HEALTH COMMITTEE

Tuesday 21 March 2006

Session 2

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CONTENTS

Tuesday 21 March 2006

HEALTH COMMITTEE
7th Meeting 2006, Session 2

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)
*Kate Maclean (Dundee West) (Lab)
*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)
*Mrs Nanette Milne (North East Scotland) (Con)
*Shona Robison (Dundee East) (SNP)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Stewart Maxwell (West of Scotland) (SNP)
*Euan Robson (Roxburgh and Berwickshire) (LD)
Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

The Rev Frank Bardgett
Sylvia Denton
Alan Lawson
Anne Logue
Scott Rae
Kate Thuillier

CLERKS TO THE COMMITTEE

Lynn Tullis
Simon Watkins

ASSISTANT CLERK

David Simpson

LOCATION

Committee Room 6

Scottish Parliament

Health Committee

Tuesday 21 March 2006

[THE CONVENER *opened the meeting at 14:00*]

Item in Private

The Convener (Roseanna Cunningham): I bring the meeting to order. I have received apologies from Mike Rumbles, but Euan Robson is here instead. I ask Euan Robson to confirm that he is attending the meeting in his capacity as substitute member for the Liberal Democrats.

Euan Robson (Roxburgh and Berwickshire) (LD): I am.

The Convener: Are members content to follow our usual practice of considering our work programme in private by taking item 3 in private?

Members *indicated agreement*.

Care Inquiry

14:01

The Convener: We continue our inquiry into free personal care for the elderly. Today we will take evidence on that subject from individuals who have made written submissions to us about specific sets of circumstances that have affected them or their families. From right to left, the witnesses are Alan Lawson, Anne Logue, Frank—[*Interruption.*] Frank Bardgett is not here.

The Rev Frank Bardgett: I am over here.

The Convener: Oh, right. You are not sitting in the right order because you are over on the left. The remaining witnesses are Kate Thuillier, Scott Rae and Sylvia Denton. I welcome you all and invite you to make very brief opening statements. Given that there are six of you, you will appreciate the need for brevity. If we take up too much time with opening statements, there will not be sufficient time to have a discussion, which is the most important part of this afternoon's proceedings.

I will start with Alan Lawson, simply because the issues that he has raised are directly to do with the Scottish Commission for the Regulation of Care, whereas those that the rest of you have brought to our attention are about free personal care or direct payments. When we have heard from each of you, we will have a general discussion involving questions and answers. I do not want people to speak for a long time at the outset because only 45 minutes has been allocated to the whole item.

Alan Lawson: I and a number of colleagues were involved in a particularly appalling case that threw up three general issues relating to the care commission that will be of interest to the committee. The case concerned a care home in Dundee, where the invoices with which we were issued had been fiddled in such a way that everyone was being overcharged. We discovered that a variety of techniques had been used with a significant number of people over a considerable number of years—three, at least.

Last June, we submitted a detailed complaint to the care commission. After six weeks, it produced a report that seemed to us to be completely inadequate, given the severity of the situation. After we decided to reject that report, the care commission carried out a much more detailed investigation that supported our contentions; it finally produced its findings in November.

However, it came as a nasty shock to us, given the severity of the case and the exploitation of the vulnerable that had been taking place, that the owner was allowed to continue to hold a licence. I

have limited time to explain the detail, but it appears to us that the penalties that were imposed on the home were rather trivial and that, in effect, it got away with what it had been doing. That same home is about to cover any increased costs that it faces by announcing a 10 per cent increase in fees. Although the care commission declared that the owner was not a fit person to continue to carry out the invoicing procedure, she is still in control of a nursing home. There are a number of other points.

Our first question is whether there are penalties in serious cases Does the care commission have enough powers to deal with serious cases and remove a licence right away? We have not read the statute in detail. Is there a sufficiently rigorous attitude towards dealing with serious cases? There seems to be a tendency to second-guess the situation and to anticipate that the owner might appeal or that a care home might be lost, but the care commission's job is to call it as it sees it.

Our second point relates to the publicising of complaint findings, which was the subject of our original submission. The care commission does not publicise the findings of its investigations into complaints and we feel that that is not in the public interest. Right from the start, we wanted to ensure that all the other residents and families in the home knew what had been going on in such an appalling situation; that the staff knew what sort of place employed them; and that the general public knew what went on in care homes, as they, particularly people who are trying to place one of their frail relatives, have an interest in knowing that.

We met senior members of the care commission in December and argued our case strongly. We received verbal and written assurances that the matter was being looked into and taken seriously, but nothing has happened and the most recent communication that we have received from the commission says that it will not make public declarations. The problem is that it is then up to the complainants to go to the press. In some cases, people do that but do it rather badly; in other cases, people do it and do it quite well; and in many cases, people do not go to the press at all. I bet that the care commission does not know how many of these cases end up in the press and how many do not—we certainly do not.

It is important to be clear that the reports do not appear on the care commission website as has been claimed. There is a publicising problem here that might affect other public bodies, although those bodies might behave differently.

Our third and final question is about intimidation. In our case, we received appalling intimidation and harassment from the owner of the care home once they realised that they had been rumbled and that a complaint was under way, including hysterical, abusive phone calls, cod lawyer's letters and an extremely hostile reception any time that we walked through their front door to visit our relatives.

We raised those points with the care commission, but it appears to think that it cannot do anything about it and does not seem terribly interested. I know that the committee has examined whether people who make complaints are intimidated or are worried about recriminations. It is a fair topic and has been for many years. However, it will be unfortunate if complainants in serious cases find themselves with no protection against intimidation, harassment or recrimination from disgruntled home owners. It would be entirely against the public interest if it became generally known that that was the case. People would not come forward to make possibly serious complaints against a home if they felt that they were completely unprotected. That is very much against the public interest.

Thank you for the extra time that you allowed me. I am happy to answer questions.

Kate Thuillier: I will talk mainly about the personal nursing and care allowance. As far as I know, all other benefits are index linked in some way, but that allowance is not. At the same time, so many costs are increasing that fees are now horrendous in my mother's nursing home. My mother entered the nursing home with motor neurone disease on 5 May 2003. Since then, costs have risen by an average of 6 per cent each year. The most recent rise was 7 per cent, which is crippling. However, the personal and nursing care allowance has not increased. Wage and utility costs have risen so that operational costs at the nursing home have gone up in some cases by 100 per cent. Training costs have risen enormously; that is largely to do with the Commission for Social Care Inspection, which is an excellent body, but it has knock-on effects on costs and fees, as indeed has the care commission.

I have two other points to make. First, when residents go into a hospital, the personal and nursing care allowance can be stopped. However, at the same time, the nursing home will be charging quite a substantial retainer for keeping the room for the resident who has no other home to go back to. I believe that, unless it is perfectly obvious that the resident will never go back to the nursing home, the personal nursing and care allowance should be continued while they are in the hospital, to cover the retainer at least.

Finally, when a resident goes into a nursing home, their eligibility for the allowance has to be assessed. That can be arranged only once a resident is in the nursing home and the time that it takes for them to be assessed depends entirely on

how heavy the workload of the social work department is. The personal care allowance is not backdated, as you know. We were lucky in that we lost out on only £420 that we should have had. Many people I know have to wait a lot longer and I feel that that is wrong. Payment should be made from the point of need.

I believe that the personal care allowance should be index linked. That is very important. The introduction of that allowance is one of the best things that the Scottish Parliament has ever done. If it is not index linked, the formula that was first used to set the size of the allowance should be applied to set a new level for the allowance every year. That would ensure that the allowance would continue to operate in the spirit in which it was first introduced.

Anne Logue: For the past three years, I have been involved in a battle with Renfrewshire Council over its charging policy. It is charging my mother, who has dementia, for her care. My father, who is now dead but who was physically disabled, did not pay anything for his care. We are going round in circles. We have had appeals hearings and so on, but I am here today because nothing has changed. The only light at the end of the tunnel comes from the on-going meetings with the Convention of Scottish Local Authorities and the Executive.

We feel that Renfrewshire Council's social work department is discriminating against dementia sufferers.

Sylvia Denton: My case was submitted by a charitable organisation and I was not aware that it was coming to the Scottish Parliament. You have my report on my dealings with the various organisations and the problems that I have had over my mother's care. I have prepared a brief statement that I would like to read out about how I feel about the health care system. Would that be in order?

The Convener: As long as it is not too long.

Sylvia Denton: There is much controversy about the accuracy of a quotation attributed to the British politician and philosopher Edmund Burke, yet it continues to challenge politicians on the issue of falling standards in our society. The quotation is:

"All that is required for evil to triumph is for good men to do nothing."

Adolf Hitler became the Führer and Chancellor—

The Convener: Actually, could we go straight to the actual case? I appreciate that you want to do this sort of—

Sylvia Denton: I cannot do that, because I have not been briefed sufficiently.

The Convener: But it must deal with circumstances that are personal to you.

Sylvia Denton: I am trying to tell you how people are lulled into a false sense of security with regard to the health care system and into thinking that everything is fine. However, it is not.

The Convener: The purpose of this session is to hear about individual cases. If there is an issue that has been personal to your family that has given rise to difficulties, we would like to hear about that specific issue.

Sylvia Denton: There are two issues, but I see no reason to go over them, because they are in the report that has been submitted.

The Convener: Okay, if there is no need, we will move on to hear from Scott Rae. We will ask questions directly on the written submission.

Scott Rae: I am here because I have submitted some feedback about my experiences with regard to my mother's care. She is physically disabled with multiple sclerosis.

The entitlement to free personal care seemed clear, according to the Scottish Executive website. However, we have met with a catalogue of problems and delays when going through the process of applying for free personal care. We have had contradictory information from the social work department and have found that there is difficulty in sourcing providers of care services. Despite the fact that they advertise their services, they seem unable to provide the sort of resource that we need. It is now around eight months since my mum's 65th birthday. The social work department has told us that she is entitled to money in principle, but none has been received. There seem to be continual delays, with the result that my mum is paying out a small fortune for her care every month. That is our experience.

14:15

The Rev Frank Bardgett: My father is in a nursing home. He has a constricted artery in his neck on which a surgeon declined to operate. The artery has led to multi-infarct dementia and a series of small strokes that have left him largely incapacitated, without memory or speech, and incontinent. He needs to be in a nursing home. My two parents-in-law are also in a nursing home. My wife and I, who are only children, are therefore well aware of the importance of nursing home care.

In my submission, I tried to show the continuing importance of quality nursing homes. I have read in the press about councillors arguing that they cannot afford to maintain nursing homes because resources must be made available for care in the community, but care in nursing homes and care in

the community should not be seen as opposites. Quality nursing homes and care in the community are both needed, and resources must be found for both because each offers benefits for particular people with particular needs. My submission suggests that the free personal care allowances that were introduced are necessary and that their costs are justifiable, but that they are not adequately resourced or administered, particularly for residential care, as several other submissions to the committee have said.

The Convener: Thank you. We shall proceed to questions on the written submissions that we have received.

Helen Eadie (Dunfermline East) (Lab): I have a question for Sylvia Denton. To whom did you go for advice on and support for the people whom your submission mentions?

Sylvia Denton: Do you mean for advice on personal care allowances?

Helen Eadie: Yes.

Sylvia Denton: I went to the Scottish Executive and a citizens advice bureau and I rang the social services, but getting answers was difficult.

Helen Eadie: Did you approach the care commission?

Sylvia Denton: I am in contact with the care commission about another complaint, but I have not approached it about personal care allowances.

Helen Eadie: So is one of your issues the fact that there are no agencies on the ground to support you?

Sylvia Denton: Yes.

Helen Eadie: What was the reaction when you went to Citizens Advice Scotland?

Sylvia Denton: There did not seem to be sufficient information to confirm whether there would be entitlement to nursing care or a personal care allowance. I was referred to the social services, which—to be frank—did not know the answers either. People can be told that there is entitlement in one case but no entitlement in another, similar case. There are no definite guidelines.

Helen Eadie: Have you approached the Department for Work and Pensions for a benefits check and advice and support?

Sylvia Denton: No.

Helen Eadie: Did the social services supply any literature or leaflets?

Sylvia Denton: I got more help directly from the Scottish Executive than from any other source.

Helen Eadie: What local authority covers the area in which you reside?

Sylvia Denton: Highland Council in Inverness.

Shona Robison (Dundee East) (SNP): I have some questions for Mr Lawson, whose evidence is more about the role of the care commission. Mr Lawson, you say that the care commission lacks the powers to deal with financial issues. Will you say a little more about that? You also mention publicity about the findings of investigations into complaints. Should care home owners be responsible for informing residents of such findings, or should that be the care commission's duty? How much information should residents and their families be given? Finally, you outline the problems that you and others have faced, but how can complainants be better supported and who should provide that support?

Alan Lawson: On the financial issues, the care commission does not examine paperwork on financial transactions between customers and homes, although I think that it is to start doing spot checks to make sure that there are no unfortunate irregularities. However, my point is not so much about financial issues. It is about the serious question of whether the care commission has the powers and the attitude to take someone's licence away in cases of gross exploitation, which our case was. The care commission is cautious and timid about doing that. Perhaps you need to speak again to the chief executive and chair of the care commission and raise those points.

On the point about publicity, the view of our group—there are five families involved—is that the families of all residents in the home should be informed. There are 30 people in the home, but only five of them know what has been going on. The rest are oblivious to it. Throughout, we have argued to the care commission that that is wrong. We know that some of its staff support our position, which is that the care commission should make a public statement whenever a complaint is upheld.

There were 1,300 complaints last year, but I am not sure how many of them were upheld. A public statement would be helpful because, in some cases, family members go completely over the top in the media about complaints and some poor nursing homes are getting it in the neck excessively. We have argued to the care commission that it would be far better for it to make a balanced public statement. If it says, "Yes, a complaint has been upheld, but in general the home retains our confidence and it got a good inspection report," that is fine. However, if they leave it to the complainants to go to the press, anything can happen because there is no control in the system and anarchy can break out.

As regards intimidation and harassment of complainants—

The Convener: Before you move on, Duncan McNeil has a question on publicity.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I think that we would all agree that, when there is wrongdoing and a complaint is upheld, that should be made public. However, the committee has taken evidence from care home owners and others who complain that the reports that are published on the care commission's website are available for too long, even when the home has responded to the criticisms and corrected things. I do not know whether there is an issue in your particular case, but our understanding is—

The Convener: I think that those witnesses were talking about inspection reports.

Mr McNeil: Was it just inspection reports?

The Convener: I think so.

Mr McNeil: Not complaints?

The Convener: No.

Mr McNeil: That is interesting.

Alan Lawson: That is correct. It is important that you do not allow people to tell you otherwise.

Mr McNeil: To be fair, it may have been my misunderstanding.

Alan Lawson: Eventually, a further inspection will take place—at present, they take place twice a year. The new inspection report, which will go on to the website eventually, will refer back to any requirements or conditions that were imposed on the licence. It is important to understand that there is a huge difference between putting something on a website—one needs a code number to get into it, by the way—and making a public statement. Putting something into the public domain is a nice phrase, but we should be clear that it means making a public statement rather than hiding it on a website.

The case in which our group of families is involved is an appalling case. It was decided on in November, but there is not a single word about it on the care commission's website.

The Convener: Do you want to move on to the next point?

Shona Robison: My next question was about how complainants could be better supported.

The Convener: I think that Mr Lawson was about to come on to that.

Alan Lawson: Complainants have to be protected by the care commission. Who else is going to do the job? Hopefully, there will not be many cases in which home owners really have a go at complainants, but there are bound to be tensions. It is almost impossible for complainants to have anonymity. Either they will have discussed their complaint with the home owner or manager beforehand, or the complaint will be about a particular individual. People will know who the complainant is. The care commission will anonymise complaints, but that is bolting the stable door after the horse is out in the open—or something like that.

We stated clearly to the care commission that we were suffering intimidation and that people were trying to throw us off following up the complaint. Do we have to make another complaint about that? The care commission should have phoned the owners and told them that if there was any more of that nonsense, they would lose their licence. I cannot see who would protect the complainant other than the care commission. If it gets out that complainants have no protection, many fewer complaints will be made. We rely on complaints being made. Twice-annual inspections of a place—one announced, one unannounced—ain't going to find out all the problems. We rely on decent family members saying that something has gone seriously wrong. However, if they think that they will get a lot of hassle from the owners and that their vulnerable relatives will become even more vulnerable, they will not make complaints, which is highly undesirable.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): Did you get itemised billing? I have been made aware that when people get their bills, they show extra costs as "sundries", which vary. A bill should be itemised, no matter whose it is: one should know exactly what the extras are.

Alan Lawson: In our case, the sundries were a very minor element of the bill. The home is now being required to produce invoices in a particular way, listing the extras, showing dates and putting numbers on them. They now show to what dates free personal care payments—which the home receives and then credits us with—apply. There was a fiddle going on with that, too. The care commission might now be tightening up what it requires care home owners to do in relation to pro formas and invoices. I know that many care homes are private businesses, so they probably cannot be told exactly what to do in that respect.

Dr Turner: You said that the social work department was overworked, that there was therefore a delay in getting an assessment and that there were no back payments. There seems to be a difference between assessments for those who have money and assessments for those who probably do not have money. There seems to be a feeling that people who have money are being overcharged. There is a different price for people who have extra cash that can dwindle while they are in a home.

Mention has been made of problems in relation to powers of attorney. Will you elaborate?

The Convener: Are you directing your questions to particular individuals?

Dr Turner: The question is for any of the witnesses. I cannot remember who raised the issue of powers of attorney.

Sylvia Denton: My mother's power of attorney was taken out in England. Recently, she was admitted to hospital and when she came out she was not allowed to go back to the nursing home that she had been in. I said that I had power of attorney and that she could not just go anywhere. The hospital wanted her out because it needed her bed, so I was told that unless I had medical power of attorney, the hospital could more or less send her where it wanted. I now have the worry of having no medical power of attorney over a lady who has dementia.

The Convener: Was that in England?

14:30

Sylvia Denton: I am sorry, it is not called medical power of attorney; it is called welfare power of attorney. It is new; it applies to Scotland.

My mother's power of attorney was granted in England. Nowadays, in Scotland the next of kin can have the power of attorney, but if that person is not the welfare attorney, they have no control over where their loved one is placed, which is cause for worry. I have no welfare power of attorney for my mother.

The Convener: The committee will have to examine the matter; the issue is new to us, so we will pursue it on your behalf. Do you want to come in at this point, Anne?

Anne Logue: No. I was just agreeing with what was being said.

Dr Turner: There are differences between the legal systems in England and Scotland. However, if someone has the power of attorney, they have it.

The Convener: Off the top of my head, I am not sure whether a power of attorney that was granted in England would prevail in Scotland. That is not the issue that Sylvia Denton raised, however; she is concerned that many people do not know about the separate welfare power of attorney.

Sylvia Denton: Absolutely.

The Convener: Okay. We are clear on that. If no one else wants to come in, Dr Turner has a question on another issue.

Dr Turner: People who have money feel that they are being charged more for a space in a home than are people who technically do not have money. That has been raised with me more than once, so what was said on the subject in the submissions rings true.

Anne Logue: That happens in the Renfrewshire Council area. My mum went into a home recently; I think she is paying £495 a week for her place. Before she officially became a resident, she was in the home for respite care. She had to go there in an emergency; we were told that the charge was £495. We found out later that the cost would have been £81 if she had been referred through the council's social work department. The care, food, bedding—everything—would have been the same, but we did not know about the referral system. My mum pays for everything. She also had to do that when she was at home; she paid for everything, including her food preparation.

Dr Turner: Did anyone give you an explanation for that?

Anne Logue: No. That is why we ended up at loggerheads with the council. By way of explanation, we were sent leaflets on the free personal care profile, but that does not apply to my mum, who has dementia. Verbal explanations simply referred us to the Executive guidance, which the council has told us it is following. We are still at that stage.

Sylvia Denton: Before she was admitted to hospital, my mother was in a home in which she was paying about £550 a month for care. Another lady in the same home was paying £440 a week. It was a Church of Scotland home and, having decided to renovate the building, the Church of Scotland home put up that lady's costs to £570 a week to cover the cost of the renovations. Because my mother was getting help from social services, she was not asked to pay more. I asked the Church of Scotland whether everyone in the home would have to pay for the renovations. The answer was that they would—I have a letter to that effect. Is that right and proper? I do not know whether it is. If a care home is being renovated, does the local council have to pay an increased charge for the residents whom it supports, or do only residents who have money have to pay by way of an increase in their charges? That should be looked into.

Dr Turner: It should be made clear whether that is the case. It was not, in the past. Costs are not always made clear upfront when someone goes into a home. Is that your experience?

The Convener: There is a significant difference between the many homes that were formerly council-owned and council-run—in which case, the council would have done all this—but which are now private care homes. In the past, such issues would probably not have impacted on the inmates, residents or whatever of council-owned and

council-run homes. I suppose whether one feels like an inmate or a resident depends on the quality of the care home.

Dr Turner: Whether it was a private home or not, increases would depend on who—the person or the local authority—was paying the costs of the person living in that home. One would think that any rising costs would be spread among all the residents, which would include those who are paid for by the local authority, although I sometimes get the impression that that is not necessarily the case. That is an added worry on top of all the other worries that have been described.

Janis Hughes (Glasgow Rutherglen) (Lab): I have a question for Kate Thuillier about her written submission. You say that when a resident is moved from home to hospital, the free personal care allowance may be withdrawn. Is that something of which you have personal experience?

Kate Thuillier: I do not have personal experience of that, but I am always nervous about the subject because I have heard of other people who do.

Janis Hughes: So, you know that that actually happens.

Kate Thuillier: I believe that it has happened. I have heard stories about that.

Janis Hughes: That would mean that one would have to pay the full component while in hospital.

Kate Thuillier: One might have to do that. Apparently, the nursing home has to make it known that the resident has gone into hospital, after which the allowance can be withdrawn. The retainer to keep one's place in a home is steep, so one will still have to pay a lot of money with no help, if the local authority money is taken away.

Janis Hughes: Have you been notified of that by the home in which your relative lives?

Kate Thuillier: I have not, but I understand that a nursing home must notify whoever pays the fees if a resident goes into hospital.

Euan Robson: Your written submission refers to backdating because of delays caused by the social work department. You refer specifically to payments being backdated to the start of the need for care, which might not coincide with the first approach to the social work department. I would like to get a clearer understanding of what you mean. In your mother's case, which you cite, the disease was diagnosed in 2002, but a need for more care was identified in 2003; I presume that a later approach was made to the social work department. I can quite see the point of saying to the social work department, "It has taken you nine or 10 months to deal with this, so I want to go back to the first notification," but did you mean that, or did you mean going back to 2002 or 2003?

Kate Thuillier: I phrased that badly. I meant that payment should be backdated to the date of entry to the nursing home. Before that, we had attendance allowance and were managing to cope with my mother's care.

Euan Robson: The payments should be backdated not to diagnosis and not necessarily to the point at which you notified the social work department, but to the date of entry to the nursing home.

Kate Thuillier: In our case, yes.

The Convener: It appears from your written submission that you are under the impression that assessment for free personal care can be made only once the applicant is in a nursing home. That is what you have said in the submission, but that is simply not the case. One can be assessed for free personal care in one's home, in hospital or in a residential home. Assessment for free personal care is not dependent on the person's geographical location.

Kate Thuillier: I knew a month beforehand that my mother would be going to the nursing home, so I thought that it would be a good idea to get her assessed so that, as we hoped, the allowance would be paid from 5 May. I was told that we could not do that.

The Convener: What is your local authority?

Kate Thuillier: Our local authority is the City of Edinburgh Council, whose social work department told us that we could not have the assessment.

The Convener: That is not the case—an assessment for free personal care can be made anywhere. The hope is that it will often be made in the home, in order to allow people to stay at home. Free personal care is not triggered simply on entry to a nursing home.

Anne Logue: I would like to say something about getting the assessment. We had incredible trouble getting the assessment on my mum done. It took between 10 and 14 months for her to be assessed by the social work department.

The Convener: We have received evidence that there is considerable variation between councils in respect of the time between the first approach and assessment. We are aware that in some areas there may well be a problem—we will consider that carefully.

Scott Rae: My mother's assigned social worker was well aware of her care needs, and a care assessment was done well before her 65th birthday, but there seemed to be no impetus whatever from the council to start the application process for free personal care. Through our

efforts, the process started, but that was months after her 65th birthday. However, as I said, we have still not received a single penny. There seems to be a breakdown—the process does not happen automatically, so the public have to make the effort.

The Rev Frank Bardgett: My father was admitted to a nursing home because he had a sudden debilitating stroke. The consultant advised us that it was in my father's best interests to be out of hospital and into permanent care as soon as possible. We found him a place in a nursing home in Perth and immediately applied for free personal care. By the time a place in a nursing home that was closer to us became available, which was six weeks later, Perth and Kinross Council had not been able to action the assessment. My father went back to the bottom of the queue, because he had moved to the area of a different local authority, which was the City of Edinburgh Council. The process then took more time. Obviously, the payments are not backdated. I simply raise, in a rather less dramatic form, an issue that others have raised.

The Convener: Anne Logue would regard a six-week wait for assessment as being just short of miraculous. There clearly is an enormous variation throughout the country in the length of waits for assessment.

Mr McNeil: I have a question for Scott Rae. This might sound a bit strange, but when was your mother's 65th birthday?

Scott Rae: Her birthday was on 23 August last year.

Mr McNeil: I suspect that some delays might be associated with the end of the financial year for local authorities, although obviously not in your case.

Scott Rae: That is all well and good, but my mum is paying thousands of pounds every month for her care.

Mr McNeil: I am not making excuses for the council; I was just thinking of possible reasons for the extension of the period.

The Convener: One of the fundamental points about access to free personal care is the informal, or formal, waiting times that now seem to apply for various reasons.

Mrs Nanette Milne (North East Scotland) (Con): My question has been answered, to an extent. Most of the witnesses have talked about delays in getting an assessment of needs, but I am picking up that, even once assessment has been done, further delays occur in producing the care package. Is that correct?

Anne Logue: Yes.

The Convener: So we have delays in assessment and a failure to backdate payments. When would be the appropriate point to which payments should be backdated? Should it be the assessment date—although people might have to wait for a long time for that—or the date on which the request was made?

The Rev Frank Bardgett: The payments should be backdated to the date of entry to the nursing home, if the care is residential.

The Convener: We cannot consider the entry into the nursing home, although that may trigger the request for an assessment for free personal care. Do you think that payments should be backdated to the date when the request or application is made?

The Rev Frank Bardgett: No, because people who apply before they are 65 would not be entitled to payments at the time of application.

The Convener: That is a fair point. So to when should payments be backdated?

The Rev Frank Bardgett: They should be backdated to when the person first needed and was entitled to be paid for personal care.

Scott Rae: In the real world, the payments should be backdated to the 65th birthday but, ideally, they should be made from when the need for care arises.

The Convener: Not everybody will need care at 65. The vast majority of people aged 65 do not.

Scott Rae: My mum has needed the same level of care for several years.

The Convener: That was an on-going situation.

Scott Rae: Yes.

14:45

Sylvia Denton: In the case of the friend whose case I have mentioned, there were three appeals. After the first appeal, everyone who made the assessment agreed that she should have personal care. However, she has only just got it. It took two years and five months. That is the problem.

Anne Logue: My mum was diagnosed as having dementia in 2003, but the social work department completed its assessment only recently. I am not sure whether the start of payments should date back to the psychiatric consultant's assessment or to the social work department's assessment.

The Convener: Or to when you put in the request.

Anne Logue: The requests were ignored. We were told by several people in the care manager's offices that my mum did not qualify for free care,

because she was continent and mobile. That illustrates the situation in Renfrewshire.

Kate Thuillier: Payment should be applied from the date when the need for personal and nursing care arises.

The Convener: The discussion has been useful. It has confirmed some issues that had already been presented to us in evidence, which gives us a feel for what is happening on the ground. You have all dealt with different local authorities; some of the problems are clearly being experienced right across the local authority spectrum. They occur to greater or lesser extents, but they exist nonetheless.

I thank you all for coming to the committee and for giving evidence. If anything occurs to you once you leave here—if you find yourself suddenly thinking, "Oh, I wish I'd said that"—feel free to get in touch with the clerks. Any such information will be communicated to the whole committee. It is not unusual for organisations or individuals to go away and think later, "Damn—I should have told the committee that." Once again, thank you for coming. No doubt you will await the committee's final report with interest.

Subordinate Legislation

NHS Education for Scotland Amendment Order 2006 (SSI 2006/79)

Road Traffic (NHS Charges) Amendment (Scotland) Regulations 2006 (SSI 2006/84)

Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Amendments) Order 2006 (SSI 2006/95)

Fish Labelling (Scotland) Amendment Regulations 2006 (SSI 2006/105)

National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2006 (SSI 2006/113)

National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2006 (SSI 2006/114)

National Health Service (Tribunal) (Scotland) Amendment Regulations 2006 (SSI 2006/122)

14:48

The Convener: Item 2 is subordinate legislation. The committee is asked to consider seven Scottish statutory instruments under the negative procedure. The Subordinate Legislation Committee raised no issues prior to today on SSI 2006/79, SSI 2006/84, SSI 2006/105, SSI 2006/113, SSI 2006/114 and SSI 2006/122.

We have received a note from the Subordinate Legislation Committee in respect of the Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Amendments) Order 2006 (SSI 2006/95). That committee asked the Executive a specific question about the instrument, although it does not really relate to the substance of the order. The question was to do with why the Executive had not used powers under the Town and Country Planning (Scotland) Act 1997, but had instead used the Smoking, Health and Social Care (Scotland) Act 2005. The Subordinate Legislation Committee was satisfied with the Executive's response. That is all that needs to be said.

No comments have been received from members, and no motions to annul any of the instruments have been lodged. Members obviously did not have the information from the Subordinate Legislation Committee regarding SSI

2006/95 until today, but I assume that nobody has any particular comments to make about it. I take it that nobody wishes to say anything about any of the instruments.

Euan Robson: I hesitate to delay the committee, and I might have got this wrong, but, on the Fish Labelling (Scotland) Amendment Regulations 2006 (SSI 2006/105)—

The Convener: We are all riveted, Euan.

Euan Robson: Paragraph 2(b) of the schedule states that Salmo salar, which is the Atlantic salmon, becomes "smoked Pacific salmon" when it is smoked. Could we perhaps check that and make sure that the Executive has got the right ocean?

The Convener: We would not wish to hold up the SSI because of that, but it is a fair point, I suppose.

Are we agreed that the committee does not wish to make any recommendation in relation to the seven SSIs?

Members *indicated agreement.*

The Convener: We will follow up Euan Robson's point. I suspect that that might turn out to be a typo.

That ends our business as far as the public are concerned, so I ask those who are not directly involved in the next agenda item to leave.

14:50

Meeting continued in private until 15:52.

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