# HEALTH COMMITTEE

Tuesday 14 November 2006

Session 2

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## HEALTH COMMITTEE
**25th 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)
Dave Petrie (Highlands and Islands) (Con)
Margaret Smith (Edinburgh West) (LD)

*attended

**THE FOLLOWING GAVE EVIDENCE:**

Lindsay Anderson (Scottish Executive Legal and Parliamentary Services)
Jillian Boddy (Food Standards Agency Scotland)
Bill Butler (Glasgow Anniesland) (Lab)
Lewis Macdonald (Deputy Minister for Health and Community Care)

**CLERKS TO THE COMMITTEE**

Karen O'Hanlon
Simon Watkins

**ASSISTANT CLERK**

David Simpson

**LOCATION**

Committee Room 4

# Scottish Parliament

## Health Committee

*Tuesday 14 November 2006*

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

**The Convener (Roseanna Cunningham):** Good afternoon. I welcome everyone to the committee. In particular, I welcome to the public gallery Professor Jim McGoldrick, the chair of NHS Fife and an old friend of those of us who are based in Tayside; Mr Ben Conway, the chair of the west Fife community health partnership; and Mrs Susan Manion, the chief executive officer of the west Fife community health partnership. I understand that they are going to stay for most of our proceedings and I hope that they find our business of at least marginal interest.

No apologies have been received, so we will proceed with item 1. [*Interruption.*] I am advised by the clerk that the minister is not with us yet—he is en route. Euan Robson is not with us either, so we cannot proceed with item 3. I suspend the meeting briefly while we get ourselves organised.

14:01

*Meeting suspended.*

14:02

*On resuming—*

## Subordinate Legislation

### Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006 (draft)

**The Convener:** I welcome the Deputy Minister for Health and Community Care, who seems to be without his officials. Are they en route or are you flying solo, minister?

**The Deputy Minister for Health and Community Care (Lewis Macdonald):** I do not know whether there is compensation for the loss of civil servants, but I am afraid that that is what has happened. I am in your hands, convener. Do you want to proceed?

**The Convener:** While I consider whether we should proceed, I invite you to say a few words of introduction. You have about five minutes. By the end of that, your officials may have turned up.

**Lewis Macdonald:** That might do the trick.

Thank you for giving me the opportunity to comment on the provisions of the draft Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006. Today, we seek the committee's recommendation that the draft regulations be approved.

Members may be familiar with the background to the draft regulations. Following a consultation that was carried out in 2002, the Parliament agreed, through a Sewel motion, that the Westminster Parliament should legislate on our behalf for a scheme for the recovery of national health service costs in most cases in which personal injury compensation is paid. The legislative provision for such a scheme is contained in part 3 of the Health and Social Care (Community Health and Standards) Act 2003. Earlier this year—as members will no doubt recall—the committee reported on a legislative consent motion to amend the provisions of the 2003 act in the light of comments that were received during a consultation in late 2004 on the draft regulations for the operation of such a scheme.

The 2003 act provides for two parallel schemes—one for Scotland, regulated by the Scottish ministers, and another for England and Wales, regulated by the Secretary of State for Health. It is estimated that, once the scheme is fully bedded in, it will generate income of more than £20 million a year for the NHS in Scotland, with the recovered costs being paid directly to the NHS boards that are responsible for the

management of the hospitals that treat the injured parties or to the Scottish Ambulance Service.

As most compensators are insurance companies that operate on a Great Britain-wide basis, it has always been recognised that the scheme will be most effective if it is implemented in a like manner throughout Scotland, England and Wales.

I am pleased to say that I am now joined by my officials, whom I will introduce. Ross Scott is from the policy implementation and development branch of the Scottish Executive Health Department and Kathleen Preston is from the office of the solicitor to the Scottish Executive.

Because we want to implement the scheme in a like manner throughout Great Britain, the compensation recovery unit in the United Kingdom Department for Work and Pensions will administer the scheme in Scotland on our behalf under an agency arrangement, in accordance with an order under section 93 of the Scotland Act 1998. The same DWP unit currently operates the existing road traffic accident scheme—which will be superseded by the new scheme—on the same basis on behalf of the NHS in Scotland. Also under a section 93 order, the tribunals service in the United Kingdom Government's Department for Constitutional Affairs will provide an appeals service for the scheme on a GB-wide basis, thus providing a consistent approach to appeals.

Our intention is to introduce the scheme on Monday 29 January, and it will be regulated by three sets of regulations: the draft Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006; the Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006; and the Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006. The 2003 act stipulates that the first set, dealing with amounts, should be subject to the affirmative resolution procedure. That is the business that is before the committee today. The other two sets of regulations are subject to the negative resolution procedure and will come before the committee in due course, via the Subordinate Legislation Committee, after they are made.

The purpose of the draft Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006 is to make provision for the amounts that are to be recovered from compensators through the injury costs recovery scheme. They set tariffs for out-patient and in-patient treatment and for the provision of NHS ambulance services, as well as the maximum amount to be recovered in relation to any one injury. The draft regulations also set out the way in which the scheme is to deal with a range of circumstances in which the amounts to be recovered may need to be adjusted.

Colleagues will be aware that the existing road traffic accident cost recovery scheme operates on a tariff, and it is that tariff on which the rates in the draft regulations are based. The draft regulations also cover the costs of ambulance services, which are not included in the existing road traffic accident cost recovery scheme but which will be included in the new scheme. The Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006 and the Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006 will make further provisions—they are being considered at the moment.

One of the provisions in the draft Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006 is that, before a compensator lodges an appeal, they should pay the NHS charges—in other words, the appeal will be lodged after payment of the charges. The intention of that provision is to avoid frivolous appeals or delaying tactics. However, there is provision in the scheme for the Scottish ministers to waive the requirement for charges to be paid in advance of a compensator lodging an appeal in the unusual event of the compensator being a person or a business in straitened financial circumstances, on the basis that meeting the requirement would result in exceptional financial hardship. Applications for such a waiver will be handled on our behalf by the compensation recovery unit, and compensators will have the right to appeal against the decision not to grant a waiver—the draft regulations also provide for appeals against waiver decisions.

As I mentioned, other regulations are to be produced shortly. The Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006 are currently with the Scottish committee of the Council on Tribunals for clearance. In order to proceed, we require the committee's recommendation today that the draft Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006 be approved.

I am happy to answer any questions that members may have.

**The Convener:** Thank you. There are some questions. Committee members have several documents relating to the draft regulations in their papers.

**Dr Jean Turner (Strathkelvin and Bearsden) (Ind):** The evidence that we received from the British Medical Association shows that although it is generally in agreement with the draft regulations, it is concerned about the implications of the way in which the blame for injuries is ascertained and the requirement for the party that is at fault to pay the cost of treatment. This may be an extreme extension of the scheme, but could the same approach to cost recovery be applied to

wrong-doers and people who have risky lifestyles, such as smokers, drinkers and those who are overweight, for example? What danger might lie in so extending the scheme?

**Lewis Macdonald:** I understand the point that is being made, but that is not the direction in which we are moving. It is important to emphasise that liability to pay charges to the NHS—to enable the NHS to recover costs—is limited to cases in which compensation has been paid to a third party.

If a person suffered an injury through their own carelessness, recklessness, negligence or whatever, the scheme would cover none of those circumstances. The scheme applies only when the injury is the result of a third party's action and the third party—or, more probably, their insurer—has paid compensation. Only in such circumstances will the scheme allow the NHS to seek to recover charges from the third party's compensator. Neither in the cases that Jean Turner mentioned nor in general will the NHS seek to recover charges from an individual.

**Helen Eadie (Dunfermline East) (Lab):** We have had representations from businesses and insurance companies. The question that emerges from their concerns is whether it could be argued that businesses and public authorities already contribute to the national health service by paying national insurance and taxes.

**Lewis Macdonald:** Businesses and public authorities contribute, as do we all in one way or another. The point is that when businesses, insurers or compensators have conceded liability and said that the fault was theirs or that of their clients, that is different from the general circumstances that Jean Turner described. The scheme applies when liability has been conceded and compensation has been paid. In those circumstances, it is entirely reasonable that the compensator should fairly and proportionately assist the national health service with the recovery of costs. The draft regulations are intended to achieve that.

In terms of wider policy priorities, the scheme will encourage employers to maximise the health and safety of their employees and will encourage others to maximise the safety of visitors to their premises. In those wider policy terms, the direction of travel of the measures will be positive rather than negative.

**The Convener:** In personal injury cases, it is normal to see various heads of claim totted up—aspects of a claim could include future wage loss and past wage loss, for example. Are you saying that the draft regulations will in effect introduce under the total amount another head, except the money will go to the hospital or the NHS?

**Lewis Macdonald:** That interpretation is reasonable, although I would not have used that formulation. In effect, the draft regulations mean that if someone has conceded liability, they are also liable for NHS charges.

**The Convener:** The compensator would pay under the heads of claim not only the injured person but the NHS.

**Lewis Macdonald:** That is right.

**Shona Robison (Dundee East) (SNP):** I heard what the minister said about the possible waiver that could be granted because of exceptional financial hardship. Will any other measures help small or very small businesses that might find higher insurance premiums a problem? What provisions exist or are under consideration to help businesses in such circumstances?

**Lewis Macdonald:** You raise a wider issue about how small businesses deal with the costs of employers liability insurance and public liability insurance, which have risen significantly in the past five years or so. The impact of the scheme on premiums, whether for small businesses or others, is likely to be small in comparison with the benefits that will be derived from it for the NHS. I do not expect the scheme to feed through into a significant hike in insurance premiums for employers liability insurance or public liability insurance.

**Shona Robison:** Will you monitor that?

**Lewis Macdonald:** We will certainly want to keep an eye on it.

**Shona Robison:** One reason for the delays in making the draft regulations was concern about whether the employers liability compulsory insurance market was sufficiently robust to cope with the changes. Are you now satisfied that that is the case?

14:15

**Lewis Macdonald:** That was a market-related judgment. The market has changed. As I said, there have been significant hits on insurance premium payers in recent years, but the situation has now stabilised to the point at which the market can deal with the scheme.

**Mrs Nanette Milne (North East Scotland) (Con):** Could the scheme have implications for sports injuries? Off the top of my head, I am thinking about people who use ski equipment in a ski resort. Is the scheme likely to impact on people who use such facilities, because their personal insurance might go up to cover the implications of the scheme?

**Lewis Macdonald:** It is important to say that the scheme will not introduce new liabilities for anybody. As the convener said, it will require an

additional payment to be made toward NHS costs when liability has already been accepted. If your concern is about extreme sports, such as skiing or other sports that involve an element of physical risk, the scheme will not impact directly on them at all. However, if an operator of equipment such as a ski tow is grossly negligent in a way that results in the operator's insurance company paying compensation to customers, that will be likely to trigger recovery of NHS charges.

**The Convener:** We now move to agenda item 2, which is consideration of the motion on the draft regulations. The Subordinate Legislation Committee considered the draft regulations and had no comment to make. Does any member wish to debate the regulations?

**Members:** No.

**The Convener:** I therefore invite the minister to move motion S2M-5040.

*Motion moved,*

That the Health Committee recommends that the draft Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006 be approved.—[*Lewis Macdonald.*]

*Motion agreed to.*

**The Convener:** I thank the minister for attending.

## Feeding Stuffs (Scotland) Amendment Regulations 2006 (SSI 2006/516)

**The Convener:** Agenda item 3 is a further item of subordinate legislation. We are joined by Jillian Boddy of the animal food chain and novel foods branch of the Food Standards Agency Scotland—I did not realise that there was anything so interesting. We also have Lindsay Anderson, from the office of the solicitor to the Scottish Executive. I welcome them both.

The committee considered the amendment regulations initially on 7 November, when we agreed to seek further information from the Food Standards Agency. A paper from Jillian Boddy has been circulated. An issue was raised about the costs that may arise from the implementation of the measure. Initially, the agency was unable to confirm those costs in writing and instead agreed to appear before the committee to discuss the issue. However, we can now refer to a paper after all. The motivating committee member in respect of the regulations was Euan Robson, so I put him immediately on the spot.

**Euan Robson (Roxburgh and Berwickshire) (LD):** When I read the paper, my concerns were reinforced. In simple terms, we are asked to agree to regulations that are liable to be overtaken by developments in 2007, as paragraph 4.3 of the partial regulatory impact assessment states, with a possible date of 2009 for a complete replacement set of regulations. The regulations apply a huge tolerance of plus or minus 15 per cent to the indication of feedstuff content. Does that add much to the sum total of wisdom about what is in a bag? We also cannot quantify the costs to the industry. We are told that dire consequences and infraction proceedings will follow, but are they really likely to happen? Is it a question of the United Kingdom and Scotland being out of line with everybody else? Have other member states implemented the European directive? Perhaps the witnesses would like to address some of those points.

**Jillian Boddy (Food Standards Agency Scotland):** The feedback that we have had is that some member states have implemented the directive and others are in the process of implementing it, as Scotland is. I would have to get back to you with further information if you wanted specific details on each member state.

**Euan Robson:** No.

**The Convener:** We must make a decision on the regulations today, so we do not have time to wait any longer for further information.

**Euan Robson:** Does Jillian Boddy know whether just one member state has implemented the directive or whether more than one has implemented it? On the member states that are considering implementation, have they also been warned about infraction proceedings? Do we have any information on that?

**Jillian Boddy:** I do not have information on infraction proceedings against other member states. It is the responsibility of the Scottish ministers to implement the directive and avoid infraction proceedings. We have had a letter from the European Commission asking us about our progress to date in implementing it, and I assume that that has also been sent to other member states.

**Euan Robson:** That is helpful.

Can I have an answer to the point about the percentage variation that is allowed in the regulations? A variation of plus or minus 15 per cent seems very wide. Do we have any indication as to why the Commission has chosen such a wide variation?

**Jillian Boddy:** It was considered that anything narrower than 15 per cent would not provide extra protection to animals or the human food chain, and 15 per cent was considered adequate to meet the requirements.

**Euan Robson:** I noted that you said in your correspondence with the clerk that the cost could range from "minor" to "significant"—that is a fair spread, I must say. It was suggested that the

minor cost might apply to small firms but, for a small firm, what seems a small cost might actually be significant. In effect, we have no information on the implications for the industry.

**Jillian Boddy:** We ran a 12-week consultation and, as I noted in my submission, we asked the industry to provide that information. Unfortunately, in Scotland, no breakdown of costs was provided for any sector of the industry, so I cannot provide any further information, although we tried to get it to include it in the regulatory impact assessment.

**Euan Robson:** That is helpful as far as it goes. I appreciate the difficulties that the FSA is in.

I have a final question for the representative from the office of the solicitor to the Scottish Executive. Is the letter that has been received from the European Commission couched in pointed terms? Is it simply a general reminder, or is it a why-have-you-not-done-this letter?

**Lindsay Anderson (Scottish Executive Legal and Parliamentary Services):** I have not seen the letter to which Jillian Boddy referred, but the matter has some fairly complex history behind it. The measure was introduced in a directive in 2002, and it might be helpful to give you a brief history of it.

**Euan Robson:** I have read the background history and do not want to detain everybody.

**The Convener:** Euan Robson is making the fair point that we have been presented with a statutory instrument on the assumption that we will nod it through. It is a bit unfortunate that nobody has prepared for any real questions on it.

I appreciate that the Food Standards Agency put the issue out to consultation with the industry. Perhaps questions need to be asked about why the industry made no response, given that complaints might well be raised when the costs feed through. Nevertheless, it is unfortunate that we have not been given the necessary background information to consider the issue properly.

Do other members have any further questions?

**Helen Eadie:** Can Lindsay Anderson explain what financial implications for the Scottish Executive would arise from infraction proceedings if the regulations were to be annulled?

**Lindsay Anderson:** There is a general obligation on the Scottish ministers to implement European obligations. The European directive was passed in 2002 and was in fact implemented in regulations that were made in 2003. However, following a court case, those regulations were subject to judicial review in both London and Edinburgh and their effect was suspended. The obligation that was placed on feed manufacturers has been partially cut away by the European Court of Justice's judgment regarding the percentage tolerance issue.

Infraction proceedings are a lengthy process but they certainly carry the possibility that fines might be applied. I cannot put a figure on that—I would just be making up a figure if I were to speculate—but fines are always a risk with infraction proceedings. In legal terms, ministers have no option but to implement the directive in the way that has been interpreted at a high level by both our courts and the European Court of Justice.

**Mrs Milne:** Paragraph 4.3 of the partial regulatory impact assessment states that the Commission is likely to embark on a wholesale review of the issue. Is it likely that infraction proceedings will be initiated before that review? I am trying to understand the timing. Will the regulations be superseded soon anyway?

**Jillian Boddy:** We do not know the outcome of the review or whether it will affect the issue. The initial response from the Commission will be available in spring 2007, but that does not necessarily mean that the point that we are dealing with will change. I do not know how quickly the Commission intends to move to infraction proceedings.

**Euan Robson:** I have no wish to put the Scottish ministers in an awkward position. If there is a legal requirement, it must be observed. One would not wish to add unnecessary costs to whatever budget the cost of infraction proceedings might come from. However, I think that this is a classic case of regulations that are perhaps unnecessary and overbureaucratic. If a review is to start in the spring of 2007, I do not understand why on earth the issue cannot be put on the agenda at that time. The regulations might not last for more than a few months—they might be done away with to avoid placing extra costs on the industry.

Convener, I appreciate that we cannot make an exact decision on the issue as we are not clear about the industry's view, but we should ask that our concern about the way in which the matter has been handled be noted in the appropriate quarters.

**The Convener:** We are required to report on the regulations. I propose that we encompass some of that concern in the report. We can point out that the decision that we are making is based on a very vague premise. I appreciate that the Food Standards Agency is not at fault because the industry did not respond to the consultation but, nevertheless, it is difficult for us to discuss the issue in such vague terms.

Under rule 10.4 of the standing orders, the committee is required to report to the Parliament

on the regulations. Are we agreed that we do not wish to make any recommendation on the regulations?

**Members** *indicated agreement*.

**The Convener:** The report will contain comments along the lines that have been expressed this afternoon.

# Health Board Elections (Scotland) Bill

14:30

**The Convener:** Somewhat ahead of schedule and probably to no one's dismay, we move to item 4 on the agenda, which is the fourth evidence session on the Health Board Elections (Scotland) Bill. I welcome Bill Butler MSP to the final evidence session.

Several documents in the committee papers provide background for this evidence session. There is a submission from Mike Dailly, principal solicitor at Govan law centre, that clarifies Mr Butler's proposed amendment on the voting system, should the bill reach stage 2. Submissions have also been received from the Finance Committee, with comments on the financial memorandum to the bill.

We also have a further submission from Dr Gilmour that comments on Mr Butler's proposed amendment to the voting system. That should have been put on the desks in front of members.

**Shona Robison:** I wish to raise a brief point of order on this item. When the Minister for Health and Community Care gave evidence last week, he was clear in his opposition to the bill. Although I disagree with his view, I think that his evidence was clear. Since then, extensive media coverage has suggested that the minister's position has changed or might be about to change. Given that we are in the middle of taking stage 1 evidence, we need the Minister for Health and Community Care to clarify his position. Is there an opportunity for him to come back to the committee and clarify whether, as has been trailed in the press, he now agrees with the idea of having a pilot scheme for electing health boards? That is relevant to the evidence that we are taking on the bill.

**The Convener:** You are proposing that?

**Shona Robison:** Yes.

**The Convener:** I do not want to prolong this discussion, although we have a bit of extra time.

After discussing it with the clerk, I confirm that the minister is coming to our meeting on 28 November, so we can ask him to do a brief session on this issue then. It would mean extending the evidence session, but we would not be able to extend the timetable—we would have to consider our position on that day.

There might be a variety of opinions around the table. Does anyone have a view, question or concern?

**Mr Duncan McNeil (Greenock and Inverclyde) (Lab):** Did the media report the minister directly, or were their comments about the Labour Party's proposed manifesto?

**The Convener:** I have not read the reports in detail, so I do not know.

**Shona Robison:** There have been various articles, but basically they are about a proposal from the leadership for limited piloting of the idea. The point is that if there is to be a change of position, the committee needs to know because we are expected to accept or reject the bill and the minister's evidence has a bearing on our view. If his view has changed or is changing, we need to know.

**Kate Maclean (Dundee West) (Lab):** I have not seen what was in the press, but I disagree with Shona Robison. We have to consider the bill and the evidence that we have taken from the minister, the member in charge of the bill and other witnesses. I do not think that we can allow reports in the press to determine how we conduct committee business. Whether there have been issues in the press about what will be in the Labour manifesto is not relevant, and I do not know what leadership Shona Robison is referring to. We can consider only what we have in front of us and the evidence that we hear, not press speculation.

**Euan Robson:** I suggest that if the minister's position has not changed, there is no point in inviting him to the committee. Could we exchange correspondence with the minister and ask him whether there is any suggestion that his view is altering? If he says that there is, he may ask to give evidence again.

**The Convener:** So an alternative proposal is that we write to the minister to clarify the position.

**Euan Robson:** I am sure that an exchange of correspondence could take place fairly quickly.

**Mr McNeil:** Shona Robison obviously takes a pessimistic view of her party's prospects and expects the Labour Party, after the next election, to put in place the policies that we are developing. The committee should not do a disservice to Bill Butler, and the people who have been involved in taking the bill forward, on the basis of discussions that are taking place in the context of policy development for the Labour Party's manifesto. We should not relate those discussions to what we are doing in this session of Parliament.

I understand that the discussions in the Labour Party are about what we will do when we are returned to power at the next election. Shona Robison is worried about that, but the time for her to be worried is after the 2007 election. We would not extrapolate from discussions surrounding the development of their manifestos the views of the Scottish National Party, the Liberal party or the Conservative party in this session of Parliament.

It is nonsense to suggest that we should call the minister to account. That would be a disservice to Bill Butler and the people who are here to give evidence today. We are here to discuss the bill that is before us in this session of Parliament. Only a week ago we took evidence from the minister; that evidence is on the record. I know that we are getting near to an election, but let us get serious.

**Mrs Milne:** We are still discussing the bill at stage 1. If the minister's mind is changing, the committee ought to know that. Perhaps we should take up Euan Robson's suggestion and ask the minister whether he sticks by the evidence he gave last week—yes or no.

**Janis Hughes (Glasgow Rutherglen) (Lab):** Nanette Milne says that she supports Euan Robson's proposal that we write to the minister, but I am not sure on what basis we would do that. Shona Robison did not say specifically that any quotations were attributed to the minister or to the Executive. If we write to the minister, we must be clear about the basis on which we are doing that. As far as I am aware, he has not been quoted as saying anything different from what he said last week.

**Shona Robison:** Clearly, we would ask the minister about his position. It is not respectful for him to say one thing to the committee on the record and to say something else elsewhere. We need to know what the minister's view is. It is also not credible for him to say one thing at this stage while promising jam tomorrow. Last week, the minister was very clear about his position, but doubt has been cast on that clarity. I am happy to accept the compromise of writing to the minister to ask about the comment that was made in the media. It would be ludicrous for the committee to ignore media comment on the very issue that we are considering.

**Mr McNeil:** It is media comment, not comment from the minister and the Executive.

**Shona Robison:** The comments were made by your colleagues. It would be helpful to clarify whether they have any bearing on the minister's view and whether his view has changed since he gave evidence last week. I would be happy for that to be done in writing, if the committee does not want the minister to appear before the committee.

**The Convener:** The initial proposal was that he should come back to the committee to give evidence. It is obvious that that will not be accepted. Euan Robson has suggested that the matter could be clarified more simply by our writing to the minister to draw his attention to the

comment that we have seen and to ask him whether his position remains the same.

**Mr McNeil:** We have seen comment from whom?

**The Convener:** Let me finish. I have described Euan Robson's proposal, which is the second option. The third possibility is for us to do absolutely nothing. Which members are in favour of writing to the minister?

**Mr McNeil:** You are curtailing debate, convener.

**The Convener:** I am trying to move on to taking evidence on the bill.

**Mr McNeil:** We did not delay the process—your colleague did that on the basis of press reports.

**The Convener:** I had assumed that we were all colleagues and that any committee member is entitled to raise a point of order.

**Mr McNeil:** You are the convener of a committee and you should not allow that committee to be used for party-political ends. We are discussing a press report that was not circulated before the meeting. No notice was given to members—even as a courtesy—that the matter would be raised, so that we could all apprise ourselves of the press report, which I believe is about a policy discussion within the Labour Party. Unlike other parties, we are not ruled by one person outwith this country. We decide our party policy through our members. Our members have discussed that party policy and they have a view. How can we hold the minister to account for that when there is no comment from the minister, from the Executive or from any member of the Parliament? If you are saying that the business of the committee will be directed by lay members in any given party and what they are reported to have said on any given weekend, it will be a long time between now and May.

**The Convener:** I am glad that we do not make political comment in the committee, Duncan.

**Mr McNeil:** What is this if it is not politics?

**The Convener:** We are all here because we are politicians.

I have suggested that there are three options. Shona Robison's suggestion is clearly not going to be accepted. Euan Robson suggested that we write to the minister; the alternative proposal is that we do nothing.

**Mr McNeil:** That is your role.

**Shona Robison:** I am proposing it; it is up to you to vote against it.

**The Convener:** With the greatest respect, Duncan, I could go ahead and do what I like. I do not think that your argument is appropriate. What I am asking for is the committee's guidance. I will not write to the minister in my position as convener if the committee is not happy about that.

**Kate Maclean:** I have looked at the piece in the press and it is just a speculative piece about what may be discussed in the Labour Party and what may be suggested for the manifesto. There is not enough strength in the article to write to the minister. We have taken evidence from various witnesses and the minister and we are going to take evidence from its proposer. The article adds nothing different. It is not specific enough; it is a bit spurious. It is just a political editor speculating about something. It is not enough for us to be writing to the minister, asking for clarification. Although the minister is mentioned, no quotations are attributed to him.

**The Convener:** Euan Robson, it was your idea to write to the minister. Do you want to press that?

**Euan Robson:** I have now read the article and share Kate Maclean's view that as there is no direct quotation it is a matter for the Labour Party to deal with in its manifesto preparation. That is the key suggestion behind the article. As far as I can tell, there is no suggestion in the article that there will be a change in ministerial policy before the next election. Now I have seen the article, if my proposal is put to the vote I shall vote against it.

**The Convener:** Then withdraw it.

**Euan Robson:** I will happily withdraw it.

**The Convener:** Now that we have dispensed with that, I wish to make one comment, which is that any member of this committee is as entitled as any other member of the committee—and indeed any member of the Parliament—to raise a point of order in the chamber or in committee. That is a simple fact in the life of any committee.

Bill Butler, you are now in place and have heard an entertaining discussion, which may or may not contain matters that are news to you.

14:45

**Bill Butler (Glasgow Anniesland) (Lab):** Good afternoon, colleagues. I thank the committee for the opportunity to speak in support of the Health Board Elections (Scotland) Bill. I believe that there is strong support across the political spectrum for the introduction of direct public elections to Scotland's NHS boards. I also believe that the case for greater democracy, accountability and transparency in the decision-making process for local health services is compelling.

I continue to believe that the best way to achieve greater accountability and transparency is through the introduction of direct public elections. The

Health Board Elections (Scotland) Bill would significantly increase public involvement in local NHS services. It would involve people in the planning and delivery of health care services in their communities.

Committee members will have the information that I provided on the equal opportunities implications of the bill. If the bill is enacted, it will be possible to try to ensure that everyone can be involved.

The bill's main aim—of introducing more democracy into the operation of health boards—does not mean that I believe that all board decisions are wrong and detrimental to local health services. The undeniable problem with the way in which boards currently operate and reach decisions lies as much in public perception as in the nature of some of those decisions. The anger some people feel about certain decisions is, to a degree, generated by the manner in which those decisions are seen to be made—in secret, with little or no explanation, often predetermined, and often ignoring the views of the community and responses to the board's consultation. Many people believe that health boards' consultations are predetermined.

I do not believe that a perfect method exists for consulting the public on major local health issues, and I do not think that direct public elections would lead to everyone being happy with every decision by every NHS board, but I contend that decisions made by health boards on which there is a large democratically elected element will have much more credibility than those made under the current system.

Accepting that decisions are legitimate is at the heart of representative democracy. Democracy is not always about getting our own way, but it is a way of making decisions that take serious account of people's opinions. That is not happening with NHS boards at the moment. Direct public elections would allow the public a mechanism to influence service delivery in their area. If we are to address public apprehension and suspicion, there must be greater openness and transparency, and there must be direct accountability. I suggest that the bill, if enacted, would allow such an approach to thrive and prosper.

I have yet to hear a convincing argument as to why the make-up of regional NHS boards should not contain a strong element of direct democratic accountability. Introducing greater democracy would mean more than just structural change; introducing electoral accountability would involve patients and communities and provide an opportunity for public debate and greater access to information.

My bill proposes that 50 per cent, plus one, of the members of each health board—a simple majority—be directly elected to represent the local communities affected by its decisions. Boards must have a proper balance between those with expertise, knowledge and experience from working in the health service and those who are most directly affected by changes—the public.

Some people I have consulted over recent months have argued that a greater proportion of health board members should be directly elected. I feel that the blend of experience and direct accountability offered by the bill is about right.

My bill supports the retention of local authority members on NHS boards. Unhappily, even with the inclusion of local authority members on each NHS board, the feeling remains that boards have failed to engage effectively with the communities they serve.

Some proposals made by NHS boards are not popular with the public but will result in improvements to local health services. I hope that my bill will succeed in making health boards work harder at explaining their proposals to the communities they represent and at engaging the public more directly, explaining the pros and cons of any changes to local health services clearly and openly. Only when that greater level of direct accountability and transparency has been achieved will communities feel in any way reassured that health boards really listen to their views.

If this bill succeeds and direct elections become a reality, not every decision taken by an NHS board will be universally popular, but I hope that elections will help to make health board decision making more open and more relevant.

I thank committee members and the clerking team for their assistance so far. I will be happy to try to answer questions.

**The Convener:** Committee members have a number of questions.

**Helen Eadie:** Good afternoon. My first question relates to research from New Zealand and from the English foundation trust elections. Committee members have received a briefing from the Scottish Parliament information centre, from which we can see that research suggests an overrepresentation of male, retired, white professionals on boards.

How do you respond to the argument that directly elected boards might be less representative of the population they serve? Is there a danger that the lack of remuneration will result in a disproportionate number of retired affluent candidates and that making the whole board area the electoral area will reduce potential

representation from minority and rural communities?

**Bill Butler:** It is very unlikely that any system of election would result in the election of a body that mirrors absolutely every representative interest or section of the community. I accept that we must try to ensure, through direct elections, that boards mirror as far as possible the community that elects them.

Dr Cumming of the Scottish Health Campaigns Network mentioned the lack of remuneration in his written submission. I and my bill team, who apologise for not being here today—Mike Dailly has another engagement, lecturing at university—have considered the issue. If we are lucky enough to have the committee and the Parliament agree to the general principles of the bill, we will lodge an amendment at stage 2 not to provide for remuneration but to ensure that people who are elected to the board do not suffer loss of earnings. In that way, we would try to address the concern that Helen Eadie raised.

We can do all we can to attract people from all parts of a health board area and from all walks of life. Although we cannot guarantee turnout and decide who will be elected, the aim of the bill is to try to ensure that becoming an elected member of a health board is as attractive as possible. We want people to come forward who have an interest in making a contribution to improving the health service and becoming involved in the complex issues that health boards face in modernising the health service while ensuring that the needs and aspirations of communities are met. We will not be able to do that 100 per cent, but that is our aim.

We want to address the concern that Helen Eadie raises, which was mentioned in the submission from the Scottish Health Campaigns Network, but we do not want people to be attracted simply because they will get a large amount of cash. That is not the kind of person we want. We want the kind of person who volunteered their services to and became active members of local health councils in the past—although that is not directly analogous to health boards. That is the thrust of that part of the bill.

**Helen Eadie:** I want to pick up, first, on the point about the danger of underrepresentation. One of the recommendations of the Nolan committee was that we should have regard to gender, race and religion. That struck me as good. Is there a danger that we might lose that? You might repeat some of what you just said when you answer that.

Secondly, in local government, it was argued for many years that we ought to have good remuneration to attract good, qualified candidates. What difference do you see between local government elections and health board elections in that regard?

**Bill Butler:** On your first point, the danger is that you might not be able to get as representative a cross-section of society as you would wish. I hope that the elections will have a high turnout and that people will be attracted to stand because they feel that they might contribute directly to work on a major area of concern. After all, people want to ensure not only that their health service is improved and modernised but that it takes into account the various concerns and issues that come up all the time in communities.

We cannot force people to come forward. In any case, it would be unfair to stipulate that there should be 50 per cent male and 50 per cent female representation, given that males account for 48 per cent and females 52 per cent of the overall population. I hope that things would even out in the course of events and that more people from ethnic minorities and with disabilities would come forward. We are trying to ensure that people are involved in the electoral process; in fact, I submitted a paper to the committee through the convener on how to encourage people who have disabilities to become involved in that process. I hope that many people from many sections of society come forward to ensure that the directly elected elements of health boards reflect a good cross-section of our society.

You make an interesting point about remuneration and loss of earnings. I do not want to have a system in which only people who are comfortably off and who come from one socioeconomic background are able to come forward to the exclusion of others who are not so comfortably off and have to work very hard for a living. I have not closed my mind entirely to your point, but I think that remuneration for loss of earnings should meet that concern.

**The Convener:** Most of that discussion was about remuneration and loss of earnings. I want to ask about the idea of making the whole board area the electoral area. That might seem attractive if we are talking about, for example, Greater Glasgow Health Board, but many health board areas encompass one or two fair-sized cities and huge rural hinterlands. If the health board area is a single electoral area, is there not a danger that we could end up with a result that favours people from the cities and leaves people from the rural areas unrepresented? For example, three committee members are familiar with the Tayside Health Board area, which takes in the cities of Perth and Dundee as well as a huge rural hinterland that stretches from Loch Earn on one side to Kinloch Rannoch and what have you on the other side. In that case, I would have thought it likely that the

people from Dundee and Perth, not those from Kinloch Rannoch, would be elected.

**Bill Butler:** That is a real concern, but simply saying that it will not happen does not guarantee that it will not happen. It might well happen.

The bill ensures that people cannot stand as party-political candidates. I hope that people do not vote along geographical lines, but there is always a danger that Dundee people will vote for the candidate from Dundee, that Perth people will vote for the candidate from Perth and that others will find themselves excluded. That is certainly not the bill's intention. I hope that people will vote for those who are committed to health services and are able to contribute positively to our attempts to deal with the many complex challenges that face the health service. Such people might have been involved in health service organisations, the Muscular Dystrophy Campaign, the Royal National Institute for Deaf People, the Royal National Institute of the Blind Scotland and so on.

If the bill is passed and enacted, future Parliaments might look at it again and find that the system is throwing up discrepancies and that people are voting en bloc for city candidates. I do not think that that will necessarily happen; I think that people might be attracted to people who, through their 500-word submission, are able to prove that they have the experience to make a contribution to the health service.

**The Convener:** That is subjective. One task that we have is to explore possible unintended consequences of the bill. We frequently legislate and find that what happens is not quite what we anticipated. It is useful to explore possible consequences in advance.

**Janis Hughes:** I understand that the bill covers only regional health boards. Will you explain why it does not apply to special health boards?

15:00

**Bill Butler:** Euan Robson asked that question on 31 October 2006. The technical reason why special health boards are excluded is that they are dealt with under a separate section of the National Health Service (Scotland) Act 1978. That act uses the term "special health board" for the branded NHS boards, but the bill amends only the section on "health boards"—the legal name used in the 1978 act.

I thought that the point might come up. In reply to Euan Robson, Dave Watson said:

"the reason for the difference is that we are talking about national and local services. We have national delivery for the national health service and local health services, on which local judgments are made."

The geographical boards, which make local judgments and are not simply administrative units, are those that need the flexibility, although they will still follow guidelines, frameworks and targets set nationally by ministers and the Parliament.

Special health boards do not fall easily into that tier of decision making. The bill is an attempt to ensure that the 14 geographical board areas take local considerations into account and know about local needs and circumstances, while working within the framework of national targets set out by ministers.

Dave Watson also said:

"We always have a fast and loose system in relation to national and local services. That is no different for health boards than for other services."—[*Official Report*, *Health Committee*, 31 October 2006; c 3160.]

Flexibility already exists, and the bill concentrates specifically on health boards as defined in the 1978 act—that excludes special health boards.

**Janis Hughes:** I understand the principle of nationwide provision. If a main premise of the bill is democratic accountability, it would not be impossible to apply the rules on national elections to special health boards.

**Bill Butler:** It would not be impossible, but it would be outwith the scope of the bill. I hesitate to tread even 1cm outwith that scope.

**Janis Hughes:** I acknowledge that.

**The Convener:** The National Health Service Reform (Scotland) Act 2004 was passed not very long ago, and the Executive recently launched its "Transforming Public Services—the next phase of reform" consultation on the potential for reviewing how public services are run. Why did you decide to introduce the bill now and not wait to see how the 2004 act and recent consultation work out?

**Bill Butler:** I support the reforms that were introduced to secure greater public participation and involvement and, whatever their opinion of the bill, every person who has appeared before the Health Committee has said that they support those reforms, because greater participation and involvement are good. I am not against that at all.

The consultation on the future of public services is also interesting. I will paraphrase, but as I understand it, the discussion document says that the process is evolutionary and indicates a direction of travel and that the Executive is open to new ideas about involving the public and communities in decisions about the speed of change. I argue that my proposal is part of the evolutionary process. It is an old idea that has been given a new set of clothes. It will allow communities to have a direct say on—and to hold people accountable for—the pace of change in the national health service. The bill, which is narrowly

drawn and proposes a reasoned and reasonable reform, is not inimical to what is being discussed elsewhere. It fits in with that.

**The Convener:** So you see it as the third leg rather than as something that comes from left field.

**Bill Butler:** Yes. I see it as a stool upon which anyone could sit.

**The Convener:** We had better hold the analogy there and not go any further.

**Bill Butler:** It is always dangerous to use extended metaphors.

**Shona Robison:** You mentioned the proposed voting system and community representation. I assume that you have read the supplementary evidence from Dr Gilmour.

**Bill Butler:** Yes.

**Shona Robison:** Why do you prefer the multimember, first-past-the-post system to the single transferable vote system of proportional representation? Dr Gilmour argues that using the latter would address the point that the convener made earlier.

**Bill Butler:** I have a couple of reasons. First, the bill springs from people's concerns about consultative processes in the health service. My consultation was reasonably extensive for a member's bill and it received 160 responses, the majority of which were in favour of a majoritarian system, although I acknowledge that a significant minority favoured the STV PR system. It would be strange to argue that consultative processes in the NHS are flawed and then to ignore the response to the consultation on the matter. That is not simply semantics—it is an important point.

Dr Gilmour is right to point out that the voting system that is proposed in the bill is not the cumulative vote. It is analogous to the system that operates in certain parts of England where there are multimember wards and which was used in Scotland before 1974. It is a simple majoritarian system.

I am not saying that the proposed voting system is perfect and I have not closed my mind to any amendments that might be lodged if the bill reaches stage 2. It would be ludicrous to do that. However, at the moment, I think that the system that I propose is reasonable. It is used in community council elections and some trade union elections. If there are seven places, the top seven people get them. Of course, members might want to discuss the matter further if the bill reaches stage 2, and I am open to that discussion.

I realise that there is no perfect system, as Dr Gilmour said. Every electoral system is a compromise and has inherent dangers, but the last thing that I want to do during consideration of my bill is to go into a debate that the Parliament has already had about electoral systems in local government.

**Shona Robison:** You said that there is no perfect solution and that you do not regard your proposal as a panacea. That was honest. Are you confident that directly elected health boards would improve public satisfaction? Would they restore the public's trust, which has perhaps been lost in recent years? You said that boards would still have to make difficult decisions, some of which would be unpopular. Would an overarching benefit of the bill be an improvement in public satisfaction and trust?

**Bill Butler:** If that happens, it will be a significant benefit, although there is no guarantee that it will happen. I do not pretend that there are any guarantees, other than death and taxes.

Trust is important for our national health service. One reason why I introduced the bill was that I felt that a corrosive cynicism was growing that suggests that everything that every health board proposes is wrong. I do not believe that, and I do not think that many people believe it, but that point of view is spreading among the public. That is bad for the NHS and it will not help the NHS to meet the challenges that lie before it. It is bad for people to feel that they do not have a say in their national health service or that if they have a say, it is not a real say because there is no direct accountability.

I do not know whether direct elections to health boards will make people more satisfied. I have been in local and national politics for 20 years. We have all been in politics for a long time, so we know that you can satisfy some of the people some of the time and so on. I hope that one benefit of the bill would be that people would feel that they had ownership of what is decided in their name. Ownership is straightforward when representatives are directly elected—if people do not like what someone in this Parliament is doing, they can vote against them or their party, but that is not possible within the NHS board system as it is constituted. I think that having the balance of expertise and experience of those who are appointed mixed with people who have a directly elected accountability could be a positive development. That is not guaranteed, because nothing is guaranteed, but it is worth doing.

**Shona Robison:** What do you think of the suggestion made by a number of boards that are against the bill that somehow the fact that there is local authority representation on boards democratises them or gives them a democratic element? Is such representation in any way adequate?

**Bill Butler:** I think that having local authority representation on boards was a progressive and positive step. However, I again refer to Dave Watson's evidence to the committee on 31 October.

He said that councillors were put on health boards because, as members know, there is a need for greater joint working between the health service and local authorities and for seamlessness where it is appropriate and can deliver. He stated that local authority representation on boards

"is a very indirect form of democracy. Councillors are there to fulfil the local authority role."—[*Official Report*, *Health Committee*, 31 October 2006; c 3161-62.]

His suggestion was that very few councillors, if any, see themselves as being super-representatives for the whole health board area.

The appointment of councillors was a progressive step, and the bill would not prevent the minister from continuing to appoint councillors; it would not take that right away. I know many councillors who make a positive contribution, and they could still do so. However, it is a mistake to imagine that somehow having councillors on boards is a substitute for having a directly elected element. A directly elected element would enhance the contribution that appointees, including councillors, could make.

**Dr Turner:** Much of the evidence that we have received suggests that if people are elected to health boards, especially if there is 50 per cent plus one directly elected representation on boards, national issues will be prevented from being considered and campaign groups could perhaps hijack decisions that should be taken nationally.

Also, how would the 50 per cent plus one directly elected representation on health boards be maintained when illness or something untoward befell people elected to the board?

15:15

**Bill Butler:** You pose two questions. First, there is a provision in the bill to enable a postal ballot to take place when there is a vacancy. The minister would also have to ensure that 50 per cent of board members were directly elected, or a simple majority if that was arithmetically impossible—six out of 10, for example. That is the only proposed change in ministerial powers. That is how the issue would be resolved.

Tell me if I am wrong, but I think that you are talking about a concern that was raised by a number of witnesses, many of them from the health boards. I remember specifically Professor Sir John Arbuthnott talking about the ubiquitous parochial nimby or reactionary, who wants nothing to change ever. I simply do not believe that that is how the bill would work out. I cannot guarantee that it would not work out like that—that would be foolish of me—but I believe that what you suggest is a slight exaggeration.

I do not think that the 50 per cent plus one or simple majority provision would make the board monolithic—there would not be a party-political block, nor would there be a geographical or a sectional block. All sorts of different people would be involved, with all sorts of different talents, abilities and contributions to make. Like people who sit around the table at any committee in any organisation, people would make alliances with some people over some issues and with other people over others. That is the natural way in which the provisions would work.

I know that it is not directly analogous, but I was made a member of the Glasgow West Health Council as a tyro district politician in 1987, just after a by-election. I went in there knowing very little—to use a technical term, hee-haw—about how things worked. However, whenever someone goes into a new situation, they listen and training is provided. They read as much as they can and get directly involved. That is how the new boards would naturally flow. The amalgam of appointees and directly elected members on the health boards would work together because the challenges are so great and the work is so complicated that everyone can make a contribution.

I also think that there will be a necessary change in culture as health boards meet the challenge of having a new, directly elected element. Health boards have been able to meet the challenge of the public participation reforms that have been implemented over the past four or five years, and civilisation has not crumbled. They have all said that those reforms are a good thing, and I think that they are right. I believe that the directly elected element of the boards would add to that and would in no way be divisive or detract from a positive programme of implementing what is best for health service delivery in health board areas.

**Mr McNeil:** As you know, I am eager for there to be a balance. I start from the point of view that there is not much to balance against the clinicians and the people who tend to dominate the boards. Nevertheless, I am struggling to see how the bill would help my constituents and their communities to have a bigger say in Greater Glasgow and Clyde NHS Board, which at the moment has in excess of 50 members. You have suggested that the councillors would stay on. Who would come off the board to create the new places, or would there be additional places?

Going back to the convener's point, I am concerned not just about Glasgow and Clyde. Because of the sheer weight of the number of people involved, Glasgow will dominate not just

rural areas such as Argyll, which the health board serves, but other urban areas such as Greenock. I am interested in how all the people who do not live within the boundaries of Glasgow but are served by the Greater Glasgow and Clyde NHS Board and are dependent on Glasgow for their emergency services would feed into the process.

I take the issues seriously because we were part of a board on which councillors from Paisley, for example, voted for services to go to Paisley and the Royal Alexandra hospital. They were strong and robust about that, because there was no loss in doing that. I suspect that a bit of that might have happened in Tayside, with Dundee and Perth. If we are talking about specialisation and centralisation of services, which go to the cities anyway, and if boards are dominated by city representatives, is it not in their interests to have the services that are on their doorstep built up? That is a big problem for me. I do not know how, given where we are, we will achieve the influence that we require.

The number of boards is another issue. Earlier, the committee had a long debate about what might happen in the future. There is a lot of speculation out there about boards becoming more strategic and their number dropping. Issues have been raised about community health partnerships and how they will become more important.

Who would be appropriate people? I do not know how we achieve the ideal profile, but probably the people who would end up on boards would be not the sick and needy, but the more articulate people who are already well set up. I worry about the list of proscribed people. In no circumstances should places on a board be taken by disaffected clinicians and other such people, because enough clinicians and professionals are already members of boards and their agenda already dominates.

You mentioned strong representation. Does that mean that you would be prepared to consider further at stage 2 the majority of 50 per cent plus one? Might we go from one extreme to another? Is strong representation different from 50 per cent plus one?

**Bill Butler:** No. I will not go 1cm outside the scope of the bill, because if I did that, the bill would fall. I assure you that that will not change.

You talked about the appropriate people to be members of boards—I take it that you are talking about the directly elected element. The appropriate people would be the people for whom people vote. Only democracy does that. One good thing about democracy is that if people make a mistake about a person or a party, they can say at the next election, "We made a mistake and we are voting you out, because you are not representing us."

I hope that a cross-section of society would be elected. Of course, many more people do not have the time to serve on boards and would not want to put themselves forward, but I argue that they would want to have the right to say who would represent them, by putting a cross or several crosses on a ballot paper. That is not much different from the situation in local government and the Parliament. People can look at all 129 of us and say, "They're all appropriate," "None of them is appropriate," or "Some are appropriate." That is democracy.

I take your point about numbers. Mike Dailly of the bill team and I considered removing or reducing the number of executive members, such as NHS chief executives and directors of finance, nursing or public health. However, that is outwith the bill's scope, so we could not include that. However, the matter is up to the minister. If he wanted to remove the voting rights of those executive members so that they returned to being experienced and expert advisers, as they were pre-1981, that would be fine. It would be up to the minister to do that if he felt that the board number was unwieldy, which is one of the issues that you talked about—if there are far too many people on boards, nothing is ever decided. Executive members could simply hold the status of adviser.

That is no different from the situation in local government, where many well-paid experts in fields such as social work and education are senior officers who give advice but do not have a vote. Many people think that one of the anomalies in health boards is that executive members make the policy—so it is claimed—or rather, draw up the paper and then have a vote on it as well. That is a matter for the minister.

Duncan McNeil made a point about one part of a health board area having greater pull than another. As I said to the convener, I acknowledge that that is a concern. I hope that rather than voting for city or town representatives, people would vote on the basis of who was the best candidate. That is my answer.

**Mr McNeil:** I hear your answer and I know that you are a good man who would wish for such things. However, you are also a politician.

**Bill Butler:** Is there a difference?

**The Convener:** In Duncan McNeil's mind, there is.

**Mr McNeil:** Supposing that Greater Glasgow and Clyde NHS Board has 50 members—I think that it has more than that—are you telling the committee that we would need to elect 51 people

to the board, which would mean that it would have 101 members?

**Bill Butler:** I am not sure about your figures. The figures are quite large, but I do not know whether they are as large as that.

**Mr McNeil:** I think that, following the recent amalgamation, the board has 55 members, but I have trimmed the figure back to 50.

**Bill Butler:** Sure. All I am saying is that that is a matter for the minister. All that the bill seeks to do is to place a statutory obligation on the minister to have 50 per cent of members plus one—or a simple majority of them—directly elected. The minister could reduce the number of voting members simply by reducing the number of executive members. That could be done—it would not be impossible.

**The Convener:** I want to clarify what you are saying. You want to leave with the minister the decision about the total size of any health board. All you are saying is that 50 per cent of board members plus one must be directly elected, regardless of the total number of members. In other words, even if a health board had only 15 members, you would want eight of them to be elected.

**Bill Butler:** That is correct. We sought to amend the 1978 act in one respect alone because we wanted to make our proposal as straightforward and simple as possible so that it would have as few unintended consequences as possible. In certain health board areas, the number of board members might be unwieldy if no change were made, but the minister could make such a change.

**Mr McNeil:** You said that you hoped that people would vote for the people who they thought would do the best job. Can I take it from that answer that you do not support the extension of the list of proscribed people, which includes elected representatives such as MSPs and councillors, as well as criminals?

**Bill Butler:** The list is taken from the Representation of the People Act 1983, with a few add-ons. Councillors could still be appointed—there would be no problem with that. The minister could make such a decision. Essentially, the people who would be forbidden from standing for election to health boards would be people who would bring a party-political element to considerations or who were proscribed for other reasons—for example, for being criminals or for being bankrupt. It is as simple as that.

**The Convener:** Nanette Milne has been waiting patiently.

**Mrs Milne:** To some extent, my question has been answered. We all know that community councils are not political organisations and that candidates are not allowed to stand as party-political figures. However, most of us have experience of knowing full well what the politics of community councillors are. That can have a significant bearing on some community council meetings and I would worry about that happening with health boards.

I think that you have answered my other question, which was about having a majority of 50 per cent of members plus one who were directly elected. You spoke about people working together on issues and forming natural alliances. To my mind, that would preclude the need to have such a large percentage of members elected. The goal of having elected representation on boards could be satisfied without stipulating a majority of 50 per cent of members plus one. However, you seem to be saying that that is not negotiable as far as the bill is concerned.

15:30

**Bill Butler:** I am always open to negotiation and I like to be reasonable—I mean that honestly. However, negotiation on the number of elected members is absolutely forbidden; if we went for a greater number, such as 100 per cent, or a lesser number, such as 30 per cent, the bill would fall, because that would go outwith its scope.

The point about community councils is interesting. I said earlier that the situation with community councils is not directly analogous to the situation that the bill would create. The community councils in my constituency are varied. Some of them are excellent and make the system work, but others—I will not name them, because I will be running for re-election next year—want to be as good as they can be but have difficulty attracting people. Sometimes, the people are volunteers rather than what one might call—although I hesitate to use this old Wilsonian term—a tightly knit group of politically motivated men, and women. The serious point is that I know of community councils and other organisations in which, as part of their natural development, people tend to work together for the greater good, although that does not always happen. The bill tries to attain the best possible balance and blend between appointees with experience and expertise, either in the health service or local government, and those who would form the directly elected element, who would seek to represent the views of the whole area.

That would be better than the situation to which Duncan McNeil rightly drew attention, although I forgot to mention it in responding to him. Duncan was right that, until now, the issue has not been about who has the say; it has been that people feel that there is no say, or that there is a say only

for those who are appointed. That situation has to change.

**The Convener:** Nanette Milne's comment about community councils was interesting, because we all know of community councils for which not enough people stand to fill the posts. People have their arms put up their backs to stand and turnouts are low. I do not want to go down the avenue of the remuneration issue, as we have dealt with that. However, one concern is the possibility of extremely low turnouts. That is an issue not only for the elections under the bill—we have an issue about turnouts for all elections.

Another concern is the number of candidates who would stand for election to the boards. The evidence from New Zealand is that the system of remuneration there means that more people are likely to stand whereas, in England, where there is no remuneration, in many cases only one person stands for election. I wonder whether a situation might arise, as for example happens with some community councils, in which not all the posts are filled because not enough people are prepared to put their heads on the chopping block, as they would have to sit in the chairs and make decisions that would not always be popular. There will always be unpopular decisions. How do you respond to that concern?

**Bill Butler:** I admit that that whole set of concerns and dangers will always arise. Throughout Scotland, people have been galvanised into action and campaigning, usually agin proposals, on a range of health service issues. If people were given a chance to develop, in a positive and productive way as part of a health board, the health services that people want and the modernisation that they know is necessary, they would stand for election. People would also be more inclined to think that the election meant something, because it would give them ownership and direct influence, as they would be electing board members who would be directly accountable to them at the ballot box. I believe that people would turn out, but I cannot guarantee that.

You are right that there are varying examples. In New Zealand, there was a 50 per cent turnout in the 2001 district health board elections under a majoritarian system. I am not saying that the new system changed the turnout; I think that there were other reasons why turnout fell to 42 per cent by 2004. For example, 15 per cent of the ballot papers were incorrectly filled in in 2004. There is not simply a systemic issue. There may be a downward trend in turnouts or the figures may simply have been skewed because people were not used to the system. However, people will get used to it.

There are examples from nearer home. There are five wards in which there are direct elections to the Cairngorms National Park Authority. A simple majoritarian system operates in those elections. The person who gets most votes is elected. Turnout ranges from a percentage in the 40s to 66 per cent; average turnout is 59 per cent.

Various examples of low and high voter turnout can be cited, but people will come out to vote if they think that doing so will make a real change to their lives. If my bill is passed, people will think that they will be able to influence the delivery of the health service, which is one of the most important aspects of their lives. However, it is impossible to guarantee that people will stand and that people will vote for them. Even though I am a politician, I will not guarantee that something will happen that I cannot guarantee will happen. However, I think that it is probable that people will stand and that people will vote for them.

**Helen Eadie:** A couple of weeks ago, the Association of Electoral Administrators flagged up to us that the cost of the postal ballot would be between £1 and £2 per person. The financial memorandum estimates the cost of running a postal ballot at around £1 per person. People throughout Scotland will be concerned that the cost could be twice that figure. Is it acceptable to take that amount of money away from health boards' budgets?

**Bill Butler:** I suppose that people would be concerned if things were put in that way, but I will be fair. A range of costs is involved. Mr Pollock of the Association of Electoral Administrators said that the cost of a postal ballot would be between £1 and £2 per elector, although, to be fair, he also said that the cost could be higher than that because many imponderables are involved. The financial memorandum gives the total cost of the elections as ranging between £600,000 and £1.2 million—the figures will depend on whether there is a turnout of 30 or 60 per cent in the elections.

We should consider the detailed evidence that the Executive gave last week. At that meeting, I asked the Minister for Health and Community Care how the Executive had reached the figure of £5 million. I accept that there would be costs, but I hope that they would not be as high as the Executive has estimated they would be. If the bill is enacted, I think that the costs will be somewhere in the middle of what has been estimated.

I have asked the Executive to provide in some detail the costs of the public participation reforms that have been implemented over the past three or four years. I am not a betting person, but if I were, I would bet that those costs will be much higher than the costs that we have discussed in evidence. However, that is fine. If we want

meaningful public participation, we must invest in it; such things cannot be done on the cheap. If we want democracy that works, a ballot that encourages turnout, and people to know about and participate in that ballot, that will cost cash.

In the next financial year, the health services for which the Parliament has devolved responsibility will cost just over £10 billion. It is right that such an amount of money will be spent on those services because they are a big priority for the Executive and for all of us. Even if the proposed health board elections were to cost the top-end £5 million that the Executive estimates, that would be only a tiny part of the health budget. It would be worth it if it led to people not only participating, but feeling that they have a directly accountable representative who will represent their interests. I cannot say what the exact cost will be, but I have recapitulated the evidence session arguments for various costs as fairly as I can.

**Helen Eadie:** There has been a restructuring of Royal Mail costs since your bill was introduced. Have you made any efforts to recalculate the costing of your bill based on the new costs, which caused us all to go, "Ouch!" when they were announced?

**Bill Butler:** No, we have not had time to do that, but we are aware of the changes to which Helen Eadie refers. We will try to look at that and come up with an approximation. My guess is that the recalculated costs will be lower than the high-end Executive approximation. Other representations and submissions have been made by all health boards—seven health boards have said that the cost of the proposals is too high and would divert from front-line services. I accept that their concerns are sincere, but they are overegging the pudding.

As regards Helen Eadie's specific question, we are aware of the possible effect of the Royal Mail price restructure and we are trying our best to estimate how it will change things, but by and large, the cost of implementing my proposals would be between £1 and £2 per elector according to Mr Pollock, what is in the financial memorandum and the Executive. It will be interesting to find out the cost of the public participation reforms, because what is proposed is very good and my bill will add to that.

**Helen Eadie:** What would the cost be in the event of any vacancies arising on health boards? In the Scottish Parliament, if there is a list vacancy the position is filled automatically without any cost being involved, but a large cost is involved if there is a vacancy for a constituency member.

**Bill Butler:** There would be a postal ballot cost for a casual vacancy. I cannot recall the exact figure, but I will write to Helen Eadie and other committee members about that through the convener.

**The Convener:** We have probably exhausted all our questions. I thank Bill Butler for coming. We will discuss our views on his evidence later. I am advised that we will publish our report early in the new year.

**Bill Butler:** I thank all committee members for their indulgence and forbearance.

## Hospital Car Parking Charges

15:43

**The Convener:** Agenda item 5 is car parking charges in Scottish hospitals. Committee members might remember that, as far back as 6 June, we had a round-table discussion about Scottish hospital car parking schemes. At that time, I wrote to the Scottish Executive to raise concerns that arose during the discussion. Our papers contain a copy of the correspondence between the committee and the Minister for Health and Community Care. I invite members to note the minister's response to us. That ends our business in public.

15:43

*Meeting continued in private until 16:10.*

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