

HEALTH COMMITTEE

Tuesday 19 September 2006

Session 2

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HEALTH COMMITTEE

20th 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)

Euan Robson (Roxburgh and Berwickshire) (LD)

*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Mr Kenneth Macintosh (Eastwood) (Lab)

Mr Stewart Maxwell (West of Scotland) (SNP)

Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Martin Cawley (Quarriers)

Joanna Daly (National Autistic Society Scotland)

Norman Dunning (Enable)

Ann Ferguson (Age Concern Scotland)

Faye Gatenby (Capability Scotland)

Patrick Mark (Parkinson's Disease Society)

Sandra McDougall (Scottish Association for Mental Health)

Kevin Morris (National Union of Students Scotland)

Andrew Reid (Inclusion Scotland)

Joyce Wilson (Disability Agenda Scotland)

CLERK TO THE COMMITTEE

Simon Watkins

ASSISTANT CLERK

David Simpson

LOCATION

Committee Room 1

Scottish Parliament

Health Committee

Tuesday 19 September 2006

[THE CONVENER *opened the meeting at 14:01*]

Item in Private

The Convener (Roseanna Cunningham): I welcome everybody to this afternoon's meeting. Many of you are here for the round-table session. We will not get to that for about 20 minutes, but thanks for coming in anyway. You will probably be quite happy to sit and listen to item 2.

Item 1 is to ask the committee to agree to take item 6 in private. Under item 6, we will discuss the possible extension of our budget adviser's contract. That will involve discussion of remuneration and detailed work, which it would be normal practice to take in private. Are we agreed?

Members *indicated agreement.*

Adult Support and Protection (Scotland) Bill: Stage 1

14:02

The Convener: Item 2 is the Adult Support and Protection (Scotland) Bill. This morning, members of the committee met three groups of people who might be among those groups considered to be adults at risk. Before we hear reports on those meetings, I record my thanks to everybody who participated in them and I particularly thank the representatives of Enable, the Scottish Association for Mental Health and Age Concern Scotland who assisted in organising and facilitating the meetings for us.

I invite one member from each meeting to report back on the issues that were raised in the discussion. I ask members to say where they had their meeting and which group they met this morning.

Janis Hughes (Glasgow Rutherglen) (Lab): This morning, the convener, Jean Turner and I visited Enable in Glasgow. We spoke to some of the people who work for Enable and some people who are involved in ACE, which is the committee of service users that advises Enable on issues that affect them.

There was a great deal of concern about the bill's proposal to give social workers the ability to enter a person's home. People felt that that would take away their rights to be in their home. They asked what would happen if they were taken away because they were thought to be at risk of abuse but it was then found that the suspicion was entirely unfounded. How would the repercussions of that be dealt with? There was also concern that agencies might pick up on rumours about someone who had learning disabilities. If the rumour was then acted on, that would result in concern being caused to the carer and the person for whom they were caring. There was a great deal of unhappiness about how that would be dealt with.

We were asked whether notice would be given of an agency going into a house to remove someone who was thought to be at risk of harm and whether an advocate or someone else would be present who could explain why someone was being removed. It was felt that people would not always understand exactly what the situation was. The group was keen that someone should be there to act on a person's behalf, if necessary.

We discussed the fact that council staff or the police could apply for a banning order. Again, there was concern about who that would affect. Would it be the person who was allegedly

suffering abuse, or would it be the person who was allegedly doing the abusing?

There was also concern about what support would be offered to a person left behind in a house when someone was removed. Where a house was held in a joint tenancy, the person removed would still have the right to go back to the house. It was felt that such a situation would necessitate a legal intervention in the form of an interdict. However, what would happen if the person who was removed was the legal tenant or owner of the property? The person who was left behind might not have the right to be there. The people whom we met brought up many such anomalies.

The trigger for an investigation was thought to be a difficult aspect of the bill. Concerns were raised about whether the provision would contravene human rights legislation and it was felt that it could be construed as being discriminatory against, for example, people with learning disabilities. There is often a perception that such people cannot care for themselves or others—parents or children—and it was felt that they could be further discriminated against because of the bill.

A point that was well made was that there is no Haynes manual to tell people how to care for someone. That point summed up the general view that was expressed to us.

Helen Eadie (Dunfermline East) (Lab): We went to Kinghorn this morning and I must thank Jessie Watts of Age Concern Scotland for helping us with the event. We were pleased that there was good participation by the older people who were there, who were all women.

The whole group supported the provision on entering a person's home. They were pleased that people would be there to look after them and their interests and ensure that they were not coming to harm. They did not feel particularly threatened by the provision, but they raised an important point about what happens if a blind person does not know who is at their door. Other issues were raised around that point.

There were also concerns about the provision to allow the removal for a short period of a person who may be coming to harm in order to assess the situation. It was accepted that that would be a reasonable thing to do, but it was felt strongly that the suspected offender rather than the person at risk should be removed. That was another important point that we learned today. The discussion that we had about people at risk from significant harm tied in with that point.

The view was that a variety of circumstances might trigger an investigation. Various issues were raised around that point. For example, if a vulnerable adult who was suffering from senile

dementia gave something to a carer, an issue might arise if the vulnerable adult then forgot that the item had been given away, which might leave the carer in a vulnerable position. As Janis Hughes mentioned, the general conclusion was that we need to provide good support for carers. We also need to consider issues to do with guidance and guidelines. I am sorry to say that we did not really deal with the point about whether people might be put under undue pressure.

Finally, on the term

“adults at risk of abuse”

that is used in the bill, the consensus of opinion was that people did not like that terminology. People expressed a preference for either “adults at risk” or “adults at risk of serious harm”.

I think that that is all that we said this morning.

Kate Maclean (Dundee West) (Lab): We visited the Redhall walled garden project in Edinburgh, which is run by the Scottish Association for Mental Health. We spoke to project users and staff as well as representatives from SAMH.

We discussed definitions quite a bit. In our discussions, which reflected what we have said in committee, concerns were raised about whether the definitions are wide enough to cover all those who might be vulnerable. It was thought that “neglect” might need to be further defined so that the term does not encroach on issues connected with lifestyle choices. A question was also raised about whether the term covers institutional neglect.

People were generally quite happy with the principle that abuse of an adult at risk should be investigated, but it was felt that such investigations should take account of the individual circumstances of each case. It was asked who would develop the criteria for determining when an investigation should take place. The issue of response times was also raised. Someone expressed concern that action on self-referrals—in which people highlight a problem with their own circumstances—could take weeks.

An interesting question was raised about which piece of legislation social workers would use in dealing with cases of abuse. For example, the Mental Health (Care and Treatment) (Scotland) Act 2003 makes provision for advance statements, but there was a concern that the bill might override that. We will need to ask the ministers about that point when they give evidence.

In our discussion on triggers, it was generally accepted that acts of violence and neglect should trigger an investigation. However, given that a lot of abuse happens behind closed doors, concerns were expressed about just what level of evidence would be required to trigger an investigation.

On interventions, the strong sense was that initial investigations should be quite subtle and should take into account the fact that the adult at risk might not be ready to admit that there is a problem. Even if such adults at risk are ready to discuss the problem, they need to be in control of what happens. One concern was that if a person speaks to a social worker or counsellor and the issue is acted on immediately, that might create problems for the person on whom the abuse is being perpetrated. Questions were also raised about what would happen after an intervention takes place. For example, at the end of a banning order prohibiting contact between the abused adult and the perpetrator of that abuse, will there be any way to manage or monitor the situation? I do not think that we have heard about that so far.

However, our main area of discussion was on resources. People felt that insufficient resources were available to support the actions that are available under current legislation, so they questioned how the provisions in the bill would be financed and whether additional resources would be provided. People did not see how staffing and accommodation could be made available using the current level of resources that local authorities have.

One suggestion was that we should have an advertising campaign similar to the zero tolerance campaign to make people aware of the support that is available. It was felt that such a campaign would have to be a positive one that would ensure that carers were aware that they could come forward and get help. The issue of wording was raised at that stage. It was felt that using the word "abuse" might stop someone from coming forward. People are less likely to admit that they are an abuser than they are to admit that they are having some problems with their caring responsibilities. I stress that the people to whom we spoke made quite a strong request for there to be some kind of advertising campaign so that people would know where to go if they needed help. Obviously, however, resources would need to be in place to back up such a campaign.

14:15

The Convener: On behalf of everyone who took part in the meetings this morning, I can say that all of us had issues flagged up to us that we had not previously thought about. That shows the huge advantage of going straight to the horse's mouth. Accordingly, I thank everyone concerned.

Item 3 is our round-table evidence-taking session at stage 1 of the bill. We have conducted a few of these round-table discussions and a number of people who are present today might have taken part in some of them. They are not meant to be as formal as a situation in which a

panel of MSPs asks questions of a panel of witnesses. We encourage people around the table to ask questions of one another, if they feel that that is appropriate. We are not the founts of all wisdom. If it occurs to anyone that nobody is asking a crucial question, they may ask it themselves. The MSPs will not dominate this session.

We have allowed a fair amount of time for this discussion, so I will not ask people to make opening statements. If I did so, we would end up spending half of our time listening to them. People will get an opportunity to intervene in the discussion. I keep a fairly constant note of people's contributions. If I think that somebody is hogging the discussion, they might find that they do not catch my eye, to use the Presiding Officer's phraseology, and I might ask someone who is not being particularly forthcoming to come into the discussion.

We will start off by getting everyone to introduce themselves. First, however, I should point out that, next to Shona Robison, there are two members of the staff of the official report. They will be taking verbatim notes of everything that is said. I think that they have some assistance in the form of information technology and that they do not have to do it all by shorthand, but perhaps they do—I do not know. It might be that other members of the staff of the official report will replace them during the meeting. Beside them, we have one of the committee clerks and Alison Britton, who is the adviser to the committee. Beside her is Simon Watkins, who is also a committee clerk. None of those people will take any formal part in the process; I mention who they are merely in case you are wondering.

I am the convener of the Health Committee.

Janis Hughes: I am the deputy convener.

Ann Ferguson (Age Concern Scotland): I am the national project manager for Age Concern Scotland.

Kate Maclean: I am a committee member.

Faye Gatenby (Capability Scotland): I am the policy officer at Capability Scotland.

Joanna Daly (National Autistic Society Scotland): I am the policy and parliamentary officer at the National Autistic Society Scotland.

Mr Duncan McNeil (Greenock and Inverclyde (Lab): I am a committee member.

Martin Cawley (Quarriers): I am a service director for Quarriers.

Andrew Reid (Inclusion Scotland): I represent Inclusion Scotland.

Norman Dunning (Enable): I am the chief executive of Enable Scotland.

Sandra McDougall (Scottish Association for Mental Health): I am the legal officer of the Scottish Association for Mental Health.

Mrs Nanette Milne (North East Scotland) (Con): I am a committee member.

Joyce Wilson (Disability Agenda Scotland): I am secretary to Disability Agenda Scotland.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I am a committee member.

Kevin Morris (National Union of Students Scotland): I am the disabled students officer for the National Union of Students Scotland.

Helen Eadie: I am a committee member.

Patrick Mark (Parkinson's Disease Society): I am chairman of the Edinburgh branch of the Parkinson's Disease Society in Scotland.

Shona Robison (Dundee East) (SNP): I am a committee member.

The Convener: Thank you. As I said, we are not doing this as a formal question-and-answer session, but I would like to begin with a general question about the provisions in the bill that would allow council staff to enter a person's home if they are worried that that person might be harmed and they cannot gain entry otherwise—in effect, the provisions give a warrant to enter. The group that I met this morning certainly showed some strong resistance to that notion. Could we have some input on that aspect of the bill?

Ann Ferguson: Since Age Concern Scotland launched its elder abuse project in 2000, we have dealt directly with a number of cases in which the individual being abused was being confined by the abuser. On some occasions, individuals were locked in their room. People who were concerned about them were unable to gain access to them to ascertain their well-being and wishes.

A lady who had been confined for two weeks escaped from her son's house and fled back to Canada, where she came from. Another lady ended up having both legs amputated as a result of gangrene because she had been confined in a bedroom and had not been able to access health care.

Three months ago, we dealt with a case in which someone had not been seen and their prescriptions had not been picked up for three months. The general practitioner, social work and the police were unable to ascertain whether she was still alive and they did not feel that they had the right of access to that property. She lived with a son who had mental health problems, would not allow people in and would not confirm whether his mother was still alive.

Therefore there have been some very serious situations that might have been resolved if the ability had existed to access the possible victim.

Norman Dunning: A point has been raised by some of the people with whom we work that reminds me of my work with victims of sexual abuse a long time ago: if there has to be a compulsory intervention, it must be well planned so that we keep the confidence of the victim and provide them with the right sort of support. That is how I would interpret what our group said today. There might be some emergencies, but I guess that they are pretty rare, so compulsory intervention should be well planned for.

The more fundamental point about the bill is to do with keeping the confidence of the people about whom we are concerned. As with most cases of abuse, interventions come about because the person who is being abused—the victim—complains. If that is to happen, we want them to be able to complain with confidence that they will be supported and listened to and, fundamentally, that control of the situation will not be taken away from them.

Kevin Morris: Essentially, I agree with Norman Dunning. If someone is being held against their will, legislation already exists that allows people to enter the property to ascertain what is going on. If that does not work, it is down to a failure of the existing system. It is about resources and not just about getting another piece of legislation that will be ignored by the different parties. We have to ensure that the resources that are supposed to be put into the current system are put there; that the legal hoops that people have to go through and the necessary checks and balances are in place; and that the people who have to use the powers are using them and know how to use them. Another piece of legislation with the same powers is not necessary—that is also true of the rest of the bill and many of the other powers that it confers.

What offends me most about the way in which the bill is written is that it takes quite a patronising view of disabled people. It will not support the adult at risk to make their own complaint or ask for some kind of intervention and allow them to feel confident that they will get the necessary support to do so and that it will not backfire in some way. The bill just seeks to have someone else come in and act for the adult at risk, which is the wrong attitude. We are moving towards having independent living and choice and control for disabled people. The bill will take back a lot of what we have worked long and hard for for disabled people.

The Convener: Is there a feeling among the various interest groups that the different

categories of people who might be designated as “at risk” are difficult to lump together in one group?

Martin Cawley: That is a valid point. Any legislation that is designed to protect the country’s most vulnerable people has to be welcomed. However, the spirit of its implementation will always be in question. We have to acknowledge that when local authorities are charged with powers such as those in the bill, that carries with it a high degree of responsibility and accountability. Legislation of this sort has to be implemented in good faith and using good judgment in the most extreme situations. The spirit of least intervention springs to mind.

What you said about the diversity of people involved is true. As Norman Dunning and Kevin Morris pointed out, we would wish to support the concept of people with learning disabilities and physical disabilities taking much more control over their own lives rather than the concept of having a restrictive duty of care. However, we cannot ignore the fact that some of the country’s most vulnerable people will be at risk, as was said right at the start.

Faye Gatenby: The convener’s point is interesting. A wide range of disabled people will be covered by the definition of “adult at risk”. Concern was expressed earlier that it would not necessarily cover the people who needed to be covered and that some people might fall through the cracks. Even so, a lot of disabled people will be covered. The people who work with Capability Scotland to whom I have spoken have been all for the idea of protecting people who need protecting—that is not in question. However, they expressed a lot of concern when they realised that the bill covers them, too. Perhaps we need to play around with the definition.

The Convener: I think that that is true.

Sandra McDougall: I agree with what some of the speakers have said. The guiding principles in the bill are particularly important. I am disappointed that we do not have the principle of reciprocity in the bill as we did under the Mental Health (Care and Treatment) (Scotland) Act 2003; given the concerns about resources, I think that it has to be included.

Who is going to monitor how the principles are working in practice? The Mental Welfare Commission for Scotland has a duty to monitor the operation of the 2003 act. It considers how local authorities and health boards are working with the principles and how they can evidence the fact that they are taking them seriously. I would like to know how such monitoring will work in relation to the bill.

The convener asked about who the bill would cover. People with mental disorder are already potentially subject to a number of the powers in

the bill. The 2003 act, which was implemented in October last year, includes the power to seek warrants to gain entry to premises, to have someone medically examined and to access records and it provides for removal orders. I am not entirely clear why people with mental disorder therefore have to be covered by the bill. I appreciate that the bill contains additional powers in relation to banning orders but, leaving those aside, there is clear duplication with the 2003 act, for which no adequate explanation has been given.

Joyce Wilson: I want to pick up on an issue that Norman Dunning and Helen Eadie raised. In executing the warrant, it will be important that the communication support needs of the people involved are taken into account. Somebody who is blind certainly needs an explanation of what is happening, but a native British Sign Language user would also need to have the right communication support.

14:30

The Convener: There is currently no provision in the bill for independent advocacy. Is it essential that such provision be included?

Joanna Daly: I echo Martin Cawley’s point. The bill should be guided by its general principles. We are speaking of instances of serious abuse. It is to be hoped that the provisions in the bill will be used in the last instance, after every other possible intervention has been made. The principle of reciprocity is also important.

The provisions in the bill will have massive resource implications. Other witnesses have suggested in their submissions that support and protection are not in balance in the bill and that there should be more support—independent advocacy is a key support. If the general principles of the bill are to guide use of its provisions, we must ensure that adults are involved at every stage. I represent the National Autistic Society Scotland, which deals with a social communication disorder. People with autism have difficulty making sense of the world; normality and routine are key to that. It is important that interventions are well planned and that adults are involved. Advocacy is vital in assuring that adults play a key role.

Kevin Morris: My concern relates to the definitions in the bill. There is a clear need for some of the powers to be available in certain situations, but many of them are built into the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003. I know that there are situations that those acts do not cover and that may need to be covered, but I am disturbed by the fact that, under the bill, I would at times in my life be considered to

be an adult at risk or a vulnerable adult. I do not consider myself to be a vulnerable adult, as I am fairly capable of making decisions. One could argue that many people who have suffered abuse do not have the capacity to make decisions for themselves because of the implications of the abuse, but what scares me most about the bill and about how it could be implemented is that it might move us back 50 years to a position from which we had moved forward. I could be put back in the position that I have been in at certain times in my life when I was locked up, drugged up and left in front of a television to watch “Trisha” and “Today with Des and Mel”. That is not what I want to do—I want one of your jobs in the future.

The Convener: Back off. [*Laughter.*]

Kevin Morris: I am scared by the general principles of the bill and the school of thought that lies behind it. The fact that it is all-encompassing is very dangerous. That scares many disabled people.

The Convener: We should be clear that the bill is about adults with capacity. Adults with incapacity are already covered. The controversial aspect of the bill is that it deals with people who we recognise as having capacity but whose circumstances may nonetheless make them a bit vulnerable.

Kate Maclean: Does the panel think that there are powers in the bill that are not already included in other legislation, such as the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003? There is an opinion that some of the situations in which vulnerable adults have been abused in the past have been the result of failures in the system, rather than the result of lack of legislation. How necessary is the bill?

Norman Dunning: I would like to go back a bit before giving others an opportunity to respond to the question. The fact that Kevin Morris, who is an articulate young man, feels as he does emphasises why so many people with learning difficulties feel that under the bill they could easily be misunderstood, especially as it includes provision for a judgment to be made about whether they are acting under undue pressure.

We are talking about a concept that is different to that of capacity which, as the convener has pointed out, is covered. The concept of undue pressure has usually been used in complaints. For example, if you were sold double glazing that you did not want, you would say that you had been put under undue pressure to buy it. Under the bill, someone on the outside will judge whether an individual has been subjected to undue pressure. If that individual has a learning disability or some other communication problem, will they have an

opportunity to express themselves? After all, they could easily be misunderstood as being under pressure when they know exactly what they want.

The Convener: We have flagged up that issue. I suggest that we park it for now and deal with other aspects.

Andrew Reid: One important question is whether legislation is required or whether existing legislation already deals with the matter. We have talked a bit about the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000. To what extent does criminal legislation cover issues such as access? After all, the examples that Age Concern highlighted illustrate criminal behaviour as much as anything else. Is our criminal proceedings system falling short on this matter, especially with regard to powers of entry? Inclusion Scotland feels strongly that disabled people are being treated differently and are not being dealt with under the appropriate criminal procedures.

Another question is whether the Adults with Incapacity (Scotland) Act 2000 is appropriate. For Inclusion Scotland, the question that came up time and again about sections that cover actions such as visits and making assessment orders and removal orders was not whether certain groups—older people, people with learning disabilities or adults with mental health issues—should be treated differently, but whether a distinction should be made between adults with and without capacity. People with incapacity might well require to be visited by someone, to have the formal right to be assessed and to have the right to benefit from removal or banning orders.

However, the phrase “adults with incapacity” is missing from several places in the bill. If the bill is to go forward, Inclusion Scotland feels that such references ought to be introduced at those points. The procedures will probably be closed off at that point if it is deemed that the adult has capacity and can conclude for himself or herself that he or she does not want to go further. If the bill is not brought together with the Adults with Incapacity (Scotland) Act 2000, it will cause major difficulties and huge confusion in the real world.

The Convener: Our evidence so far suggests that the problem arises when people think that the Adults with Incapacity (Scotland) Act 2000 does not apply and that they are not dealing with people who could be designated as adults with incapacity. The controversial point about the bill is that it is specifically not about adults with incapacity, in respect of which many issues—competing rights and responsibilities and what have you—arise.

Andrew Reid: In that case, why treat disabled people any differently from women or other people who suffer domestic abuse?

The Convener: That is certainly a question that must be examined. It has already been raised with us.

Ann Ferguson: Kate Maclean wondered whether the bill is necessary. Without it, we would condemn hundreds of thousands of older people to a lifetime of abuse.

The Convener: Hundreds of thousands?

Ann Ferguson: Research shows that in Scotland almost one in 10 older people—about 100,000—have experienced an incident of abuse. Those older people had mental capacity. The research did not include older people who lack mental capacity or who live in care homes and hospitals. As I said, about 100,000 older people in Scotland have experienced at least one incident of abuse; the research suggests that more than 40 per cent of those people have experienced more than one incident. As the population of Scotland becomes older, the number of people who experience abuse will increase. That is why we need legislation.

The Convener: How many such incidents would be covered by criminal law? Why are they not being dealt with in that way?

Ann Ferguson: That is a good question. The police are not interested in investigating neglect; they do not regard it as criminal behaviour. They frequently consult Age Concern Scotland on what to do about abuse because they think that a criminal investigation is not appropriate. Indeed, the victim might not want a criminal investigation: they want the abuse to stop, but they do not necessarily want their sons and daughters to be prosecuted and locked up. Such things make criminal investigation difficult.

The police often pass abuse incidents to the social work department and say that they are its responsibility, but social workers often then pass the cases on to someone else. You would be shocked by how often an abuse victim is passed from agency to agency. Day in and day out, we deal with cases in which abusive situations cannot be resolved because nobody will take responsibility.

The Convener: You said that 100,000 elderly people have suffered abuse. In the interests of the committee's work, could you forward the research to us so that we can consider it?

Ann Ferguson: I was referring to academic research that was published by Ogg and Bennett in 1993. Also, Comic Relief has commissioned King's College London to do United Kingdom-wide research into the prevalence of abuse.

The Convener: Can we get that reference? We will ensure that the committee considers the information.

Patrick Mark: Advocacy is important in the context of the bill. The people with whom we are concerned who are in the later stages of Parkinson's disease have communication problems—a loss of volume as well as a loss of mobility. It would be to their great advantage if someone they trusted could speak on their behalf and put forward their views.

Janis Hughes: The people whom committee members met this morning expressed concern about the impact of removal orders on their rights. What do panel members think about banning and removal orders? Should we remove the person who is deemed to be at risk, or the alleged perpetrator of abuse? How would that decision be made? We should bear it in mind that the bill does not provide for a right of appeal.

The Convener: I will bring in Shona Robison before we hear from Kevin Morris.

Shona Robison: For clarification, will Ann Ferguson say whether the figure of 100,000 that she mentioned is the figure for the UK?

Ann Ferguson: It is the figure for Scotland—it equates to approximately 10 per cent of the older people who live in Scotland.

Shona Robison: We must see that research.

The more evidence on the bill I hear, the more concerned I become about it—that should not be happening. We have heard differing views. Although Ann Ferguson sees merit in the proposals, most witnesses on this panel have expressed concern about whether the bill is needed. However, the statutory agencies from whom we heard were all in favour of it. I am worried that the organisations that represent the people who might be on the receiving end of the bill's provisions are expressing deep concern, whereas the people who would use the bill are mainly in favour of it.

14:45

I wonder whether we need to be far clearer about to whom the proposed legislation will apply. I do not think that it would ever apply to many of the people to whom we spoke this morning because they were able to articulate their own views about what should happen to them. The idea that someone else could make such decisions greatly worries me.

From what Ann Ferguson has said, on the other hand, a group of people—particularly elderly people—could be vulnerable for various reasons, including their physical frailty or their inability to get outside help. The Executive in particular needs to focus on being far clearer about to whom the legislation will apply. At the moment, the definition is far too wide. I am beginning to be concerned about that.

Kevin Morris: I think that Ann Ferguson said that one in 10 elderly people suffers abuse. However, one in eight women suffers domestic abuse, which is a higher proportion. Why does the bill target a specific group of people? Why is it being said that one in 10 is more important than one in eight? One person in four has a mental health problem, so the provisions will cover them at some point in their life—one in four of us around this table will be subject to the measures at some point in our lives.

The Convener: One hundred per cent of the people around the table will come under the auspices of the legislation if they live long enough, which I hope we all do. That reinforces the point that you are making.

Kevin Morris: I return to what Ann Ferguson said about neglect and abuse being passed over by the police. That is another failure in the system. We must work on the system and the resources that are behind it. The police do not follow up cases because they do not have enough resources to do so; instead, they pass cases on to social workers because that is easy. If the bill is passed, Parliament will have burdened social workers with yet another responsibility. Another massive responsibility would be chucked on to overstretched social work departments that are already failing in carrying out other responsibilities.

We must consider who might report suspected abuse. A member of my union, who is a gay disabled man, posed a question when I was speaking to people about the proposals. His mother does not approve of his relationship with the man he is living with. Would his mother be able to claim, maliciously, that abuse was happening in the relationship? That would absolutely divide them. A person could be removed from their home and their relationship. The boyfriend of the man in question could be subjected to proceedings for abuse. I am worried that the proposed legislation could be misused.

Norman Dunning: I want to go back to a point that Shona Robison made. Everybody thinks that the provisions would apply to somebody else—that is exactly what we have heard when we have spoken to groups of people with learning disabilities. They think that other groups of people with learning disabilities or older folk are far more vulnerable than they are.

I agree with a point that Kevin Morris made. This morning, committee members will have met one of our members—a young wife and mother who looks after a child in a perfectly responsible way. Why should she be treated differently from any other woman who finds herself in difficulty? The proposed legislation would treat her differently.

On banning and removal orders, the critical issue for us is the agreement of the victim. Such

measures are extreme. If they are the only way that people can see of ending abuse, that is fine, but action should be taken with the victim's consent and not because somebody else thinks that it should be taken.

In a domestic abuse situation, the young mother that I am talking about could achieve that for herself with an interdict under matrimonial legislation, so why is the bill trying to introduce such measures? It is hard to see how the removal order would work except by giving somebody respite to let them get the help and advice that they need to make their own mind up. I can see it working in that way. However, again, the order would have to be made with their consent.

Apart from anything else, that provision is going to be completely impractical. The bill does not contain a power of detention, nor could it under human rights legislation. If somebody is removed and is properly advised—as I assume they will be—they will be told that, although they have been removed, they can go home if they want to. If the action is taken without somebody's consent, the situation will be farcical. By introducing such measures, which seem to be compulsory but are not, the bill will fall into disrepute. More important—I repeat my earlier point—it will not have the confidence of the victims, which is what we must have if we are to make progress.

The Convener: A couple of points about resources were raised at the various meetings this morning. We have heard evidence at previous committee meetings that councils would expect to use respite facilities as, for example, places to remove people to. Some eyebrows were raised at that because there is a lack of respite places as it is. In any case, is respite care an appropriate place to remove somebody to if they have been running their own household up to that point?

Can we have some comments on the lack of appeal provisions in the bill? Sandra McDougall may want to comment on that. At the moment, there is no provision in the bill for advice to be given when these extreme measures are taken. That is why the point about independent advocacy has been raised. At the moment, there is no *prima facie* provision for that advice and there is no appeal against the extreme orders. It is unlikely that they would be used every week—Scottish Borders Council thought that it might use two or three orders a year. However, if that figure is multiplied across Scotland, we are probably talking about 100 or so orders—it is difficult for us to gauge. There are issues about resources, advice, appeal and all the rest of it.

Sandra McDougall: I have a few different points to make. The first is on the use of removal and banning orders and the question that Janis Hughes raised. I support what Norman Dunning

has said in relation to that. In deciding which order would be most appropriate, we would need to see a case study and consider the particular circumstances of the case. I have yet to see a case study that has convinced me of the need for either of the orders, and I am deeply sceptical about how effective the orders will be if they are used against the wishes of the people to whom they will apply. As Norman Dunning has pointed out, assessment and removal orders do not include a right to detain someone—rightly so. Once the powers are exercised, someone could choose to leave and go back to the situation they were in before.

Someone asked me what would happen and what they would be offered if they were the subject of a removal order. They wanted to know whether they would be offered a viable alternative to returning to their abusive situation, such as good quality emergency housing that would be available right away, as well as counselling and support. We all know how long waiting lists to see psychologists are. What other support services will people be offered, especially in the light of the fact that the person who is alleged to be abusing them may well be providing them with daily care, support and social interaction? If all those things are not offered to people, people might choose to return to the situation that they have left.

As far as I can see, for banning orders to work and be effective, the person who is to be protected by the banning order must want the order to be in place so that, if it was breached, they could take action to ensure that it was enforced. I do not think that banning orders will be workable without the person being on board with that and wanting the order to be in place.

I return to the earlier question about advocacy. People with mental disorder have had a right of access to independent advocacy services since the Mental Health (Care and Treatment) (Scotland) Act 2003 came into effect in October last year, but we hear all the time from people who are not able to get advocacy when they want it. There are not enough advocacy services to go round, and there is a huge question about what a right of access to advocacy services actually means. I am not saying that advocacy services should not be available—they should—but we need to consider current availability of advocacy services. As I said, there are simply not enough advocacy services to go round.

Martin Cawley: Many of the points that I was going to touch on have just been made. Removal and banning orders will give rise to complicated scenarios. There are so many different situations that a local authority can find itself in before making its decision. For example, should a person be removed from their own tenancy? Should a

person effectively be banned from their own home if that is where the care is being provided? There are many complications that could conflict with various rights that an individual, the victim or the perpetrator might have. As Norman Dunning said, the question is whether the bill is robust enough to stand up in that regard and whether things risk becoming farcical, to use his word.

On representation and advocacy, the bill mentions a safeguarder being appointed by the sheriff. However, there is no clear indication of what the roles or responsibilities of that safeguarder might be, nor of where they might be drawn from. Would they be drawn from someone's existing circle of support or from a professional body or agency? That requires clarification.

I share some of the concerns that have been expressed about resources. If we consider the complications of removal and banning orders, the worries about where to put people on an interim basis and the absence of a right to detain, that seems to be a complex mix and a difficult process for local authorities to implement.

Those three areas are some of the most prominent gaps in the proposed legislation.

Faye Gatenby: It has been mentioned that no right of appeal is included. On that, section 1 says that action will be taken only to provide benefit to the adult at risk, but there is no way to look back to see whether that has actually happened. Did the benefit happen? Who decides whether the benefit happened? Does it depend on the view of the adult at risk, of the sheriff or of the council official who is pursuing the action?

I return to what Shona Robison said about statutory authorities welcoming the provisions. I can understand where they are coming from—I used to work as a housing officer. If someone knows what is happening, it must be dreadful not to be able to do anything about it, so I can understand why authorities would want the extra powers.

My impression from the debate is that there is no question but that there is a problem and that people need to be supported, but I wonder whether the bill is the right way to address that. It almost feels as if, although you can pass legislation, it is not so easy to address the problems of overburdened social work departments or police forces. Those are perhaps the real issues. The bill can be passed, but will that be the job done? There seems to be a view that it is not the way to go, although there is no doubt that the problem exists. I wonder whether we can better match the two together.

The Convener: Janis Hughes has a specific point, and Helen Eadie will then open up a slightly different area of discussion.

Janis Hughes: Faye Gatenby has just spoken about having been a housing officer and feeling frustrated about not having the ability to intervene. The policy memorandum covers a number of issues regarding adult protection and provisions that are currently in place. Many are about people who are mentally disordered. The memorandum describes one relevant existing power as being

“a power to remove a person suffering from chronic disease or living in unsanitary conditions who lacks proper care and attention from home to a hospital or other place”.

That comes from section 47, as amended, of the National Assistance Act 1948. There are some provisions that do not immediately spring to mind. As well as those that come from the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003 and other legislation, there are other provisions.

15:00

Helen Eadie: I liked the reality check that Faye Gatenby gave us a moment ago, which is that there is a problem and that we have to consider how to make the bill work.

What sort of behaviour do the witnesses think would justify an investigation being triggered?

The Convener: While the witnesses are pondering that question, I invite Ann Ferguson to come back in.

Ann Ferguson: It was helpful to be reminded that there are bits of legislation around that could be used in situations of abuse. However, the reality is that the existing legislation is not working. Much of the discussion has been around banning orders and removal orders, which seem to be the most contentious parts of the bill. Nobody has mentioned adult protection committees, which make it someone's responsibility to do something. Is that because there is agreement about the committees, which would require people to use the tools that are already there? Is there less agreement only around the more contentious issues?

The Convener: We are talking through some of the areas of controversy and the issues that people have raised with us. Adult protection committees were not said to be an issue in this morning's meetings, although that is not to say that they are not an issue for some of the officers of the various organisations.

I invite Kevin Morris to respond to Helen Eadie's question about trigger behaviour.

Kevin Morris: For me, the only thing that could trigger an investigation would be the victim—not someone who is perceived to be the victim—saying, or being helped to say, that they want an investigation. In effect, the bill is saying, “We

understand that you have capacity, but we don't really care. We're going to do this for you.”

The only thing that I thought was a major issue with regard to the adult protection committees was the fact that there is no built-in provision for them to be user led and to consult disabled people. The bill is all about statutory bodies making the same decisions that they are making now—they are just doing it in a different committee.

Joanna Daly: I disagree with Kevin Morris. Autism is a social communication disorder and, as such, people with autism have difficulty in forming and developing relationships. Three key characteristics of autism are difficulty in social communication, interaction and imagination. Because people with autism have difficulty relating to the world around them, they might have difficulty understanding social convention and protocol and the fact that relationships involve dialogue and knowing what to expect of people and what is expected of them in return. A person with autism might not know that they were being abused. We know of a case in which a child had fallen and broken his arm, but did not mention it for weeks because he could not communicate the fact that he was in pain and he did not show distress.

That is why we have a slight issue with the fifth, catch-all element in the definition of “abuse” as

“any other conduct which causes fear, alarm or distress.”

People with autism might not demonstrate fear, alarm or distress, or they might not do so in a conventional manner, so as to trigger an investigation. There are occasions when a person might not know that they are being abused, or they might not be able to communicate that to others.

The Convener: I know that the autistic spectrum is broad. Some people are mildly autistic, whereas others are seriously so. From what you said, I understand that not all autistic adults would fall within the definition in the Adults with Incapacity (Scotland) Act 2000, but some must do so.

Joanna Daly: Yes. Some people with autistic spectrum disorder have difficulty making decisions or acting, so they would be defined as adults with incapacity. However, autistic spectrum disorder is not mentioned in the Mental Health (Care and Treatment) (Scotland) Act 2003 or in the code of practice. The Millan report said that, for the purposes of the 2003 act, autistic spectrum disorder should be categorised as a learning disability, but autism is a developmental disorder and should not be categorised as a learning disability or a mental health problem. There are adults who have capacity and do not suffer from mental illness, but who are vulnerable because of the nature of autism, which causes difficulties with social communication.

The Convener: That is useful information.

Martin Cawley: I want to go back to a point that Kevin Morris made about what might trigger an investigation. I give an example: an elderly parent is living with their son or daughter and is experiencing neglect or abuse. Another family member, who is not directly involved in the care of the elderly person, is aware of the situation and is distressed because they think that what is happening to the elderly person is not right. They think that an investigation would be appropriate. In my opinion, those circumstances would be sufficient to trigger an investigation, which would have to be undertaken responsibly by the local authority. The trigger would not necessarily be the elderly person saying that they might want out of the situation, given that significant abuse could be going on.

Norman Dunning: I agree in part with Kevin Morris. The main trigger should come from the person who is experiencing neglect or abuse. However, it will not always do so.

One of the user groups that the committee met this morning made the excellent suggestion that there should be more advertising about the issue. We need a campaign along the lines of the zero tolerance campaign, first, to tell people that they should not put up with neglect or abuse and, secondly, to direct people to the help that is available. As we heard, the second part of the equation is missing, because the resources are not available to enable us to offer people alternatives. If there were alternatives, more people would self-refer.

I can imagine situations in which there would be no self-referral. As the convener said, we might all find ourselves in that position one day—at my age I am quite close to it. If my health and well-being were deteriorating, but I had not noticed because it had been happening over a long period, and if I had not noticed that I was not receiving the care that I should receive, I like to think that the authorities' first approach would be to me, to say, "Do you realise what is happening?" In all our discussions, I keep coming back to the need to involve the victim.

Kate Maclean: I have heard no evidence that has convinced me that the bill is necessary. Martin Cawley gave the example of the person who is concerned about an elderly relative, but the person could express their concern and the abuse or neglect could be dealt with under existing legislation. The examples that witnesses have given all demonstrate the failure of organisations to operate within the current rules. The current legislation is not being complied with, but there seems to be no requirement for additional legislation.

The definition in the bill probably would not apply to a person who had the capacity to self-refer. I am a little confused, because no one has given me an example of how the bill would improve matters. We can legislate until the cows come home, but if people are falling through the safety net because organisations cannot do their jobs properly, legislation will not help.

The Convener: I want to return to the issue of undue pressure that we parked when Norman Dunning first raised it.

Dr Turner: The more evidence we hear, the more confused I am getting. As the saying goes, "When in doubt, leave it out." I wonder whether we are simply creating more problems.

Will the witnesses expand on what they feel constitutes undue pressure? After all, people are subjected to such pressure at some point in their lives. For example, it could be argued that being bullied at school is undue pressure. Undue pressure is a form of bullying and how well do we deal with that? To what extent can we provide a burden of proof to allow someone to make a judgment on such a matter? Whose evidence would be enough to convince a sheriff to take away someone's rights and ignore what they are trying to say? We have discussed the example of two people who live, and have suffered abuse, in the same home but who, despite that, still want to stay there. Usually, that is where the matter has to be left.

Norman Dunning: Jean Turner has very much articulated the point that I was trying to make. I do not see how a third party can judge whether a person has been subjected to undue pressure. I agree that an individual can complain that he or she has been put under such pressure. Indeed, as Jean Turner pointed out, that could happen to any of us at any time in any transaction. If we have capacity and feel that we are under undue pressure, we will complain about it. However, I do not know how a third party can come along and say, "I've noticed what's going on; you're under undue pressure" if the person in question does not agree. Moreover, I am no lawyer, but I cannot see how such a judgment would hold up in any legal process. I am quite mystified by the provision.

The Convener: I remind everyone that these matters will be subject to a civil legal process, in which the burden of proof, based on the balance of probabilities, is much lower than the burden of proof in a criminal court, where a matter has to be proved beyond reasonable doubt. As a result, the evidentiary requirements for cases that are covered by the bill are considerably lesser than the requirements for criminal cases.

Norman Dunning: I accept that entirely. The concept of undue pressure is currently used in civil

proceedings. However, in such proceedings, the person who complains about undue pressure is usually the one who has been subject to it and the question is whether, on the balance of probabilities, it is likely that they have been pressured unduly. However, under the bill, someone on the outside will say, "On the balance of probabilities, I think that you're being unduly pressured" when the person in question might well disagree. I just cannot see how that will work.

Ann Ferguson: As far as undue pressure is concerned, we have witnessed incidents in which people have threatened violence; have threatened to withhold social contact by saying, for example, "You'll never see your grandchildren again"; or have misinformed the person in question by saying, "If you say anything, they'll take you away and put you in a care home". Such statements put people in a state of such fear and alarm that they believe it better to tolerate the abuse, no matter how bad it is, instead of doing something about it.

Sandra McDougall: The bill says:

"An adult at risk may be considered to have been unduly pressurised to refuse to consent to the granting of an order ... if it appears—

(a) that abuse which the order or action is intended to prevent is being, or is likely to be, inflicted by a person in whom the adult at risk has confidence and trust, and

(b) that the adult at risk would consent if the adult did not have confidence and trust in that person."

I find that definition strange, because it suggests that the abuse is being carried out by someone in whom the adult at risk has "confidence and trust". Surely there is an inherent contradiction in that.

I wonder what kind of relationships would be covered in that definition. Indeed, SAMH asks in its evidence whether the definition would apply, for example, to residents in a care home. The definition requires more detailed consideration, because we are unsure how it will work.

15:15

Shona Robison: I am trying to think things through. How can we legislate to intervene in situations in which, for example, an elderly person has not given their consent for action to be taken, but undue pressure is deemed to have been exerted by someone who has threatened to put them in a care home or threatened them with not seeing their grandchildren? I am thinking about Ann Ferguson's examples. Surely one would not want to see such situations resulting in banning orders—how would that deal with a complex family relationship? Things might have been said that should not have been said, but is it the role of the law to intervene? Should we say, "If you continue to threaten this person with not seeing their grandchildren, there will be a banning order"? That would not be the intention of the law.

We must consider the intention. I do not think that the intention is to intervene in such situations. At the start of the process, my view was that there would be intervention in extreme cases in which people were in physical danger and had been so abused that they were too frightened to do something about what was happening.

I am worried about the broad examples that we keep coming back to. There is a broad spectrum of complex and difficult family relationships—I am sure that we have all had such relationships in our own families. However, is it the bill's purpose to deal with them? I suppose that I am directing that question at Ann Ferguson.

The Convener: I will bring Ann Ferguson back in after Kevin Morris has spoken.

Every divorce lawyer in Scotland will have come across situations such as those that Ann Ferguson described—for example, marital breakdowns that involve people threatening other people that they will not get to see their children. Sadly, such things seem to be part and parcel of the human condition when there is a potential family breakdown.

We must address the point that Shona Robison made, which takes us back to what Kevin Morris said at the start. Many categories of people could be covered by the legislation at some stage in their life.

Kevin Morris: Threats are common. If somebody threatened me, I would say, "Away and on your bike"; I would not listen to them. However, somebody on the outside could say that because someone had threatened me, I must be under undue pressure. I would not be feeling any pressure whatever, so that would be ludicrous.

A sheriff's ability to overturn somebody's refusal to consent depends on the definition of the term "unduly pressurised". It has been said that the bill states that somebody will have been "unduly pressurised"

"if it appears ... that abuse which the order or action is intended to prevent is being, or is likely to be, inflicted by a person in whom the adult at risk has confidence and trust".

If a person does not have confidence and trust in someone, there will be no abuse—instead, there will be common assault. If somebody whom I do not know and in whom I have no confidence or trust walked up to me in the street and hit me, they would have committed common assault, but if somebody whom I was living with, who was a big part of my life and in whom I trusted did so, that would be abuse. Any sheriff would be given *carte blanche* in any case to overturn a refusal to consent. The get-out clause is deeply worrying.

If a disabled person who lives with a family—disabled people can have families—is removed from their house, where would they be put? I think

that that issue has been raised. Would they be moved to a respite care home, as has been suggested? Such a home would be totally alien to them, and they would not want such a move. If the person is a disabled single parent, what would happen to their children? Would they be taken to a care home with them? Would they be put in care? Would there be a fight to get them back because they had been left in an abusive and dangerous situation with the parent? What would happen? Would families—but only the families of disabled people—get torn apart because of the abuse that was taking place? Usually in that situation the family would be kept together, but in my opinion the bill seeks to tear the family relationship apart.

Ann Ferguson: To clarify, the examples that I gave of undue pressure were in addition to the abuse that is already happening. The undue pressure is what is preventing people from disclosing the abuse or from taking any action about it. It is the extra hurdle that they need to get over.

Shona Robison: But would that be enough to override the person's refusal to consent? Surely it could not override the decision of someone who is saying that they do not want any interference because of the threats that have been made.

Ann Ferguson: The discussion has predominantly been around issues of consent. Perhaps I am thinking about the other, less controversial—but very important—parts of the bill. We are not just discussing the consent issues; we are talking about other issues, including the barriers to people accessing help.

We raised the issue of resources. At the moment, few resources are being made available to people who are experiencing abuse. Abuse is very complex, and legislation is only one part of dealing with it. For me, the bill says that it is unacceptable for people to be abused and that those people who need extra support will have it made available to them.

The Convener: After we hear from Joyce Wilson, I want to bring in Nanette Milne on definitions of abuse. The committee has heard evidence about things that most of us were utterly astonished to hear classified as abuse. "Abuse" is itself a pejorative term.

Joyce Wilson: It is worth picking up on the lack of a long-term view in the bill. Ann Ferguson said that abuse is very complex and that legislation is only part of the answer. The bill's emphasis is very much on formal measures, rather than on the right kind of supportive resources that might be available to families and individuals.

I think that the committee heard from the bill team at an earlier meeting about research in America that supported that view. Counselling,

care management and therapeutic intervention were said to make the difference to families who generally wanted to stay together. What happens after the seven days of the removal order are up, if respite care or a residential care facility of some sort is used? The opportunity to consider what happens then is lacking in the bill.

Mrs Milne: The term

"adult at risk of abuse"

implies that there is an abuser. We have been hearing evidence that abuse is not always intentional. It could simply be a case of a loving carer who has reached the end of their tether looking after an elderly relative, for instance. There is a feeling that we should not use "abuse" in the bill, because it is a pejorative term. Do people round the table have any ideas about that or about what other term could be used? The group that I saw this morning thought that it might be better to say "adult at risk", leaving out "of abuse" altogether. Perhaps "adult at risk of serious harm" would be possible.

The Convener: That question arises from evidence that we have received that says that the bill could encompass what might be called benign neglect, or neglect arising out of old-fashioned notions of what is and is not appropriate. The example that was given to us was of somebody being packed off to bed at 8 o'clock in the evening just because that was more convenient for the other people in the household. That stopped the committee in its tracks. We all know that that is what social work departments frequently do to individuals. When we began to discuss such scenarios, we questioned whether "abuse" was the right word in such circumstances. Indeed, we questioned whether the bill should apply to those kinds of scenarios.

I think that Ann Ferguson is talking about abuse that most people would regard as criminal behaviour. I might be wrong, but I think that that is where your concerns lie. Will you talk about the definition of abuse? I think that you have used the word most strongly.

Ann Ferguson: There is no doubt that sexual, financial and physical abuse are potentially criminal offences. However, the abuse that older people most frequently report is psychological. The members of the Fife user panels, who the committee met this morning, have strong views on verbal abuse, which they think is almost as bad as physical abuse. We are talking about situations in which people scream and shout in someone's face.

In a care home in the west of Scotland, carers perpetrated a lot of psychological abuse on residents. Some incidents might seem insignificant. For example, carers bought white

shoelaces for a gentleman who had brown shoes and then giggled about the distress that that caused him. However, such behaviour humiliates people and undermines their confidence and self-respect. Much psychological abuse is hard to pin down as criminal behaviour on which legal action could be taken.

The Convener: Are you saying that under the current arrangements, such behaviour in a care home cannot be addressed? Surely that is the job of the Scottish Commission for the Regulation of Care.

Ann Ferguson: Cases can be referred to the care commission, but the abuse continues. In a family setting, older people can be made to feel that they are a burden. A person might have no self-esteem, because they have been ridiculed and told that they are rubbish. They have been told that they are a nuisance and a pest, who is tolerated only because of the income that they bring into the family. It is difficult to resolve such situations.

Kevin Morris: In no way do I underestimate the psychological abuse that people suffer and I understand where Ann Ferguson is coming from. However, as a member of the committee said, the examples that she gives indicate a failure in the system. A case can be referred to the care commission, and if the situation continues the care commission is failing in its duty and social work departments and local authorities are failing in their duty of care towards the person. There is a framework in which such cases can be addressed.

A major problem and a major source of abuse in families is the almost perverse incentive for local authorities to rely on informal care. Many people in Glasgow are packed off to direct and care services, for example in Glasgow, where they are asked questions like, "What time will you go to the toilet? Will you go two or three times a day?" The carer tells them, "I will come in for those five-minute periods, but the rest of the time I won't be there and you must sit in front of your television. I will come in to get you out of bed and dress and wash you, but then I will stick you in front of the television and I will come back at 11 am to take you to the toilet. I will cook your meal but you must deal with it after that. Oh, and if you want me to go shopping, I can carry only a certain amount, so you can have only a certain number of litres of liquid. You cannot have what you want."

If psychological abuse and neglect are covered by the bill, social work departments throughout Scotland that rely on informal care will be caught by the bill. There is a big problem and we need to consider other systems and redress the balance.

15:30

The Convener: That point was raised at a previous meeting. It is of course the social work departments that are the principal investigators under the bill, yet the evidence that we have received suggests that some of the behaviours that they might be expected to investigate in a private scenario would also be legitimately investigated in institutions under their control. The matter is very complex.

Does anyone else wish to contribute on that point? Do we feel that that point has been dealt with adequately for now? We have another couple of things to deal with.

Dr Turner: I am thinking about the example of the lady who was being lied about, which cropped up during a fact-finding session this morning. We always think of abuse as being perpetrated in the home, but it can come from outside. It might come from carers, as we have been discussing. We heard this morning about somebody about whom tales were being told. Tales can be told by family members. I am thinking about what Martin Cawley from Quarriers was saying. Lots of people who live at a distance think that they know better how to care for somebody. They are not doing the caring, however. They are not under pressure and they do not know what the problems are, yet they criticise. There is a great danger that an awful lot of resources might, unfortunately, be used up as a result of people telling tales.

Martin Cawley: I would not necessarily define some of the examples that have been given as abusive enough situations for the proposed interventions to be imposed. If the bill becomes the only legislation that can protect people—and there is still a question about that—it should be for the most extreme physical, sexual, financial or violent situations.

Norman Dunning: Throughout the passage of the bill so far, I had assumed that, when we were discussing abuse, we were discussing things under the remit of the criminal law.

The Convener: No.

Norman Dunning: That has been my assumption, given how wide the criminal law can extend when it comes to breach of the peace and so on. It is hard to think of situations that ought to be the concern of the bill that are not also the concern of the criminal law.

The Convener: We have been advised that the bill could apply to benign neglect, for example. I have mentioned the possible difficulties with what I would call old-fashioned notions of what is and is not appropriate. Kevin Morris alluded to that sort of situation when he gave an example of a mother's disapproval of her disabled gay son's relationship.

There could be all sorts of issues, but we have been advised that benign neglect would be a category under the bill. That gave us some cause for alarm. The example that we were given, which involved somebody being sent to bed at 8 o'clock in the evening, really worried us.

Shona Robison wanted to discuss the general impact of the bill. I am not sure whether you think that we have addressed that already, Shona.

Shona Robison: I think that we have. People have expressed their views.

The Convener: We are all concerned about the matter of resources, in particular. I know that Kate Maclean was concerned about that in relation to the advertising campaign. I think, however, that we have dealt with that.

I see Patrick Mark waggling his pen about.

Patrick Mark: As a non-expert, I just wanted to make the point that abuse is a horrid word, which conjures up all sorts of perceptions about what might be going on. In many cases, what we are discussing is more of a failure in the duty of reasonable care.

The Convener: There might also be an issue of self-neglect. There does not have to be another party involved for the bill's provisions to be invoked.

Kevin Morris: How would removal orders or banning orders work in cases of self-neglect?

The Convener: We discussed last week the example of an elderly person living in what seemed, to a third party, to be complete squalor. It took the authorities about a year and a half to gain entry to his house, and they discovered that he was living in squalor, although he was perfectly fit, healthy and otherwise fine. In such cases, a third party might phone in their concerns. Self-neglect is therefore part and parcel of the provisions—they are about protecting people at risk, including those who are at risk from themselves. Although most of the discussion has centred on third parties either deliberately or inadvertently harming an individual, we must also bear it in mind that the bill covers people who might be harmed by their own behaviour.

I sense that the discussion is drawing to a natural close. At this point, I want to bring in Ann Ferguson. We seem to have concentrated on the bill's controversial aspects—which is what happens at these meetings—and I ask her to spend a minute or two flagging up aspects of the bill that are not necessarily controversial but are certainly important.

Ann Ferguson: We must send out a clear message that the abuse of people who might be more vulnerable than others will simply not be

tolerated, and giving someone the responsibility for doing something about that is the bill's major thrust. Assessment orders, for example, will allow officials to access potential victims in order to ascertain their wishes. After all, it is important that they are allowed to take control of the situation.

Although we share the discomfort of many agencies about proceeding without consent, we would be seriously concerned if we lost key elements of the bill because of its other, more controversial aspects.

The Convener: We have reached something of a natural end. I hope that everyone has enjoyed this afternoon's session, which has highlighted a number of extremely interesting issues and flagged up yet more questions that we will have to raise with other individuals. The discussion has been fantastic and I thank the witnesses very much. You are welcome to stay on and listen to the remainder of the Health Committee's doings, but you might wish to grab a cup of coffee instead.

I suspend the meeting briefly while we rearrange the committee room.

15:37

Meeting suspended.

15:39

On resuming—

Petitions

The Convener: Item 4 is consideration of four petitions. Members have been circulated with a paper on this item that sets out at paragraphs 11, 14 and 19 recommendations on each petition that the committee might wish to consider before deciding what, if any, action should be taken. Paragraph 2 of the paper outlines the four petitions.

Hospital Parking (Charges) (PE967)

The Convener: We are still waiting for a response to PE967 from the Minister for Health and Community Care. I think that the best thing is to defer consideration of the petition until we receive that response. Are members agreed?

Members indicated agreement.

Residential Care (Charges) (PE897)

The Convener: PE897 relates to the financial implications of residential care. It is recommended that committee members highlight the detail of the petition in tomorrow afternoon's parliamentary debate on our care inquiry report, with a view to encouraging the Executive to encompass the matter in its own review. Do members think that the recommendation is reasonable?

Members indicated agreement.

Food Chain (Supermarkets) (PE807)

The Convener: PE807 has been under consideration since February 2005. I should point out that the Environment and Rural Development Committee has recently produced an extensive report on its inquiry into the food supply chain. The question is whether we wish to take any further action on the petition or whether we feel that the Environment and Rural Development Committee has dealt adequately with the matter. My view is that at this stage of the game there is nothing that we could do that would add to that committee's work. Are members agreed?

Members indicated agreement.

European Charter of Rights for People with Autism (PE952)

The Convener: PE952 was first considered in May 2006 by the Public Petitions Committee, which referred the matter to us. The paper outlines the main points of the European charter of rights for people with autism. We have already received evidence from the National Autistic Society

Scotland and the Scottish Society for Autism in relation to the Adult Support and Protection (Scotland) Bill and, indeed, someone from the National Autistic Society Scotland took part in this afternoon's round-table discussion. It is recommended that we consider the National Autistic Society Scotland's views and take them into account in our stage 1 report on the bill. Are members content with that approach?

Members indicated agreement.

The Convener: That ends the public part of this meeting. I ask all those who are not members of the Health Committee to leave.

15:42

Meeting continued in private until 16:13.

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