

WITNESSES

Richard Baker (Help the Aged)

Kelly Bates (Barnardo's Scotland)

Malcolm Chisholm (Deputy Minister for Health and Community Care)

Elizabeth Duncan (Help the Aged)

Maggie Mellon (NCH Scotland)

Ian Millar (British Agencies for Adoption and Fostering)

Lexy Plumptre (British Agencies for Adoption and Fostering)

Anne Stafford (Children 1st)

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 14 February 2001

(Morning)

[THE CONVENER opened the meeting at 09:37]

Item in Private

The Convener (Mrs Margaret Smith): Good morning and welcome to the Health and Community Care Committee. I draw members' attention to agenda item 1, which is to ask the committee whether it is happy to consider item 4, which is discussion of the conclusions and recommendations for the stage 1 report on the Regulation of Care (Scotland) Bill, in private. It is our usual practice to discuss draft reports in private.

Is it agreed that we take item 4 in private?

Members indicated agreement.

Regulation of Care (Scotland) Bill: Stage 1

The Convener: Item 2 is further evidence on the Regulation of Care (Scotland) Bill. First up this morning is Malcolm Chisholm from the Executive. Are you on your own?

The Deputy Minister for Health and Community Care (Malcolm Chisholm): I have a gang of officials somewhere, but they have gone missing—never mind, they will turn up. You should ask your easy questions before they arrive.

The Convener: You look isolated there.

We have a series of questions. Do you want to make an opening statement?

Malcolm Chisholm: No. Everything in the opening statement that I made to the committee four weeks ago stands. I have been reading the *Official Report* of your discussions and I think that they are a very good example of our new procedures in action. I might not think so in an hour's time, but that is what I think at the moment.

Janis Hughes (Glasgow Rutherglen) (Lab): There has been disappointment that the bill does not give a statement of principles and a full explanation of those principles. That disappointment should perhaps be taken in the context of the consultation paper going a bit further than the bill does on the principles of care. Some people from whom we took evidence felt that the principles in the introduction to the bill did not go as far as they been led to believe that they would. Will those principles be elaborated on in due course?

Malcolm Chisholm: I will deal with that point—but first I will introduce my team. Liz Lewis is head of the regulation of care team, Lynda Towers is from the solicitor's office and Nikki Brown is from the local government finance department.

I suppose that the answer to Janis Hughes's point comes down to what is appropriate to include in a bill and what is not. I could wax lyrical about the principles of the bill, and shall no doubt do so over the next six months. I think that I did so at question time last week. We could all do that, and be genuine in doing so. However, legislation is not the place in which to put those principles and objectives. It is not appropriate to do that in legislation. It is certainly not normal, although I suppose that it could be argued that we now have a Scottish Parliament and we can put whatever we like in legislation. Far be it from me to appear to be bound by Westminster tradition; I would be horrified at the very thought. It would be very unusual to have a statement of principles in the bill; but, obviously, the principles are implicit in

every section of the bill and will be made clear in every speech and announcement that we make about it. However, it is not the purpose of legislation to have that kind of vision statement—appealing though it might be.

Janis Hughes: I take your point, but the bill has been compared with another—the Standards in Scotland's Schools etc Bill, which is now an act. People who gave evidence during the passage of that bill felt that it contained a number of principles, and they now feel that this bill falls a bit short. It is not that people are simply saying that they want more to be in the bill; they are basing their views on a previous example.

Malcolm Chisholm: Clearly, some of those points are covered in the policy memorandum.

Janis Hughes: Yes—we pointed that out to witnesses.

Malcolm Chisholm: Obviously, members will be able to introduce amendments. The reason we are keeping a statement of principle out of the bill is not that we do not believe in it; we are simply making a judgment on whether it is more appropriate to have something in a bill or in a policy memorandum. We have made our judgment, but this is probably an issue that we do not need to fall out over.

Mary Scanlon (Highlands and Islands) (Con): I would like to raise an issue that will be familiar to Malcolm Chisholm's ears—personal care. Has further consideration been given to the definition of personal care in the bill in light of recent developments to do with the Sutherland report? Section 2(20) talks about

“vulnerability or need”

relating to a person

“being affected by infirmity or ageing”.

There is also a fairly clear definition of personal care. I will not read it all out, but it sounds very similar to Sutherland's definition. How does that fit in with the development group that you are chairing? Do you accept the definition in the bill?

Malcolm Chisholm: Section 2(20) has a reference to personal care. To decide which services are regulated, it is necessary to define personal care. The subsection defines personal care and personal support and those services would be regulated. In a way, the purpose of the definitions is to distinguish those things from nursing care, which, of course, is not being regulated in the same way through the bill.

I am certainly comfortable with that definition of personal care. It is very similar to Sir Stewart Sutherland's definition. I know that the Association of Directors of Social Work and perhaps the Convention of Scottish Local Authorities wanted it

to be fleshed out more, but I would draw members' attention to the words “for example” in section 2(20). The definition does not relate exclusively to eating and washing. The phrase used is:

“(as for example, but without prejudice to that generality, to eating and washing)”.

In addition, there is a reference to

“mental processes related to those tasks”.

That is also encompassed in the Sutherland definition although, in popular understanding, that is sometimes overlooked. The definition in the bill is in line with the Sutherland definition, and I am quite comfortable with that definition of personal care.

Mary Scanlon: Can we assume that that definition will lead you through the development group?

Malcolm Chisholm: In general, the definition is fine, but we must be more specific. Sir Stewart Sutherland accepted that he was giving only a general definition. In particular, when one talks about free personal care, one also needs an assessment tool, as a general definition does not solve the problems of assessment. The care development group will develop the work begun by the chief nursing officer on developing an assessment tool that will capture personal care. That is the particular problem, but there is no great gap—I know that Nicola Sturgeon will ask me about this on Thursday—between that understanding of personal care and the general understanding of personal care.

09:45

Mary Scanlon: Given that this is such a controversial issue, would you advise the committee to be more specific and to lodge amendments to section 2(20) in order to cover items such as mobility, toilet functions and so on? Is the definition too loose? The last thing we want is for people to be haggling over the definition in five, 10 or 15 years' time. In order to make the provision totally clear, should not we be taking steps to ensure that the bill does not have only “as for example” and that it is more specific?

Malcolm Chisholm: It is up to members of the committee if they want to improve—in their view—the definition. However, it is quite clear that “for example” means for example, rather than an exclusive definition. I am pretty happy with the definition in section 2(20), but I would consider with great interest an amendment that members regarded as an improvement.

Nicola Sturgeon (Glasgow) (SNP): I know that Mary Scanlon covered this point, but for the record, would you guarantee that the definition of personal care that the development group comes

up with for the purpose of deciding what care will be free and what care will not be free will not be narrower than the definition that is in the bill? As Mary said, that definition reflects the Sutherland definition.

Malcolm Chisholm: The key issue that the development group will have to tackle is the assessment of personal care needs. Given that the requirement for me to find a definition of personal care within six months is written into the group's remit, I would be foolish to say with absolute precision today what that definition will be. In general, I am comfortable with the bill's definition of personal care, which is in line with Sir Stewart Sutherland's definition and with our understanding of what personal care means. As I said, it would be foolish to shut down six months of deliberations by saying the last word on the subject now.

Mary Scanlon: Do you agree that it is difficult to measure concepts such as "vulnerability or need", which apply to young people and to people with disabilities? I do not know how one could measure or assess vulnerability. Do you agree that those terms, which are in section 2(20), are rather vague?

Malcolm Chisholm: You have moved on to a slightly different issue.

I believe that the definition of those terms is quite broad. Could you spell out what you have in mind? Do you want a more precise definition?

Mary Scanlon: I am not talking about what I have in mind. The Regulation of Care (Scotland) Bill is the first to go through the Health and Community Care Committee and we already have problems over the definition of personal care. I am unsure how one could measure vulnerability on a scale of one to 10. What criteria would one use in order to assess vulnerability? Perhaps the committee should consider that further, but I am seeking a lead from you.

Malcolm Chisholm: I should be interested to hear your suggestions. The bill covers a lot of territory, but we would be pleased to consider further suggestions from members.

Mary Scanlon: Do you agree that those terms are a bit vague?

Malcolm Chisholm: That had not occurred to me, but now that you have drawn the matter to my attention, I am prepared to reconsider it.

Mary Scanlon: Thank you.

A Scottish Parliament information centre paper, which was produced some time ago, considered the issues of protecting children and securing their safety in the context of the statutory index of adults deemed unsuitable to work with children.

Responses to the Executive's consultation exercise on those issues were due by 27 October.

The policy memorandum describes the

"growing concern about bad practice and gross misconduct by a . . . small minority of the social services workforce."

Is there anything in the bill that will address the issue of people who should not be working with children?

I note that the

"nature of the work attracts . . . people who take advantage of the opportunities to abuse their position and exploit service users."

We are considering the social services work force, so can you assure me that there is something in the bill to ensure that as much as possible is done to protect vulnerable children?

Malcolm Chisholm: On registration, there are fit person checks. However, what you are referring to—the index of unsuitable adults—goes further than that. Some people have said that it would be better if that was included in the bill, but it will be done by separate legislation, partly because of the phasing. As you said, the consultation paper went out only in the second half of last year, so there is more work to be done on that. This is a good example of the fact that we take our time with legislation in the Scottish Parliament. The consultation will firm the matter up; however, on registration by the council, there will be fit person checks as well.

Mary Scanlon: What is the progress on the consultation, which was to be with the Scottish Executive by the end of October? We are about five months down the line, and I would like to see the proposals included in the bill—it is an important issue.

Malcolm Chisholm: A policy position paper will be issued once all the responses have been assessed and discussed. You know the process: we have a consultation paper, a policy position paper, then legislation. Unless we skip some stages, it will not be possible to get that issue into the bill. The result of the consultation will come quite soon; however, it is better to do it properly than to hurry it, to get it into the legislation.

Mary Scanlon: As a minister, would you prefer the issue to be integrated into the bill? Would that be wise?

Malcolm Chisholm: It will not make all that much difference if it comes a few months later.

Shona Robison (North-East Scotland) (SNP): Some of the organisations that have given evidence have expressed concern about the definition of a support service in section 2(2) of the bill. Is it intended to include home care services or day care? If so, why can it not specify that that is

the case, rather than leaving it somewhat vague?

Malcolm Chisholm: I read what Community Care Providers Scotland said about that. You are right—it refers to home care and day care, and not to the additional elements such as befriending advice, supported employment and vocational training that Community Care Providers Scotland discussed. Do you feel that that is not clear enough in the bill?

Shona Robison: That is what the people who gave evidence felt. We feel that it could be a bit more specific.

Malcolm Chisholm: It is to do with keeping options open. Although that is substantially what is meant, if we tied it down to those two types of care, it could not be anything else. That is the problem.

Shona Robison: Should the hospice movement be covered?

Malcolm Chisholm: The hospice movement would be included under “independent health care service”.

Shona Robison: So it would be covered by that paragraph?

Malcolm Chisholm: Yes.

Mr John McAllion (Dundee East) (Lab): Since you were here last, further concerns have been raised by witnesses about the rather contrived method that you propose for funding the Scottish commission for the regulation of care. You tell us that you will increase funding to local authorities so that they can meet the increased charges levied by the providers because the providers have had to meet increased registration fees. Those fees will be used to fund the commission. Why not fund the commission directly? It is all the same public money.

Malcolm Chisholm: There are two issues. As I said when I gave evidence to the committee before, we thought that there was an issue of principle. The view was taken that it was better that the costs of regulation should be explicit and transparent. It gives the providers a stake in the system.

If you do not accept that theoretical argument, there is a practical argument. Much of the discussion on the bill is based around care homes. That is important, but it is worth reminding people that we are talking about 17,000 care services, of which slightly more than 2,000 are care homes. We are rightly all concerned about residential and nursing home care, but that represents a minority of the care services that are covered in the bill. You ask why everything is not funded. It is probably okay to say that for the services that are publicly funded, but are you suggesting that the

independent health care providers to which I have just referred should not have to pay for the costs of regulation? I am perhaps taking an extreme example, but many of the services that are regulated are paid for, not from public funds, but by private providers or individuals. If we funded some costs, we would get into a difficult situation. Would we pay for the cost of regulating the services that are paid for with public money but not for the cost of regulating independent health care services? There are practical considerations.

I understand the point that you make about money going round the system, but that is the system that we have at the moment. People do not pay fees that cover 100 per cent of the costs of regulation, but they do pay fees. We are not suggesting anything new.

Mr McAllion: At the moment, fees cover only 17 per cent of the costs of registration. You plan to move to a system that is funded 100 per cent by fees, which will not relate directly to the provision of services.

Malcolm Chisholm: I know. However, there is more bureaucracy in the present system, which collects only 17 per cent of the costs, than in the new system, in which two finance officers at the commission might deal with everything. I take your point, but the important point for public expenditure is that the costs will be paid for, in one way or another. I sent you a letter clarifying the grant-aided expenditure arrangements. The cost of fees will be included in GAE in the next spending round. In addition, in this spending round, in the resource transfer that we are negotiating with the Convention of Scottish Local Authorities, we will take account not just of the fees that local authorities have to pay for their homes but of any increase in costs that will fall on local authorities because private providers raise their charges.

The bill is cost neutral for local authorities. I understand your argument about money going round the system, but you have to remember that most of the services that we will regulate are not in the category of care homes that are run by local authorities.

Mr McAllion: So you understand the argument, but you are not going to listen to it and do not propose to reconsider.

Malcolm Chisholm: I have followed the argument with great interest, and I admit that it is a fine judgment. To some extent, one can say that the door is not entirely closed. We have said that we will subsidise the cost of regulating child care services, so the full cost will not be borne by providers. No doubt, similar arguments could be put forward for other services. In my role on the care development group, I will certainly consider

the costs of residential and nursing home care, as they are clearly a fundamental issue.

Another perspective is to see that fees are only a minor element of costs. Even a full increase over the next few years would lead to an increase in charges for nursing and residential home care of less than 1 per cent. There are no proposals to subsidise fees, but there is nothing in the bill that theoretically excludes that if anyone wants to argue for it. If, down the line, people find that the fees are too much of a burden on nursing homes or whatever, they can argue for subsidy as others have done in relation to child care. A decision on that is not being taken at the moment.

I entirely understand your argument, but I think that it has got out of perspective. We are not talking about big increases for anyone compared with the amount of money that one pays for a residential or nursing home place.

Mr McAllion: The increases might not be enormous, but they are quite significant. You mentioned COSLA and said that you would cover the increased costs for local authorities. The financial memorandum says that the transfer of £6 million

"will be agreed with COSLA",

but that is very optimistic. We have received correspondence from COSLA saying that it cannot agree to the proposed transfer of around £6.1 million because it does not agree with your estimate of the cost of the residual duties for local authorities, or with your estimate of the fees that local authorities will have to pay. The letter from COSLA states that

"the cost to local authorities for payment of fees for their own provision will be substantially more than that estimated by the Scottish Executive."

How do you respond to COSLA?

Malcolm Chisholm: We are very reasonable people and are still negotiating with COSLA. Nobody is saying that £6.1 million is the final figure.

10:00

Shona Robison: You have argued that the private sector, in particular, should be seen to be paying. However, fees in the private sector will be passed on to the clients, the fees of 80 per cent of whom in nursing homes are paid for by the public sector. That money will then come out of local authorities' community care budget so, generally, it will not be the private sector that pays. Is that a good use of the community care pound?

Malcolm Chisholm: It is explicit in the financial memorandum and in my letter to the committee that that will be taken into account in setting GAE for local authorities. If 80 per cent of nursing home

places are paid for from public funds—in future, that figure may be less than 80 per cent, as more people own their own homes and so on—20 per cent of people are paying their own nursing and residential home care fees.

I am sure that Shona Robison and everyone else want to move to free personal care. Are you saying that you also want free regulation? There is an argument for that, but ultimately we have to make choices about public funds. Are you extending your argument to independent health care? Are you saying that nobody at all should pay for regulation? We could say that, at £18 million or £20 million, in the scale of things the cost is just a drop in the bucket of the Scottish Executive budget, but there are many drops. Politics is all about costs and opportunity costs. We have to be careful about loading everything on to central funding, just because it seems to be a comparatively low amount.

Shona Robison: The concern is that there would be a loss of resources, because money would be recycled around administrators. That would not be the best use of the community care pound and would be a waste of resources that could be spent directly on service provision.

Malcolm Chisholm: That is definitely the most persuasive part of the argument, but I am not sure how much it amounts to. The system that will be introduced will be less bureaucratic than the present one, which operates at the level of individual local authorities.

Shona Robison: While you are being persuaded, I will ask about childminders.

The Convener: I will stop Shona Robison there, as three other members want to ask about fees.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): You mentioned GAE for local authorities. You will be aware that some local authorities have caused bed blocking problems because they do not allocate the full GAE equivalent. Could the proposals exacerbate the situation in local authorities, if the community care pound is continually recycled until it is worthless when it is finally divvied up?

Malcolm Chisholm: That, too, is an interesting and important argument, which we have to address. The care development group needs to consider it, and it will be probably be raised in the debate this afternoon. The Executive said that services for the elderly were a priority; what do we do when local authorities spend substantially below GAE on services for the elderly? We could have an interesting discussion about that. However, I do not think that the logic of that argument is that everything should be funded centrally. Some people might argue that, but that is quite a drastic step.

Margaret Jamieson: Surely if we are in the game of providing equity of service throughout Scotland, irrespective of income or location, it is incumbent on us to ensure that we get best value for the community pound. Some local authorities say, "That may be the GAE that is allocated to this authority, but we will determine the levels of GAE that we spend in the other departments." That makes a mockery of what you are trying to do.

Malcolm Chisholm: We ought to face that dilemma. The new arrangements that we are reaching with local authorities for new money in the first instance for the elderly mean that authorities will receive the money only on the basis of agreed outputs. That is a significant step. I have no doubt that people will say that we must go further than that in due course. I accept Margaret Jamieson's point, which leads into a major discussion about the relationship between central and local government.

Margaret Jamieson: Will you consider that aspect further?

Malcolm Chisholm: Yes. I might even talk about it this afternoon.

Nicola Sturgeon: I will make three points quickly. You said that you found the bureaucracy argument most persuasive but that you did not know what the cost would be. I suggest that an assessment of the costs of the bureaucracy of the system should be done, to give us some information on which to base our judgments.

You said that the increases are not enormous, but even after the subsidy that you have conceded for childminders, for example, you are talking about an increase from £10 at the moment to £50 when the bill comes into force. That is a fivefold increase for childminders. To most childminders, that is a pretty enormous increase in fees.

I have a general point to make. I am pretty sure that you will have followed the committee's deliberations on the bill. You will know that there is almost complete, if not universal, opposition to it. Are you sitting here saying that although you are persuaded by some of the arguments and know how widespread the opposition is, you will simply ignore that and plough ahead with the arrangements in the bill? That does not strike me as the response of a listening minister.

Malcolm Chisholm: I always listen. I will continue to consider the issues. As I said to Shona Robison, I think that, theoretically, the bureaucracy argument is strong. However, it is difficult to quantify. As I have said—I am throwing this back to the committee, and no one has responded yet—we will need a bureaucracy if we are to charge independent health care and people whom I imagine most committee members do not think should receive the regulation free. We cannot get

rid of finance people dealing with those matters. I understand the argument that is being made, but payment concerns not just public expenditure.

Nicola Sturgeon: May we have some comparative figures for the cost of the bureaucracy for each possible model? If we had hard information by which we could judge whether you are right or wrong, we would not have to talk in generalities.

Malcolm Chisholm: We can consider that. It would be helpful to ask COSLA to give us some information about how much it thinks it will cost local authorities to deal with the system.

Dr Richard Simpson (Ochil) (Lab): I apologise for being late—I had some train problems. I declare that I have an interest in a nursing home company that operates in England and Wales and that I am a member of the British Agencies for Adoption and Fostering. My wife works in child training and I apologise for anything else that I do not know about.

I reiterate and support Nicola Sturgeon's point about fees. I strongly urge the minister to consider costings. I understand his problem—that we wish to charge truly independent private operators for the work of the care regulation body—but the circulation of the public money will require the Scottish Executive to conduct annual assessments of how much it must pay local authorities for a fee that you have said must increase every year. Local authorities will have to negotiate with the independent, voluntary and charitable sectors annually on how much they will allow in their contracts for that increasing fee.

I disagree with the minister; the increase will not be 1 per cent. Evidence to the committee has suggested that fees may increase from the current £65 to about £500 or £600. That may be incorrect, but it was nevertheless the suggestion. That amounts to considerably in excess of 1 per cent of the turnover per person. After that, the independent sector will have to negotiate with the care commission on an individual bed basis. The points that the committee has heard in evidence, which all members reiterate today, are that the bureaucracy is not light, but heavy.

I hope that the minister will agree to recast the system, re-examine it, study the bureaucracy and try to come up with a different form that will allow us to charge the independent hospital sector, hospices—although they receive public money, and their becoming involved in the bureaucracy for the first time will be a heavy weight—and those bodies that self assess for care in residential or nursing home accommodation and are outwith the public purse. It is reasonable to levy a charge on them.

Malcolm Chisholm: I think that the figure you

quoted was used by Scottish Care last week. I do not recognise the figures it used.

Dr Simpson: The figure is based on percentages that you have given.

Malcolm Chisholm: No one is talking about £600. Paragraph 214 of the financial memorandum refers to an increase of less than 1 per cent. If we were considering increasing fees to £600, I would ask for a subsidy, but no one is talking about such a range. As I have said, nothing shuts down the option of a subsidy in the future if the fee becomes an unrealistic burden. In fact, there will be a substantial subsidy over the first two years of the commission's operation.

You are restating the argument about some of the money going round the system. I have accepted that I will examine the bureaucracy. However, I still think that there is a slight danger of focusing completely on one aspect. We can argue at the margins but, to be honest, fees are a small part of the issues that I and the care development group are considering regarding the costs of long-term care, nursing home places and residential care places. However, we will give some attention to that.

The Convener: You have heard the committee's views, so I will move us on. We will not go round in circles any more. Nicola Sturgeon has some questions on inspections.

Nicola Sturgeon: We move from one concern to another. In the context of a system in which fees are about to increase, there has been widespread concern about the fact that the bill guarantees only one inspection a year, which is a reduction from the current situation. Almost every witness has given evidence that there should be a minimum of one announced and one unannounced inspection a year and that anything less would severely reduce the level of inspection and be unsatisfactory. Given the weight of that evidence, does the Executive intend to reconsider the relevant sections?

Malcolm Chisholm: We should remember that we are talking about a statutory position. It is currently not statutory that care homes should have two inspections a year. The Accounts Commission recently drew to our attention the fact that a large number of councils do not conduct two inspections a year. We are proposing a statutory minimum. If you are proposing that the statutory minimum should be more than one, I must throw a question back to you—do you propose that that should apply to all the care services that will be regulated? As you know, only care homes are supposed—as it were—to receive two inspections at the moment, although that is not statutory. All the child care services that the bill covers require only one inspection currently. Are you suggesting

that all services should be subject to a statutory minimum of two inspections? If you are, you are taking a great deal of flexibility out of the system.

Of course we want several services to be inspected more than once a year. One of the reasons for a statutory minimum of one is to allow the commission some flexibility, so that it can concentrate on the poorest services and the newly formed services. I was interested to read the committee's discussions on the matter. Finding out about what is going on in care homes and other services is not just down to inspections. Much of the discussion last week about talking to people who use the services and about advocacy was interesting.

We are obviously talking only about a statutory minimum and it will be in the power of ministers to require more inspections if that is what the Executive or the Parliament decides. However, members should focus on the fact that there is no statutory minimum of two inspections at the moment, and all child care services have only one inspection. What are you actually suggesting? Are you saying that there should be a statutory minimum of two inspections for all services? If you are, think about the implications of that for flexibility in how the commission works.

10:15

Nicola Sturgeon: What I am suggesting is that there is a persuasive argument that care homes should have a statutory minimum of one unannounced inspection and one announced inspection. That statutory minimum is necessary to ensure public confidence in the quality of care provided in care homes, given the vulnerability of the people who are in them. I think that the arguments that have been put to us for that are persuasive. I know that you are a minister who listens carefully to what people say. Are you prepared to look again at that argument, so that the intention behind the bill, which is to build public confidence and ensure quality, can be realised in practice?

The Convener: Before you answer that, minister, I would like to pick up on what Nicola Sturgeon is saying. It is important to consider the residential nature of much of the care provision that is covered by the bill; that is not true of a childminder who may look after a child for two hours after school. We were talking about the residential elements of care. I picked up a little bit of practical knowledge about that last week, when Peter Cassidy and I visited a care home in Fife. The point that has been raised most often by the people we met then and by witnesses to the committee is that inspection is not just about finding out what might be wrong.

The care home owner I spoke to last week said that she sees it as a partnership and as a good discipline for her. She said that an unannounced visit is very different. On an announced visit, she would be looking at books and there would be a different focus for the inspector, whereas an unannounced visit might be at weekends or in the evening. An unannounced visit gave her an opportunity to be judged on what had gone on earlier in the year. None of us has yet heard from anybody who has been persuaded by your arguments on that, minister.

Malcolm Chisholm: An inspection methodology group is currently looking at all those matters. It may well come forward with some further suggestions. However, I must repeat that there is not a statutory minimum of two inspections at the moment, so there is nothing in the bill that needs to change what happens at the moment. I will obviously pay great attention to any amendment along the lines that you have proposed and I understand where you are coming from, but a statutory minimum of two inspections would have an opportunity cost. I am sorry to use that phrase again, but it is one of the most important concepts in politics.

A statutory minimum of two inspections would reduce flexibility and would probably change the nature of the inspections. Are you saying that one thorough inspection is not as good as two less thorough inspections? That one inspection could well be unannounced; nobody is saying that the one statutory inspection would have to be announced. We must consider the opportunity costs of making that decision. However, yours is an arguable position and one that I would consider.

Nicola Sturgeon: The last time you appeared before us, you said that by the time we get to stage 2 you might have a better idea of the number of inspectors who would conduct an inspection. Is that any clearer yet?

Malcolm Chisholm: That is something that the inspection methodology group is considering at the moment. I hope that we will have a report on that by stage 2.

Janis Hughes: Has any further consideration been given to whether there will be five local offices or some other number? That is something that witnesses have expressed concern about for various reasons.

Malcolm Chisholm: I have heard quite a lot of representations on that subject. When I started out, I could certainly understand the point of view that there should be more than five offices, but I have two comments to make. First, we are talking about those five, or possibly six, offices being complemented by local bases, which a lot of

people could operate from when appropriate. That would be particularly appropriate in rural areas.

Secondly, you should consider the relatively small number of people we are talking about. We sometimes forget that we are not talking about thousands of people, but about hundreds. With five bases, there would be about 60 people formally connected with each base, although it would not mean that they were going to that base every day. At present, inspectors for the whole of Lothian operate from an office in my constituency. That is not too different from the kind of model that is being proposed, as Lothian covers almost a fifth of the population of Scotland. If you think about the numbers of people involved and the fact that centres are complemented by local bases, it is not such an extreme proposition as some people have said.

Remember that the thinking behind the whole bill is to change a local service into a national service so that we can get rid of all the inconsistencies we have at the moment. That makes it quite important that we do not just replicate the present arrangement.

Janis Hughes: So you are basically saying that you are sticking with five centres?

Malcolm Chisholm: That is the proposal. I asked people when I met the unions—

The Convener: What about health board boundaries?

Malcolm Chisholm: That is an interesting suggestion, which I have been attracted to myself. The problem with health board boundaries, as we know, is that they cut across local authority boundaries. If we had the same boundaries for inspection as we have for health boards, we would have 15 centres. I have given thought to that suggestion and, if that is what you are proposing, I shall certainly give it further consideration.

The Convener: It is certainly a suggestion that we have heard. One of today's submissions highlights the fact that, when you add in the regulation and inspection people for each local authority and health board, there are about 44 or 46 bases. You said that we want to change a local service into a national service so that we can get continuity in standards. I do not think that any member of the committee disagrees with that and most of the people we have been hearing from are generally in favour of the principles of the bill, but we do not want to change a local service into a national service if that would mean losing some of the benefits of having local inspectors who are able to build up on-going rapport and a mutually helpful relationship at a local level. We must consider how we can go about involving local people—possibly through extensions of advisory committees—in ensuring that local links are

retained in the new system and that the views of service users are listened to.

Malcolm Chisholm: The whole point of the bill is to have more user focus, so the views of users and other stakeholders are obviously fundamental. It is entirely possible to have committees. They do not have to be area based, but they could be.

If we are talking about centres plus local bases, I am not sure what difference there would be in practice between having what you call 15 centres and what I call five centres and 10 local bases. I am not sure whether there is really such a big gap between the two proposals.

The Convener: The ball is in your court on that one, minister.

Margaret Jamieson: You should be aware that, if there were five centres, the amount of travel for an individual—

Malcolm Chisholm: People are not going to be travelling—

Margaret Jamieson: But there will be occasions when they will be required to visit one of those five centres. If, for example, the centre for the west of Scotland were based in Glasgow, it would be inappropriate to ask somebody from Stranraer to travel that road, given all the difficulties that that would entail. Logistically, it is unacceptable to move to five centres. We must try to maintain a local base, because the intelligence that those inspectors can pick up is invaluable. You risk losing that by pulling those services into a larger centre.

Malcolm Chisholm: I entirely agree. Nobody is proposing that people should have to travel from Stranraer to Glasgow. I would certainly not support the proposal if that was what it would entail.

Margaret Jamieson: I take it that you are going to have something mid way?

Malcolm Chisholm: I do not think that that is what the proposal is suggesting.

The Convener: She is trying to sway you, minister.

Margaret Jamieson: Minister, I note the letter that you wrote to the convener on 9 February, in which you indicate that the Transfer of Undertakings (Protection of Employment) Regulations do not apply because

“a business is not being transferred”.

I thought that we had moved away from that definition of the TUPE regulations and that we were more amenable to ensuring that staff get the best opportunities possible on transfer. Could you take us through your letter and explain that?

Malcolm Chisholm: People had concerns

about the limitations of TUPE. The intention is to improve on TUPE.

Margaret Jamieson: I have particular concerns about an employer saying that TUPE does not apply because a business is not being transferred, because I have been there and own the tee shirt. It is clear that individual employees and a service are being transferred. Staff organisations are concerned on behalf of local government employees and health service staff, who will transfer with different terms and conditions and salary levels. It is important that we ensure continuity in the work force. COSLA, the Scottish Trades Union Congress and Unison made the suggestion that there should be a body in place that replicates to some extent the staff commission that took part in local government reorganisation. Before I go any further, I should declare an interest as a member of Unison.

Malcolm Chisholm: Perhaps I, too, should declare an interest as a member of Unison. I take your point about TUPE, but the purpose of the comment in the letter is not to suggest that we should have something less than TUPE, but that we should have something better. I met the unions this week and we discussed all those matters. The intention is that when people transfer, in the first instance they should do so with their current terms and conditions. The unions want to come to agreement about the terms and conditions of the whole work force, because at the moment we have 32 sets of terms and conditions—even more if we count all the health boards.

Negotiations are under way and people seem to be fairly happy with the way they are progressing. We hope to have an agreement on at the very least the same, but hopefully better, terms and conditions for all the new work force. Over time, people who transferred under their previous terms and conditions would move over to the new conditions. My understanding is that the unions are happy with that aim.

On the question of a staff commission, we should remember that there are certain differences between the two situations. Under local government reorganisation, everyone was transferring to different bodies, whereas in this case everyone is transferring to one body—it is not an analogous situation. There is also a technical difficulty because we cannot set up a staff commission without legislation and we could not pass such legislation in time. We can do this without the complexities of a staff commission. A group is working on the issue of staff transfer and is negotiating with the unions. I expect us to find a way forward that will keep people reasonably happy.

Margaret Jamieson: Okay.

Dr Simpson: The last time we questioned you, minister, we asked you to consider the parallel of the centralisation of general medical services to the Common Services Agency, which took place three years ago. Previously, the individual health boards administered those services. At a human resources level, there was a lot of anxiety among those staff who transferred. We asked you to talk to the people involved to find out whether lessons could be learned in respect of the transfer of staff to the commission. I accept that there is not an exact parallel because an element of the work force will still be dispersed, but there are two points: the anxiety that was caused to staff in the transfer process and the loss of effectiveness, local contact and understanding that has resulted from the centralisation process. Clearly, that should be avoided.

Malcolm Chisholm: That is true. I am sorry, but I have no recollection of undertaking to do that. However, if I gave such an undertaking I shall certainly do that. If you could provide a note of when I promised to do that it would be helpful. I re-read the minutes last night and I do not remember that. However, I do not have a problem with it in principle.

Dr Simpson: I will check that.

The Convener: We certainly had a discussion on the matter, although I cannot say categorically that you gave us that undertaking.

10:30

Dr Simpson: I remember that it was a very cold day in the Hub.

Malcolm Chisholm: I have never been in the Hub, so it must have been somebody else.

Dr Simpson: Perhaps it was your officials.

The Convener: If it was in the Hub it might have been an informal briefing.

Dr Simpson: I apologise, minister: it may have been your officials who gave such an undertaking.

The Convener: Before anyone gets the wrong idea, it was not an informal briefing over a few jars in the Hub, but an informal meeting with officials.

Margaret Jamieson: That issue has been addressed by the Audit Committee in the budget overview.

The Convener: We would be happy to accept any further points on that in writing.

Malcolm Chisholm: Staff seminars on such matters are taking place in Inverness this very day.

Margaret Jamieson: Is there any prospect of establishing a commissioner for children? Several

people have raised that issue with us.

Malcolm Chisholm: That issue has come up in relation to the bill because part of it is about children and because the Care Standards Act 2000 set up the children's commissioner for Wales. I am sure that members understand the point, but for the benefit of people outside the Parliament I should say that although the Health and Community Care Committee is the lead committee and I am the lead minister on the bill, decisions about some elements of the bill are not made by the health department. A commissioner for children would fall under the work of the education department. Clearly, the establishment of such a role would not be for me to decide. Consideration has been given to those matters, but as it does not come under my remit, I cannot say any more than that.

Margaret Jamieson: Do you believe that the establishment of a children's commissioner could be accommodated within the bill or would further legislation be required should the Executive be persuaded that a commissioner would be appropriate?

Malcolm Chisholm: It would be dangerous for me to stray into someone else's portfolio. I would merely observe that the children's commissioner for Wales was set up under the Westminster legislation with a relatively narrow remit, because the work of the commissioner was governed by the overall parameters of the bill, which referred to certain groups of children. I believe that the Education, Culture and Sport Committee is looking into the matter. However, I should end there before I get myself into deep water.

Margaret Jamieson: So you cannot tell us whether we will have such a commissioner.

Shona Robison: Is it intended that a specialist division within the commission will regulate the independent health sector? Are there staffing implications in that?

Malcolm Chisholm: It is the intention that there should be a specialist division and that would have staffing implications. However, we are not talking about many staff because the independent health care sector in Scotland is relatively small.

The Convener: Thank you, minister. We allowed the minister a little more time because several people have raised some of the issues that we have discussed and we will want to include those in our stage 1 report.

I now welcome witnesses from the British Agencies for Adoption and Fostering. We have already received your written submission. Do you wish to make an introductory statement or would you rather move straight into questions?

Ian Millar (British Agencies for Adoption and Fostering): Whatever would make best use of the committee's time. I could certainly make some opening remarks.

The Convener: I think that we will move straight to questions, if that is acceptable.

Ian Millar: Okay.

Margaret Jamieson: Do your organisations agree with the bill's provisions in general?

Ian Millar: Yes. We welcome the bill and its provisions for national care standards, a regulatory body and an inspection service.

Margaret Jamieson: What are your views on the consultation arrangements?

Ian Millar: We welcome the fact that there has been wide and useful consultation, as the legislation will be very wide-ranging and involve many interested parties.

Mary Scanlon: It is quite difficult for the committee to question you, as the bill's implications for adoption and fostering will be considered at stage 2. Given the fact that we have an opportunity to change things, I draw your attention to a television report last night claiming that there was much red tape in the system. Your submission also raises concerns about

"the inability to achieve a fully integrated service".

It goes on to outline concerns about

"the quality of assessment and planning . . . the quality of services actually provided, and in particular of adoption and fostering services; and the proper implementation and resourcing of the Children (Scotland) Act 1995 and the Adoption (Scotland) Act 1978".

Do you think that freeings in adoptions, which is mentioned on page 6 of your submission, should be included in the bill? There is a major criticism—

The Convener: Mary, perhaps you could leave the question there. You can come back in after the witnesses have answered.

Ian Millar: I will address our concerns about assessment, and Lexy Plumtree, our legal consultant, will say something more about your other detailed points.

Any future amendments on adoption and fostering should also encompass social work fieldwork services to children and families. As the effectiveness of the assessment of a child's needs is the key to the effectiveness of any subsequent actions or services, there has been concern both north and south of the border, if not about the quality of the assessments then about how they have been articulated.

The nature of adoption has changed considerably in recent years. In the main, we are

talking about children who are significantly damaged by their experiences. As a result, if we are going to ask substitute carers to look after children and to carry out quite extensive repair work, we must have very comprehensive and accurate assessments of children's needs so that the people who will be in the front line of caring for those children will have clear tasks.

We therefore stress that children's needs must be assessed, and are aware of the concerns of the social services inspectorate south of the border over the quality of such assessments. Given our involvement with local authorities north of the border, we have no reason to suspect that there is any room for complacency. For example, the Department of Health introduced a framework for the assessment of children in need and their families, because of the SSI's concern that a number of social work practitioners were unable to articulate clearly their theoretical base for assessing children's needs. That is the starting point for examining the quality of the services provided. We must know what people are being asked to do before we can find out whether they are doing it adequately.

Mary Scanlon: It would be very helpful if you could send us a submission outlining such concerns. At the moment we have nothing to compare with the bill's provisions. Your present submission mentions past failures concerning the quality of assessment and services without being totally specific about them. Although I understand that you have been part of the consultation process, perhaps you could tell us at stage 2 whether the bill is addressing those concerns.

What are your major concerns about the Children (Scotland) Act 1995 and the Adoption (Scotland) Act 1978? Are you suggesting that they are not being properly implemented and resourced, and will the bill address those concerns?

Ian Millar: Perhaps Lexy Plumtree could answer that question.

Lexy Plumtree (British Agencies for Adoption and Fostering): Excuse me. I have a terrible cold.

The Convener: I am glad that you are at the other end of the room.

Lexy Plumtree: I think that I am past the infectious stage. I just have this husky, interesting voice with some squeaky notes.

We included that concern in our submission just to highlight the fact that there is still an issue. The Children (Scotland) Act 1995 has been in force for a number of years. The adoption legislation goes back to 1978, although the 1995 act substantially amended it. We are not suggesting that the acts have not been implemented or that nothing has

been done under them; it is just that this is an on-going issue that centres on the resourcing of and support for local authority social work departments and the voluntary agencies that they increasingly use to carry out much support work in fostering, adoption and child care fieldwork services.

Perhaps that is not really a matter for the bill; however, we must address certain issues about the funding of child care services with local authorities. Only this morning we have heard of ministers' concerns about the great expense of funding the Sutherland recommendations and teachers' pay, and what impact that might have on other services. Without leaping on the back of that political concern, I think that there are concerns that need to be addressed.

As a lawyer, I do a lot of training in social work departments on child care legal issues, and one gets the sense that individual social work practitioners are struggling to get through the work. An area manager said that she could always tell who her child care workers were because they never took lunch. Child care services and charities are concerned about such issues. Although I appreciate that they might not be within the scope of the act, we felt that we should raise them in our submission.

Dr Simpson: My supplementary links two elements that Mary Scanlon mentioned. You have talked about the consultation on the national care standards, and you have raised concerns about compliance with those standards and the sanctions that might apply to any local authority that fails to comply. Those aspects seem to be linked. How can appropriate standards be rigorously applied across the board?

10:45

Lexy Plumtree: When I was drafting our submission, I included something about sanctions. As Mary Scanlon said, the bill does not yet include adoption and fostering, so it was a bit difficult for me to deal with everything. The idea of the bill is to allow registration, inspection and deregistration. If a service provided is unsatisfactory, the provider is to be deregistered. However, deregistration is not feasible for local authorities, which have statutory duties to provide not only child care services but community care and a range of other services. We cannot just say that such-and-such a local authority did not do its adoption work properly and must therefore be deregistered. That is not feasible, practically or legally.

We have not developed a huge strategic plan in this regard. In England and Wales, local authorities have been inspected on these matters for a number of years, but the inspections are not even annual and not every authority is inspected

regularly. The centralised SSI inspectors—the equivalent of the social work services group here—go out and inspect a range of services in a number of authorities. The sanction that they use is to name and shame. Anyone who reads "Community Care", the weekly social work publication, will know that it carries regular reports, as do other formal publications, saying that the adoption services in council X have not been carried out properly and giving information on what that council has to do. That is the only feasible sanction. I do not think that you could deregister a local authority when we are talking about a statutory duty.

Ian Millar: The reports that have been provided by the SSI south of the border, where people are being measured against explicit standards, have resulted in things such as this document—"Framework for the Assessment of Children in Need and their Families". That is extremely helpful in assisting local authorities that may be failing. I like to think that that kind of document, rather than sanctions, would be a way of improving matters.

Shona Robison: Section 55(1) of the bill gives a definition of "child". You say in your submission that:

"Leaving the definition as it is currently is not acceptable in relation to these services."

What would be an appropriate amendment to the definition?

Lexy Plumtree: You will appreciate that, because the bill contains nothing about adoption and fostering services, I do not know what Government amendments will be introduced at the next stage. Those amendments may deal with this point.

In adoption and fostering services, and in child care and fieldwork services, a child is usually defined as being someone under the age of 18. Local authorities' duties towards children, whether they are children in need or children who are looked after, continue up to age 18. Fostering and adoption allowances are paid up to age 18. The Adoption (Scotland) Act 1978 uses age 18 in its definition.

The reason for that comment in our submission, and for a number of similar comments, was not to suggest that the committee should spend a huge amount of its time on this issue today. We simply wanted to highlight the issue as one that will need to be considered at future stages if Government amendments do not deal with it. We feel that the definition of a child in the bill, as being a person under the age of 16, is not good enough for the type of services in which we are interested.

Shona Robison: So this is an issue that you want to highlight, but it will depend on what the

Government does.

Lexy Plumtree: Yes. If a Government amendment defines a child, for the services that we are interested in, to be a person under the age of 18, that should be satisfactory, subject to the actual terms of the amendment.

Mary Scanlon: Would you expand on your proposal on curators and safeguarders on page 5 of your submission? You say that there may

"simply cease to be sufficient Curators, and adoption cases will languish indefinitely".

Lexy Plumtree: Again, this is obviously not a key area in the bill with regard to direct regulation and inspection. However, a provision in the bill amends the Children (Scotland) Act 1995 in relation to the regulations for safeguarders and curators. We have no dispute with that provision, but we hope that the Executive will undertake—when it has the new section in the Children (Scotland) Act 1995 and it brings in up-to-date regulations for safeguarders and curators—to consider not only safeguarders, who deal with the children's hearings system, but statutory curators in adoption.

The consultative documents have mentioned improving the appointments system and the training of safeguarders, bringing them within the ambit of the children's panel training services. We have no objection to that, but we want the Executive also to consider training and funding for curators in adoption. That is a similar, but different, service.

Adoption legislation requires there to be a curator in every adoption case. Every adoption and freeing case that comes before a court has to have a curator's report. I know from comments that I hear from legal and social work colleagues round the country that, in cases of difficult freeings and difficult adoptions, there is a shortage of curators and that curators do not get an especially good fee for their work. That work is very complex in difficult cases. Many people therefore say that they cannot do it, or that they cannot do it in the time allowed.

One very experienced adoption lawyer has told me—this is just a personal view, but it comes from someone whose views I respect—that, eventually, if we do not modernise the system for curators, we may well end up not having many curators to do the work. What will then happen in the court cases involving children? The assessment work for children that my colleagues have mentioned is crucial, but we also have to get the end processes, the court processes, right.

The Convener: We are in a bit of a vacuum because we are not sure what will be in the bill. We could go into all sorts of expansions on

adoption and fostering and then find that we had to come back to you in the future.

Lexy Plumtree: What is in the bill is probably all we need. However, we want to say to the Executive that, although it has consulted on safeguarders, it must also consider curators.

Mr McAllion: In your written submission, you express concern about the costs to your members that are likely to arise from the proposal that the commission be self-financing through fees. What could be the implications for child care services?

Lexy Plumtree: We have been in here for about half an hour and I was interested to hear your questions to the minister about what I presumed were the cost implications for day care and health care services. You will appreciate that I am not terribly familiar with those services.

We would obviously welcome a commission, but we would not welcome the idea that it had to be totally self-financing if that meant that the fees for registration—and, indeed, for inspection, if that were charged for—had to come from the voluntary agencies such as ourselves, from the voluntary agencies that do a lot of day-to-day work providing child care services for local authorities or from the local authorities themselves.

Local authorities have substantial budgets, but if central Government expects them to pay the commission a large fee for registration, as they will be bound to do, that will not be very fair to local authorities, unless central Government is giving the local authorities that money first. Central Government could just be taking away from local authorities money that they should be spending on services on the ground, not on bureaucracy.

Mr McAllion: You probably heard the minister claim at one point that the sums involved to pay for registration are small compared with free care for the elderly, for example. In your submission, you say that if fieldwork, adoption and fostering services are to be registered for the first time, the fees charged would come out of local authority child care budgets. Is that your view?

Lexy Plumtree: It is not so much our view as my fear. It is another expense for the local authority. Where will the money come from? Will it decrease further the money that is spent on child care services?

Mr McAllion: So your fear is that the complex system that the minister proposes to fund registration and inspection through increased GAE and that kind of thing may not be sufficient, and that the resources may come out of core budgets?

Lexy Plumtree: I do not know enough about the financial arrangements. I am not a very good financial person, but it is a fear.

Ian Millar: It is a fear.

Mr McAllion: You also say that there should be a mixed form of funding to support the Scottish commission for the regulation of care. You say that

“the Commission should be funded appropriately, not dependent on collection of fees”

but you think that run-for-profit organisations should be charged fees. Are you suggesting that there should be fees for run-for-profit organisations, but that the rest should be funded publicly?

Lexy Plumtree: We do not have a formal BAAF view. We do not want to be controversial about this.

Mr McAllion: Oh, go on.

Lexy Plumtree: I do not want to get the sack. We have fears about the financial implications of the cost of registration and inspection for our members, which are voluntary agencies. All the voluntary adoption agencies in Scotland are small, with one exception. We also have fears about fees for local authorities—will their child care budgets be reduced? It would not be unreasonable to require a reasonable management fee from run-for-profit organisations, but no organisation should have to pay through the nose for what should be a central Government body with high standards, and which should be funded publicly.

Nicola Sturgeon: I have a point for clarification, because we do not want to misrepresent your views. The proposal is that the Executive will increase GAE to local authorities, which will then pass the money on to the Scottish commission for the regulation of care, but that seems to be a cumbersome way of doing it. Do you agree that if that is what is envisaged, a better way of funding would be direct financing, thereby cutting out the middleman?

Lexy Plumtree: I think so. It seems to be more sensible that instead of giving local authorities extra money to pay back, it should be paid directly to the Scottish commission for the regulation of care. There will have to be some central funding for the commission. It cannot be funded solely from registration and inspection fees. It is not a subject on which I have much knowledge, and being a lawyer I never like to commit myself.

Nicola Sturgeon: As a fellow lawyer, I never like to commit myself either.

I wish to move on to an issue that is separate from what we have discussed, but it is one on which different views have been expressed, and that is the creation of two bodies—the Scottish commission for the regulation of care and the Scottish social services council—as opposed to

one body. Do you have any views on that?

Ian Millar: Generally, we welcome that. In relation to the council, the notion of having a body to register and regulate social work practitioners, which has wide powers to require, for example, continuing professional development, and can deal with situations in which people might be struck off in the worst-case scenario, is attractive. It is welcome that there will be a body that has that oversight role with regard to social work training and keeping up the standards of practitioners. I do not know whether we have given any thought to whether there should be two separate bodies, but the notion as presented is attractive, and is on a par with what happens elsewhere.

Lexy Plumtree: Ian Millar is right that we do not have a strong view on this. I know that the question of whether we have too many quangos is a big issue. I question whether having one quango instead of two is appropriate, because the proposed quangos have such different functions. Also, the commission will be involved in inspecting and registering a huge range of services—health care, community care and matters that do not directly involve social work professionals—so it is probably fair to social work professionals that their registration and possible removal is dealt with by a separate body.

11:00

Janis Hughes: I wish to turn to another subject. In your written submission you welcome the fact that there is to be an extension of inspections into the fields that you represent. What are your views on the bill's provisions on the nature and frequency of inspections?

Ian Millar: We heard part of the earlier debate. There are resource implications. We do not envisage frequent inspections. If there are to be inspections of fieldwork services and the entire adoption and fostering service, the nature of the inspections will be different from the inspections of establishments. It may be that a single large-scale inspection on a regular basis will be more effective.

Broadly speaking, we have been impressed by the way in which the SSI has operated south of the border and by the pertinent commentary that it is able to make on service provision. If that were to happen here on the basis of one annual inspection, that might be better than half-hearted impromptu inspections that may carry a more sinister element. I know that inspections point out shortcomings, but they should also point the way in which to make improvements.

Janis Hughes: You heard some of the earlier discussions. Are you saying that you would favour one announced and thorough annual inspection?

What are your views on an unannounced inspection during the intervening period?

Ian Millar: The answer to the first question is yes. I am not sure about impromptu inspections for such a huge service, because I am not sure what they would achieve. In an establishment one could do some quick cosmetic work to bring about immediate improvements, but if something is not working terribly well in such a huge service, you will not be able to tidy it up quickly just because you think that the inspectors are coming.

Janis Hughes: In your written submission you welcomed a separate care services complaints procedure. Could you elaborate on that with regard to the current proposals?

Lexy Plumtree: We do not have strong views on or worries about what is in the bill. It is important to have a complaints procedure. We welcome the clear way in which section 6 is written, and the fact that the complaints procedures are separate from, and can also be used along with, local authorities' existing complaints procedures, which are the relevant procedures for our service. That is important.

A minor point is that the wording of the section suggests that complaints can be made only by service users. Obviously, that is the most important function of the complaints procedure, but we foresee situations in adoption and fostering where foster carers or adopters—who are not service users but are, in effect, service providers for local authorities or others—might want to complain about the service that they receive. The wording of the section at the moment would not allow that. That is my only concern on that point, and it is not a big concern.

The Convener: Thank you very much for your written submission and for your responses to our questions. As I and committee colleagues have said, we are in a difficult situation as we do not have anything in the bill in front of us on adoption and fostering. We may, if it is acceptable to you, come back to you to ask you for a further written or oral submission—more likely to be written—once we see the adoption and fostering element of the bill. We will then know what we are working with and will be able to go into more of the detail. No doubt you will have comments and suggestions for amendments at that later stage. For the time being, thanks very much. We will be in touch.

We will hear next from Children 1st, Barnardo's Scotland and NCH Scotland. Good morning and welcome to the Health and Community Care Committee. We have received a written submission from you, for which I thank you. Do you wish to give an introduction, or shall we go straight to questions?

Anne Stafford (Children 1st): I would just like to say that our three organisations represent major providers of child care in Scotland and that the basis of our submission is the welfare and safety of the children who use our services.

The Convener: At stage 1 of our legislative process, we are meant to do two things: first, to consider the bill in general, to decide whether the bill is necessary and to decide whether we agree with it; secondly, to say whether we believe that the arrangements that have been made for consultation have been adequate. I put those two questions to you: what are your general views on the bill and what comments do you have about the consultation that has been undertaken to date?

Anne Stafford: Our organisations are well aware of the risks to vulnerable children and young people, both those living in the community and looked-after children. We strongly welcome the measures to register and set standards for those who work with children and with other vulnerable people.

The Convener: And the consultation—

Anne Stafford: We wondered whether there could have been more contact with the vulnerable young people and with other users themselves, but we welcome the fairly extensive consultation process.

Margaret Jamieson: What do you believe to be the main implications of the bill for looked-after children?

Maggie Mellon (NCH Scotland): We hope that looked-after children, as well as the people looking after them and the public, will be able to rely on a good system of regulation of the services that they receive. There should be much less chance of hearing about the disturbing abuse of children in public care that has been regularly reported. We seek a regulation of both the services and the work force, to make a repeat of such abuse much less likely and to engender public confidence.

Anne Stafford: Events in Dunblane probably started off some of the discussions around what is now covered by the bill. We welcome the bill as it highlights the risk to children in certain settings.

Margaret Jamieson: Do you have concerns about how projects might be regulated?

Maggie Mellon: Do you mean individual services that we run in partnership with local authorities?

Margaret Jamieson: Yes.

Maggie Mellon: We hope that most services will be covered by the proposed regulation, as they all involve working with vulnerable children. We view our services, like other services, as being subject to registration and inspection. If they formed part

of a larger local authority service, I suppose that they might come under a general registration.

Our organisations all have our own quality assurance and, in some cases, external, arm's-length inspection. We still seek to ensure the quality of our services, even if in the context of a larger service that might be subject to lesser standards of regulation.

Anne Stafford: Our organisations employ qualified social workers, teachers and community education workers. We hope that the system of regulation will be integrated and will, at some stage, include all our staff.

Mr McAllion: I would like to turn to the proposal for the Scottish commission for the regulation of care to be self-financing through fees. In your written submission, you discuss the impact on some "valuable and needed services". You suggest that

"those that are self help/service-user developed - will be unable to absorb the costs of regulation or to secure the necessary extra funding to continue".

Could you expand on that? Will some vital services go under as a result of the proposals?

Kelly Bates (Barnardo's Scotland): We are concerned that the bill suggests that the proposed commission and council will be partly, if not wholly, self-funding. Without figures, nobody is too clear about what that will eventually mean. We wish to highlight our view that a clear balance needs to be struck: we need to ensure that high standards are met through quality inspection and regulation, but that that is not to the detriment of service provision. If voluntary organisations have to pay an increasing sum for inspections, registration and reporting mechanisms, that could take away from the much-needed resources used to provide the services. It should not get too bureaucratic and financially tied up. That is the note of caution that we want to sound.

Mr McAllion: You say that a balance has to be struck. Does that mean that inspections and registration should not be 100 per cent financed through fees?

Kelly Bates: Ideally, registration and inspection should be paid for by the new commission and council. If voluntary bodies have to start finding funds from their own resources or if they have to approach the statutory services with which we are in partnership, that means trying to get more money from local authorities to pay for our own fees and registrations. That could have a detrimental effect on the provision of services. Voluntary sector funding is increasingly hard to get. For many of us, our arrangements with local authorities form part of a financial and professional partnership. Such partnerships with statutory services are increasingly difficult to secure. That

could be an additional ingredient in making complex arrangements even more difficult.

Mr McAllion: Is that the view of all three agencies represented here?

Maggie Mellon: Wherever the money comes from, it will be from funds that are devoted to care services or to public services in general. Given that there is a limited pot, we are concerned that there needs to be a balance in regard to registration and inspection. They should be rigorous and should cover all the services that vulnerable people receive, but what society or people want to spend on services and the amount of money spent on regulation have to be taken into account sensibly. We are concerned about there being an enormous edifice of registration and inspection, with no account being taken of the actual amount of money that is available for all services.

Whether funds come from central Government, from local authorities or from the services, they still come from one finite amount of resources. We are concerned that the set-up does not become top-heavy. To avoid that, we want to rigorously use service users as the standard for services. We want to involve them in the decisions that are taken. In that way, if user-led, organisations should not be put out of business. The bill is about providing a better quality of life for service users and ensuring their safety. That principle should be the basis of decisions that the commission or the council makes.

Dr Simpson: I do not want to make assumptions, but I think that the committee is saying that we want to avoid bureaucracy in the system. Is it likely that there will be one charge level or variable charge levels? Those levels will change every year, so you will have to renegotiate every year. Are your organisations comfortable with the fact that you will have to add that into your negotiations every year with your local authorities, if that is your purchasing organisation?

The more inspection of services that are not good that is required, the higher the costs of the care commission will be, and if it is self-financing, it will be charged back on everybody. Some of the principles in the bill seem to be complete nonsense.

11:15

Kelly Bates: One of our concerns is that the bill suggests that some fees could be waived, but is not clear what those will be and whether the fees will be raised annually.

Dr Simpson: They will be.

Anne Stafford: We do not want there to be any additional expenses on the voluntary sector or on

child care organisations at the expense of their being able to provide services.

Dr Simpson: We expect that local authorities will start to negotiate three-year contracts with voluntary organisations now that they have three-year funding, but if what we read in the financial memorandum about the care commission is right, the charges are going up every year. Even on a set contract you will have to anticipate charges, as you do not know what will happen beyond the 10 per cent increase in the first two years. You will have to take a guess in your three-year contract or you will need to have a clause that allows you to renegotiate every year, especially in the third year when the increase might be 200 or 300 per cent.

Maggie Mellon: The proper balance must be struck between regulation and provision of services from the outset, so that we do not end up with 50 per cent of an organisation's service costs being spent on regulation and inspection. That could happen unless regulation costs are limited.

Dr Simpson: Were you consulted on this?

Maggie Mellon: I do not know whether the self-financing proposal was in the original consultation papers.

Anne Stafford: We certainly submitted our concern about the fees and the implications for the voluntary sector during the consultation process.

Mary Scanlon: How do you see the regulation of child protection services being undertaken? You make a point in your submission about the need

"to increase public confidence in our services and reassure the public that serious steps are being taken to ensure children are safe and well cared for."

You mention that it has been a concern throughout that children

"can be at risk in many different ways, from sex offenders who systematically target children".

Have those concerns been addressed in the consultation process? Can you give the committee an update on the concerns about at-risk children and child protection services?

Anne Stafford: Parts of the bill are about reassuring the public that children in those settings are safe. Public awareness of those issues is high following the Sarah Payne and Anna Climbie cases. The public would expect that child protection field services be regulated. If they are not, the public might be reassured that something was happening when it was not. We therefore want to see child protection fieldwork services included in the bill.

Mary Scanlon: You mentioned the Orkney case, which was more than 10 years ago. Have the lessons that were learned from Orkney not come into the system? Is that still an example of

bad practice that we must address in the bill?

Anne Stafford: There is more knowledge and information about the real risks to children. We are increasingly aware that children are at risk. If they are at risk of sexual abuse, they tend to be at risk from adults whom they know and trust but who are not their parents. They can be at risk from neighbours and in places in the community such as sports clubs. A job has to be done to reassure parents that their children will be safe in all sorts of settings. We want an integrated system where no child falls through the net and where the work force is as well regulated as possible.

Mary Scanlon: We mentioned the index for sex offenders to the minister. He said that there is a consultation process and that a policy paper will be produced. Have you been part of that process? Are you satisfied with the progress on that?

Anne Stafford: A range of measures are proposed for the protection of children in various settings. We are keen that the system that emerges is integrated and coherent, so that there are no gaps and children are not more at risk in an informal club than they would be receiving a social work service in their home. All children must be covered by the measures.

Mary Scanlon: Have your concerns been addressed? Can you assure us that the concerns that you have raised in the submission are being addressed in the bill, or should this committee be doing more to help protect children? We are asking for your advice.

Maggie Mellon: We do not think that the bill as it stands will address those concerns. In regard to the Orkney case, we do not want a situation whereby after children are removed their care is inspected and regulated, but the decision about whether to remove children is not subject to any standards.

There are two issues. One is that the social services council will mean that staff who do not meet certain standards of practice will be subject to deregulation, so that if you could prove that somebody had not carried out their job according to professional standards they should be deregistered.

Secondly, we are concerned that the agencies that employ those staff are made to operate to a standard so that the processes that are put into play about care assessment of children's risk and the management of cases when children are considered to be at risk or are under supervision at home ensure that that work is subject to standards. That would assure the public that it is not only the service at the point of delivery that is the issue, but that decision-making is subject to proper professional standards.

Mary Scanlon: Convener, can I ask that the organisations before us suggest to the committee any amendments that they see fit to cover those serious concerns? It would be a lost opportunity if we did not take advantage of the bill to cover vulnerable children.

The Convener: We voiced concern, during informal briefings at the start of the process, about the fact that the index of unsuitable adults would not be available to be considered with this bill. The minister has told us today that it will follow. Presumably, as long as you feel that all the pieces fit together properly, you are relaxed about the fact that the index is not in the bill but will follow.

Anne Stafford: There is an issue of timing and coherence, but if the end result is a coherent system that means that no child falls through the net, that is what we want to see.

We think that a statement of principles and values in the bill might have helped. We were disappointed that the bill does not contain a statement of principle. "Aiming for Excellence: Modernising social work services in Scotland" contained strong statements about principles and values. We think that the Standards in Scotland's Schools etc Act 2000 is a model for doing that. It would have greatly strengthened the bill.

Nicola Sturgeon: I was struck by one comment in your submission. Although it is a sensible point, some expansion on it would be useful. You say, on page 4, that it is important that a sensible balance is struck between standards and their costs. That is an important issue. Can you tell us a bit more about where you see that sensible balance being?

Kelly Bates: There are a number of issues to do with cost. As I have already mentioned, the voluntary sector is concerned that fees for registration and inspection would reduce the money available for service provision. There are a number of concerns about resource implications; even the implications of the voluntary sector's having to spend time tracking what is happening to the bill.

Most voluntary organisations have clear core standards and quality assurance procedures. It is important that it is not impossible for voluntary organisations—some even smaller than my organisation and with less flexible resources—to examine what the implications of whatever is produced under the rules and regulations will be or to ensure that their existing standards and procedures fit in with what is produced by the commission and the council.

We are keen to ensure that there is regulation and that there are high standards that are set quite clearly, but we do not want the regulations to be so detailed, bureaucratic and inflexible that it is

difficult for service providers to continue to deliver a quality service. The issue is not only to do with fees, but to do with a range of implications.

Nicola Sturgeon: My next question is slightly separate from what we have been discussing. Should there be one body or two? Differing views on that have been expressed. Are you comfortable with the creation of two separate bodies or do you think that there is an argument for having one body?

Kelly Bates: We are aware that some evidence has been given on the subject and we have discussed the matter. I do not want to appear to be sitting on the fence, but we have no particularly strong views about whether there should be one or two bodies. We are concerned that the functions are carried out effectively and efficiently and that the guiding principle should be the protection of the vulnerable people in our communities, whether that is done by the private or the voluntary sector. Whether there are two bureaucracies or one is not important at the end of the day.

Shona Robison: What are your views on the provision of national standards?

Maggie Mellon: In what regard? Are you talking about the setting of standards?

Shona Robison: Yes.

Maggie Mellon: Again, that takes us back to the point of principle. We think that unless something in the bill says that the main aim is to secure a good quality of life and high level of safety for service users, anyone who is involved in the setting of standards will not have a guiding compass and will be subject to whoever happens to be appointed by the Executive to be on the bodies. If we had a principle similar to the one that was outlined in the original vision statement—that the services should be built around the needs of the service users, who should be involved in the planning and delivery—people would have a clear understanding of the kind of standards that we want to achieve and would not end up producing long lists to do with fuses in plugs and so on, as everything that they did would have to pass the test of whether it made the situation better for the service user.

Anne Stafford: If we keep the interests of children and other vulnerable users at the heart of any standards, that will obviously be positive.

Janis Hughes: What are your views on the nature and frequency of inspections as laid out in the bill?

Maggie Mellon: We had understood that some of the regulation would be around self-assessment. All our organisations have processes for quality assurance.

In relation to the question that the British Agencies for Adoption and Fostering was asked, we thought that there should be a regular inspection and that no service should go beyond a certain period without having an external inspection. We think that the commission should also have the power to make impromptu inspections. Of course, that power should be used sensibly and organisations should not be overburdened with drop-in inspections as that would not be good for service users. Such inspections should be carried out in circumstances in which there is cause for concern and on a random basis.

Janis Hughes: The provision in the bill is for one announced—and, presumably, thorough—inspection a year. I take it that you are happy enough with that as well as with unannounced inspections.

Maggie Mellon: I think that the commission would have to keep the power to carry out unannounced inspections.

Janis Hughes: What are your views on the complaints procedures?

11:30

Kelly Bates: It is important that whatever complaints procedures are available are easily understood and easily accessible. Complaints procedures are often criticised for not being user friendly. To enable children and young people—particularly the most disadvantaged, who lack confidence and have low self-esteem—to make a complaint, the procedure must be accessible and easily understood.

The Convener: On the subject of omissions from the bill, you have talked about child protection issues, fieldwork services and the fact that you would have liked principles and values to be written in to the bill. Your written submission says that you want nanny agencies to be covered by the legislation and gives us more information about fieldwork services. It also gives us an interesting take on the commissioner for children in Scotland. Many of us on this committee are keen on that idea but you suggest that including the commissioner in this bill might make their remit too narrow.

I do not want to go over the ground that you have covered in your written submission, but I would like you to talk further about elements that you think have been omitted from the bill. Would it be worth while, at this stage, to highlight concerns such as those about the commissioner?

Anne Stafford: We were keen to speak about the commissioner for children today. Some of our organisations have been campaigning for such a

commissioner for 25 years. The Scotland for children campaign is made up of a large number of bodies, including the Association of Directors of Social Work's children and families forum, COSLA and most of the major children's organisations, as well as the Association of Directors of Education in Scotland. There is widespread support for the notion of a commissioner whose remit would encompass all children, not simply those who are looked after or who are involved in the care system. We are concerned that a remit that was based on the provisions in this bill would exclude the majority of children, including some who face great adversity.

We are keen that there be a commissioner for children and are impressed by the approach that Northern Ireland is taking on the issue, with wide consultation and a stand-alone bill. If it were possible for the miscellaneous provisions of the bill to provide for a general commissioner for children, that might satisfy us. Children in the care system would also be best served by such a commissioner as that would mean that there was as little distinction as possible between those children and children in other settings.

Kelly Bates: On the voices of users, schedule 1 to the bill says that there should be representation from

"persons who use, or are eligible to use, care services".

We want to ensure that children and young people are represented. That is not easy to achieve and it is important to stress that there should be a support mechanism to ensure that the voices of young people are heard by the commission in a way that is constructive and positive rather than tokenistic.

The Convener: Thank you for answering our questions and for your written submission. I found that useful, especially on the commissioner issue. We can end up going down a particular alley on an issue without recognising that it is not necessarily the best way to go.

I welcome our next witnesses and thank them for attending the Health and Community Care Committee. We have a short written submission from you, but you will want to expand on your thoughts. Do you wish to make a short statement before we move to questions?

Elizabeth Duncan (Help the Aged): Thank you and good morning. I have with me our press and information officer, Richard Baker, who will chip in when you get bored listening to me.

We were asked initially to address four points. The first was our understanding of the reasoning behind the bill. Help the Aged's point of view is that the reasoning behind the bill is to provide clear and equitable standards of care for

vulnerable people throughout Scotland and to ensure that those standards are maintained at a high level and improved as necessary.

The second point was key issues. For Help the Aged, the key issues raised by the bill concern representation of service users on any consultative or advisory body overseeing the bill or its subsequent enactment. I will go into that later. We hope that the consequences of the bill's enactment will offer a transparent and accessible system of information, access, equality and accountability throughout the process of supporting vulnerable people in the community and in care homes. We appreciate that there are financial considerations around registration and other matters, but I do not feel qualified to comment on those factors at this point.

Help the Aged has so far had limited involvement in the consultative process, but welcomes this opportunity to contribute. As is stated in our pre-submitted summary paper, Help the Aged does not wish to comment on children and young persons, offenders accommodation, boarding schools or hostels, and housing—except perhaps as part of a community care package of support. However, we wish to comment on day care and home care; complaints practice, process and procedure; categories of residential establishment; and training of social workers and definition of the terms thereof.

May I speak on those matters?

The Convener: We are conscious of time because we want to get to our draft report, but if you speak to those matters it may knock out some of the questions that members were going to ask.

Elizabeth Duncan: National care standards is an issue that relates to the representation of older people. Section 5(2) states that the Scottish ministers

“shall consult any person they consider appropriate”.

Elsewhere, it has been said that standards will be user focused. We urge that—as per the Better Government for Older People recommendations and imperatives, for example—users and interested parties from the many older people's forums in Scotland be brought into the process. At the Better Government for Older People conference that was held down the road from here on Friday of last week, it was being stated that the better government programme had taught us much about including older people in matters that are of concern to them.

Schedule 1(3) states that the commission must “provide a proper balance”, which will include

“persons who use, or are eligible to use, care services”.

We therefore urge that the process of membership

be clarified as soon as is practicable, so that older people can make their needs and views known from the start, and on a continuing basis.

The complaints practice, process and procedures is an area about which Help the Aged is very concerned. As a national body, we hear many complaints from users, relatives, staff and the general public about aspects of care that they feel are suspect or, in some cases, criminal. Older people—and those concerned with them—need to know that if they enter care or receive care, they are receiving the highest standards available to them. They need to know that they will be safe and secure and that they will be cared for.

It has been interesting in the past week or so to see the newspaper reports about appalling and brutal treatment of vulnerable older people by “care workers”. Such reports do not engender feelings of safety and security, especially when—according to the reports—the workers in question are found guilty but receive only a monetary fine. That is despite the fact that common, if not brutal, assault was going on.

Over the past weekend, newspaper reports have indicated that older people in hospitals and care homes are malnourished. That is appalling and it echoes research done by Help the Aged into cases of malnourishment throughout the country. It is nothing to do with the food itself; it is simply that older people cannot get to their food. In hospitals, food is being put on a trolley at the end of the bed. The meal is not pushed towards patients and is taken away at the end of the day. In residential homes, food is put where older people cannot get to it or, in some cases, the food itself is unsuitable.

To find out that someone has gone into care and that they are not even being fed is an appalling indictment on many levels. There are staff and training issues, but we are obviously not monitoring clearly enough, if at all. We need to be able to assure people that care means what it says.

We have received complaints from staff about the management in care homes. That is a tricky one. It often happens when staff have felt unable or unwilling to take their complaints to the managers or, having done so, have felt that appropriate remedial action will not take place. That is always a difficult situation. When the commission is operational, it may have to consider a whistleblower policy to ensure that, in such circumstances, staff are not victimised by management. All such complaints are difficult to deal with, but the type of complaints that have come to us of late have been from rural or island communities. It is tricky to deal with them, given that there is little choice of home or, indeed, of employment. Those difficulties notwithstanding,

the process of lodging a complaint and seeking remedies must be made clear to everyone involved: recipients, care givers or families. I presume that some sort of handbook on that will eventually be produced.

On categories of residential establishment, I understand that while the bill is in the process of consultation and refinement, a care home working group is examining proposals for a single care home system. Help the Aged applauds that move, since it echoes the need for a clear continuum of care to be provided on one site. That fits in well with the recently agreed single assessment tool to establish the needs throughout nursing and personal care. I mention that because I am aware that the bill makes statements about local authorities being able to employ nurses. However, we are in any case in a changing culture, as far as the continuum of care is concerned.

As a social worker—I qualified many years ago—I am especially interested in the training of social workers and the definition of the term. Help the Aged has worked with the colleges of education to devise training modules that highlight the issues and concerns about, and of, older people. Those training tools are useful for students who seek future employment in care settings.

We are working with the Royal College of Nursing and similar agencies on a Scotland-wide basis to ensure that the nursing care given to older people is appropriate. That work came about through our dignity on the ward campaign, which revealed that while nursing care might be excellent, the care element suffers occasionally in high-pressure jobs. That led to the outcomes that we referred to earlier, where staff have insufficient time to ensure that older people eat their meals. Good nutrition is the other part of getting better when one is receiving medical care and attention in hospital. If that part of the jigsaw is not present, recovery becomes difficult.

11:45

There are also issues about how older people are treated by hospital staff. By and large, they are not treated as individuals who have rights or with dignity; they are treated as old Mrs so-and-so in such-and-such a bed.

We fully agree that the registration of social and social care workers is essential, with the proviso that staff who are guilty of the mistreatment of vulnerable people should be not only subject to the law of the land but prohibited from working in care settings ever again—they should be debarred from such work. I refer to certain newspaper articles that have appeared recently.

The Convener: That may go beyond what is provided for in the bill, but we would expect that

those would be the likely outcomes of misconduct—depending on the level of such misconduct—given that a professional body is to be established with the remit of examining the conduct of professionals.

You have covered quite a lot of the other issues that my colleagues were going to ask you about, so after another couple of questions I will leave it at that.

I would be grateful if you would address the implications of self-financing through fees, the creation of the two separate bodies and the nature and frequency of inspections.

Elizabeth Duncan: If I may, I would like to make a couple of points about day care services and home care services at the end.

The Convener: That would be fine.

Elizabeth Duncan: I have no firm opinion about the creation of two separate bodies. As long as they work well together, co-ordinate their work and advise each other, their creation raises no problems for us.

We believe that only one inspection a year is not enough—there should be at least one announced visit and one unannounced visit a year. I have yet to mention the regulation of care delivered in the home, which could be quite difficult. The issue of services that are delivered in the home is quite sensitive, as the person delivering the service must be invited into the home. That is why it is important to ask older people—the service users—how they envisage the regulation of those services working. Many of us are aware that when one asks older people about a service that they receive, they tend to answer, “Yes, it’s fine. It’s lovely,” because they worry that if they say anything derogatory or less than completely positive, the service might be taken away. More work needs to be done on that issue, perhaps by consulting the groups that I recommended earlier.

As I said, we have no particular view about self-financing. We appreciate that a cost element is involved in inspection and I know that COSLA is considering a direct grant to cover those fees. We are not a direct service agency, so I find it difficult to say much about costs on behalf of such agencies.

The Convener: You wanted to make a couple of points about day care services.

Elizabeth Duncan: If I may.

I have gone through the bill with great care and found only limited reference to day care for adults. Help the Aged spends a lot of time assisting with the development, establishment and maintenance of day care services for older people. The universally accepted figures appear to indicate

that only around 8 per cent of the population will spend their later days in residential care. That leaves around 92 per cent of the population living at home, supported by a battery of services including day care services.

Most day care services are provided by the voluntary sector, sometimes on service contracts with the local authority and sometimes funded by the organisation's own funds. Most of those voluntary and charitable groups are strapped for cash, yet the provision of day care services relieves the stress on carers and gives older people a better quality of life and more variety. Day care services can make a substantial contribution to the success of preventive medicine measures and can reduce the financial pressures on long-term and home care services.

The Convener: Could you be specific about day care services as they are affected by the bill, rather than talk about the generality of day care services?

Elizabeth Duncan: My point is that as far as I can make out, the bill mentions those services in passing and states that they will be subject to inspection and regulation. The definitions are rather unclear. The provision of day care services is not a statutory requirement, but such services are perceived to be local authority services: it is nice for people to receive them if they can get them.

The explanatory notes refer to

"day care services for adults"—

but no further definition is given.

The Convener: Are you calling for greater clarity of what is covered by the term

"day care services for adults"—

and of what will be required—

Elizabeth Duncan: The notes refer to "adults"—I must presume that such references include day care services for older people, which make up a substantial number of the services provided in that sector.

Mary Scanlon: That was my point. I was quite surprised that you had no concerns about the financial implications of the bill. The financial memorandum estimates that registration for a large adult day care centre will cost between £1,400 and £1,800 and between £1,200 and £1,800 for a home care service. Given the amount of services that Help the Aged provides, I am surprised that you are not concerned about those fees.

Elizabeth Duncan: I did not say that I had no concerns; rather that it would be difficult for me to comment on behalf of private or independent

home care agencies or local authority home help services and so on.

Another difficulty with the provision of day care services is that they are not standardised. Day care services that are offered by a voluntary agency in one area might be vastly different from those offered by another voluntary agency in another area.

The Convener: I presume that the bill is trying to achieve standardisation through the introduction of national care standards in all sectors of care provision.

Elizabeth Duncan: If those standards are going to be introduced, the financing will have to be examined closely. At present, most of the day care centres that we work with and help to maintain must fundraise to keep going. There will be implications for those centres if they are hit suddenly with a fee of £1,200 to £1,800, given that they are struggling to maintain services, whether they are funded through grants or—wholly or in part—through a service contract. That is a bit worrying. In many cases, those centres have received no increase in funding over the past six years. The financial implications should not be borne by the day care centres—they should be borne by the service contractors.

Richard Baker (Help the Aged): We attended a meeting of the cross-party group on older people, age and aging. While I will not go into the issue too deeply, we empathised with the concerns that were expressed about self-financing through fees and about how unrealistic that is. We are seeking views on a direct grant.

On a wider level, the improved care standards and their standardisation will require additional resources. The burden should not fall on people who pay for their care.

Shona Robison: Could Elizabeth Duncan send us a copy of the Help the Aged report on malnutrition in care settings, to which she referred?

Elizabeth Duncan: That report was part of our dignity in the ward campaign.

If I may, I will leave copies of a report, which some members may have seen already, by our friends at Broomhill day centre in Penicuik. They detail many of the issues about registration better than I am able to.

To whom should I direct the publication from our dignity in the ward campaign?

The Convener: You should send it to the committee clerk.

Elizabeth Duncan: I am happy to do that.

The Convener: Thank you.

Budget Adviser

The Convener: Agenda item 3 is on the budget process. It is recommended that the committee consider the contents of our report on the budget process, confirm its intention to appoint an adviser for this year's budget process and approve the terms of reference for the adviser. Are members happy to do so?

Members *indicated agreement.*

Dr Simpson: The time allowed for the adviser is inadequate, but apart from that—

The Convener: We now move on to the next agenda item, which is to be taken in private. I close the public part of our meeting.

11:55

Meeting continued in private until 12:35.

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