

LOCAL GOVERNMENT COMMITTEE

Tuesday 9 January 2001
(*Afternoon*)

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LOCAL GOVERNMENT COMMITTEE

1st Meeting 2001, Session 1

CONVENER

Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

*Mr Kenneth Gibson (Glasgow) (SNP)

*Mr Keith Harding (Mid Scotland and Fife) (Con)

*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

Mr Gil Paterson (Central Scotland) (SNP)

*Iain Smith (North-East Fife) (LD)

*attended

THE FOLLOWING MEMBER ALSO ATTENDED:

Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

WITNESSES

Sandy Cameron (Association of Directors of Social Work)

Jim Gibb (National Association of Inspection and Registration Officers)

Elizabeth Norton (National Association of Inspection and Registration Officers)

Jacquie Roberts (Association of Directors of Social Work)

Ruth Stark (British Association of Social Workers)

Dorothy Sutherland (British Association of Social Workers)

Liz Timms (British Association of Social Workers)

Carole Wilkinson (Association of Directors of Social Work)

Sue Wilkinson (National Association of Inspection and Registration Officers)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Craig Harper

LOCATION

Committee Room 1

Scottish Parliament

Local Government Committee

Tuesday 9 January 2001

(Afternoon)

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

The Deputy Convener (Dr Sylvia Jackson): I welcome members to the new, reformed Local Government Committee of 2001. Following the restructuring of the committees, the committee is smaller. We are not happy to have lost members who gave good service and provided ideas, but we are happy to welcome a new member of the committee, Iain Smith, who has a lot of expertise in local government. Do you have any interests to declare, Iain?

Iain Smith (North-East Fife) (LD): None to declare formally.

The Deputy Convener: Does the committee agree to take the consideration of the paper "Modernising the Complaints System" in private, as is our normal procedure?

Members indicated agreement.

The Deputy Convener: I should have mentioned that apologies have been received from Gil Paterson.

Reporters

The Deputy Convener: Next on our agenda is the appointment of reporters. We are looking for a member of this committee to attend the Health and Community Care Committee when it considers the Regulation of Care (Scotland) Bill, and for a member to attend the Social Justice Committee—formerly the Social Inclusion, Housing and Voluntary Sector Committee—when it considers the Housing (Scotland) Bill.

Interest in attending the Social Justice Committee has been expressed by two members: Michael McMahon and Kenny Gibson. I do not know whether both would still like to attend that committee.

Mr Kenneth Gibson (Glasgow) (SNP): I am willing to wrestle for it, if Michael McMahon is up for it.

The Deputy Convener: If you are both willing, the only option for us is to vote on it. We can appoint only one reporter.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): Kenny Gibson might favour the more physical way, but I, being a democrat, would prefer a vote on the matter.

Mr Gibson: Michael McMahon may think that he has more chance in that type of competition than in the other.

Iain Smith: I thought that decisions were reached by consensus in this committee, not by voting.

The Deputy Convener: We rarely have a vote.

Mr Gibson: We did that for the first 13 months, but I am trying to liven things up a bit.

Iain Smith: Just as I arrive.

The Deputy Convener: Come back quickly, Trish Godman. I should have explained that apologies have been received from Trish Godman, which is why I am in the chair today. She will be absent for several weeks, while we consider these two bills.

I understand that neither Michael McMahon nor Kenny Gibson is especially willing to attend the Health and Community Care Committee.

Mr Gibson: When the third meeting of that committee is held, I shall be in Dublin, representing this committee, so I would be unable to attend all three meetings. It would not be appropriate for me to act as a reporter if I missed a third of the meetings.

The Deputy Convener: We may have to divide that role in any case. Michael, do you still want to volunteer for the Social Justice Committee?

Mr McMahon: I was under the impression that the committees met at the same time.

Mr Gibson: No. They meet on separate days. The Social Justice Committee meeting will be on the Wednesday and we come back on the Tuesday night. The Health and Community Care Committee will meet on the Tuesday morning.

The Deputy Convener: The Health and Community Care Committee meeting is on 30 January and the Social Justice Committee meeting is on 31 January.

Michael, do you still want to go to the Social Justice Committee meeting?

Mr McMahon: To be honest, I must have misread my e-mail. I understood that the meetings were taking place at the same time. I assumed that it would be impossible to go to both and I examined only the social justice side of the issue. I have given no consideration to the health issues. In the light of that, I would rather be the reporter to the Social Justice Committee.

The Deputy Convener: I think that we must have a vote.

Mr Gibson: What will we vote on?

The Deputy Convener: We will vote on which of you will be the reporter.

Mr Gibson: I hoped that Michael McMahon would agree to go to the Health and Community Care Committee, which would allow me to go to the Social Justice Committee. If Michael goes to the Social Justice Committee, we have no one who is able to attend the other committee.

The Deputy Convener: We will deal with that separately. Keith Harding has expressed an interest in going to some of those meetings, but he is unable to attend the third one as he will be in Dublin. We might be able to find someone else to attend that one.

Mr Gibson: Go on, Iain, now is your chance.

Iain Smith: I will be in Dublin as well, so I am in the same boat as the rest of you.

The Deputy Convener: I will not be in Dublin, so I could fill in for Keith at the third meeting.

Do both of you still want to go forward as reporter to the Social Justice Committee?

Mr McMahon: I would much prefer to do that. As I said, that is the only one that I had considered.

Mr Gibson: That is the only option that I have.

The Deputy Convener: We will have a vote.

The first question is, that Michael McMahon act as reporter to the committee for stage 1 of the Housing (Scotland) Bill. Are we all agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Jackson, Dr Sylvia (Stirling) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
Smith, Iain (North-East Fife) (LD)

AGAINST

Gibson, Mr Kenneth (Glasgow) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)

The Deputy Convener: The result of the division is: For 3, Against 2.

The second question is, that Kenneth Gibson act as reporter to the committee for stage 1 of the Housing (Scotland) Bill. Are we all agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Gibson, Mr Kenneth (Glasgow) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)

AGAINST

Jackson, Dr Sylvia (Stirling) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
Smith, Iain (North-East Fife) (LD)

The Deputy Convener: The result of the division is: For 2, Against 3.

Michael McMahon will be the reporter to the Social Justice Committee.

We have agreed that Keith Harding will go to two of the meetings of the Health and Community Care Committee and I will go to the third one.

Regulation of Care (Scotland) Bill: Stage 1

The Deputy Convener: We have with us representatives of various organisations. The first organisation from which we shall hear is the Association of Directors of Social Work. Jackie Roberts is the director of social work at Dundee City Council, Sandy Cameron is the executive director of South Lanarkshire Council and Carole Wilkinson is the director of social work and housing at Falkirk Council. We will allow our witnesses some time to outline what they think are the main issues before we ask our questions.

Carole Wilkinson (Association of Directors of Social Work): I thank the committee for allowing us the opportunity of appearing here today. I will make a few general remarks before saying something about the proposed Scottish social services council and the Scottish commission for the regulation of care.

The Association of Directors of Social Work welcomes the bill and supports its intentions of safeguarding vulnerable people and of giving the public confidence in social work and social care services. We specifically support the range of services that is covered by the new regulatory system, the emphasis on quality—in both care services and the education and training of staff—and the focus on achieving a well-trained, motivated and regulated work force.

I will make four points about the proposed Scottish social services council. The first relates to the inclusiveness of the proposed register. Members may be aware of the considerable debate about who should be included on the register, particularly in the early stages of registration. We are well aware that the work force is diverse, and that regulation will be a complex task. However, we stress, as we have done all along, the importance of the register's inclusiveness and of achieving it in good time. The public will assume and expect that all social workers are registered. We are particularly concerned that the bill as introduced appears to suggest that all workers will immediately be registered. That will not be the case.

Our second point relates to the promotion of the service and of the work force. We hope that the Regulation of Care (Scotland) Bill and what follows it will encourage ministers and other MSPs to promote social work and social care as an important area of work that contributes significantly to the lives of vulnerable people. The ADSW, like many other organisations, is concerned about the recruitment and retention of social workers. Key functions of the Scottish social services council will be to undertake work-force

planning and to ensure that training and education are developed for the work force.

Members may be aware that there is great concern in England, particularly in the south, about the recruitment of staff, and that there is a severe staff shortage. We in Scotland do not face that problem at the moment, but the association and others are actively considering the issue of recruitment so that we avoid some of the difficulties being experienced in England. One of the factors of recruitment relates to image, and it is important that we use the opportunity provided by the bill to promote the positive aspects of social work and social care.

The third concern that we wish to draw to members' attention is the protection of the title of social worker. We welcome the bill's coverage of that, but suggest that it needs more work and needs to be reinforced by a clear definition of what tasks are expected of a qualified social worker alone.

Our fourth point concerns the role of the chief social work officer. We would like the bill to include reference to the chief social work officer as the fit person for registration purposes and as the senior officer responsible for ensuring that codes of conduct and codes of practice are applied and are adhered to. In the current context of changing organisations, we feel that that needs to be stated clearly to ensure that everyone knows where responsibility lies for those areas of work. We can say more on that if members wish to ask us questions about it—or indeed about any of the points that I have just made about the Scottish social services council.

I come now to the Scottish commission for the regulation of care. We have four points to make about it as well. First, our overriding concern is to ensure that best practice in the current arrangements is carried forward, and that standards are improved further. We are concerned that the bill specifies only one inspection per year, specifically for residential care services. We want there to be two per year; to have only one is a dilution of the current system. We accept that self-evaluation will be a useful tool, but it will only work if it is carried out alongside on-site inspections. The impact of inspectors carrying out on-site inspection visits cannot be underestimated.

Our second point relates to inspection fees. Work on the implications of the financial arrangements for local authorities is not complete. We, as both providers and purchasers of services, are very concerned about the impact of fees on the new regime. We also remain concerned about the belief that the commission can achieve self-funding through fees: we do not think that that is achievable. It is clear that the imposition of fees on local authorities will draw on community care

moneys. We pose the question whether that is the best use of the community care pound.

14:15

The third issue concerns the complex area of complaints. We must work hard to achieve the interface between current procedures—the statutory complaints procedure, personnel procedures in councils and organisations and child protection procedures. When the Scottish social services council and the Scottish commission for the regulation of care come on stream, that area has the potential to become more complex and confusing.

We suggest that the statutory complaints procedure probably needs to be revisited and reviewed first. It is important that the procedures of the new commission link well with other complaints procedures. Wide consultation will be required to ensure that all those complaints procedures fit. The other point about complaints procedures is that, as well as fitting, they must be accessible, particularly to those people who wish to make complaints.

The fourth point, which relates to care services, is simple to state but not simple to achieve. We are concerned that the definition of personal care is not adequate or sufficiently full. We would like that definition also to cover aspects of social care, so that we can avoid some of the continuing debates about what constitutes health care and what constitutes social care.

We will comment on two other areas. It would be remiss of ADSW not to support whole-heartedly the idea of the development of the children's commissioner. We hope that, in Scotland, we will draw on the work that is being done in Wales and that we will seek actively to draw out the best of the Welsh model. While we are particularly concerned about the emphasis on support for children, we wish to ensure that the role of the commissioner is meaningful and works. Otherwise, the purpose of the commissioner will be devalued.

Finally, on structure, we are well aware of the debate about whether there should be one body or two. It is of primary concern to ADSW that, if there is to be two bodies rather than one, both sides of the work of the council and the commission should work well together. Linkages should be established and the quality of staff recruited should add to the credibility of what is an important development for social work and social care.

We are happy to answer your questions.

The Deputy Convener: Do either Jacquie Roberts or Sandy Cameron wish to add anything at the moment?

Sandy Cameron (Association of Directors of Social Work): No.

Jacquie Roberts (Association of Directors of Social Work): No.

The Deputy Convener: I open up the discussion for questions.

Iain Smith: I will follow on from the final points that Carole Wilkinson made about whether there should be one body or two and about the fact that the bodies should work together. Those points were also referred to in the ADSW written submission.

Could you outline some of your concerns about what might go wrong between the two bodies if adequate or proper communication and co-ordination does not take place between them? That would give us a clear idea of your concerns.

Sandy Cameron: The functions of both bodies are interdependent and much will hinge on the effectiveness of the codes of conduct and the codes of practice.

The Scottish social services council, as established, will not have an executive arm, if you like, to check on how effective the codes will be out there; it will rely on the officers of the commission for that. There must be proper and effective communication on issues between the bodies. We believe that it is vitally important that that function is spelled out strongly in the bill and that careful consideration is given to whether we need two separate bodies or one body operating under one structure. Perhaps one body, with separate functions, by all means, and with appointed bodies to oversee those responsibilities, but with a common core management, would ensure effective communication between the functions.

It will also be important for the public to have a straightforward and readily understandable mechanism through which they can raise their concerns. There is a danger of confusion—for example, is this issue for the commission or is it for the council? We believe firmly that there must be a one-door approach, and it would ensure that the public's concerns were addressed properly if the bodies were to become one structure.

We believe that the legislation is extremely important. Sadly, it is necessary because, while the vast majority of our work force are dedicated, committed and highly caring people, other people with improper motives find their way into the social services work force; therefore, bodies such as these two are extremely important. From the outset, the public must have confidence in the bodies. If there were a failure of communication, irrespective of the good intentions of the legislation, the credibility of the bodies would

quickly fall. Things should be set up to ensure that the public get the robust mechanism that they need and want, to protect our most vulnerable citizens.

Mr Gibson: At the bottom of the first page of your submission, you write that you are

“concerned that the current planned Scottish Executive increases in total revenue grant to councils over the next three years may not be sufficient to meet all the additional burdens placed on councils over that period, including those arising from this Bill.”

What would be the bill's impact on the service if resources were not there to fully fund those burdens?

Jacquie Roberts: Local authorities purchase 80 per cent of the places in all the independent homes anyway, so the burden of fees for the purchase of care will be passed on to the local authorities. At the moment, no finance is available in the budgets for funding the fees on behalf of the local authority providers. There is no guarantee in the three-year grant settlement that there will be enough funding for local authorities to put in the money for registration fees. It is expected that the cost for the commission will go up to at least £100 per bed.

Mr Gibson: How can that gap best be closed?

Jacquie Roberts: By central funding.

Mr Gibson: So what you want is a guarantee from the Executive that it will provide funds?

Jacquie Roberts: Yes.

Mr McMahon: On a number of occasions, representatives of local authorities and the service providers within local authorities have come to the committee and complained about interference from ministers and outside bodies. Will the bill change that? What powers do you think that the ministers should retain? Will they retain too many powers? How will the bill impact on the services that you hope to provide?

Carole Wilkinson: Especially regarding the commission, providers will welcome the fact that there will be an independent body that regulates care services. One of the justified criticisms at the moment is that, while regulation is carried out by local authorities and health boards, there is a perception—not always a fair one, but a valid one—that local authority services are dealt with differently. Having an independent body, overseen by ministers, will be welcome.

The bill as drafted seems okay. The devil will be in the detail and the implementation, which all of us will want to watch. However, the association has never felt that the balance is tipped too far towards ministers. We are not worried about that.

Jacquie Roberts: I would add that we would support an independent and consistent system of regulation. That will protect many more vulnerable service users. The most important thing for members of the public and local authorities will be to have a good system of local presence, so that people know how to contact the national commission and council through a local office.

Sandy Cameron: The credibility of the formally appointed bodies will be strengthened by the fact that there is a clear intention to involve service users and their carers. They will have a direct input, which is consistent with modern policy and absolutely appropriate.

We have to recognise that, if service users and their carers are to be involved in bodies such as the commission and council, they will need proper support to enable them to make the best contribution. It will be equally important to ensure proper liaison between the bodies, local authorities, health boards and local communities. We would worry if there were no local control over that. At present, the arrangements are a bit deficient in ensuring that there is a proper mechanism for consultation with people who have experience of the services and of the impact that decisions have at a local level. Early on, it will be important that the bodies establish those types of mechanisms.

Mr McMahon: You seem to be happy with what is in the bill, but you have raised a couple of concerns about how things are interpreted and how they should be put forward. Are there major omissions and gaps that require to be filled in?

Carole Wilkinson: We are generally happy, because the process has been one of consultation all along. The ADSW has felt that it has been able to put forward its points of view, and as a result of points that we have made, we have seen changes along the way. It has been a positive process, which is a point that I should have made formally. We do not think that there are great omissions, because there was the opportunity to make our points.

The concern that we have always raised is the first point that I made, which is about how quickly the registration of social care staff will include all significant groups of social care staff. While we recognise that it is difficult, there needs to be a timetable; otherwise, the public will believe that all staff are registered, and will only discover by default that they are not. Qualified social workers, residential child care staff and some home manager staff will be included, but that leaves out a whole range of social care staff who will not initially be registered, and it could be a few years down the line before they are. That is not a message that will instil confidence that the work force is registered and monitored.

Sandy Cameron: In terms of the principles of the bill, which you are considering, that is a crucial issue. The bill allows for wider registration, but the explanatory memorandum does not give a great deal of comfort that there will be speedy movement towards registering the entire work force. Even as additional groups are added, the majority of the social services work force will not be included in the scope of the register, although they will be included within the scope of codes of conduct and codes of practice.

However, there is no mechanism for dealing with breaches of those codes of conduct. For example, if a home help behaves contrary to the code of conduct by stealing from a client, as sometimes happens, and the employer deals with that person, there is no mechanism to stop that person going to another agency or local authority and getting a similar job. There is no mechanism for the social services council or the Scottish commission for the regulation of care to record that. That could bring those bodies into disrepute in the eyes of the public, who will believe that they are protected. A mechanism has to be found to deal with breaches of codes of conduct and to consistently track people in the work force whose past history has caused concern.

Jacquie Roberts: May I add that there are more than 80,000 users of the home care service and the number is growing, so the problem is significant.

Mr Keith Harding (Mid Scotland and Fife) (Con): What are the implications of the new provisions for planning, managing and delivering services to the required standards?

Sandy Cameron: For all providers there will be a new challenge in terms of the scrutiny that there will be and the standards that are being set. The National Care Standards Committee, which is the body that is advising Scottish ministers on the standards that will be implemented by the Scottish commission for the regulation of care, clearly has an important role. It is setting standards across the range of providers, including for the first time local authority providers, that will have to be met. Managers in all services will have to be clear about the standards that they have to meet.

Within the local authority sector, responsibility for ensuring that a local authority is advised on the standards that must be met and responsibility for determining how the local authority is performing against them must lie with the chief social work officer, which is a statutory position. There must be someone in each local authority who is clearly identified as the person who will be responsible for advising the council and ensuring that standards are met.

14:30

Carole Wilkinson: The work of the commission and the council involves a huge training agenda for staff. There will be clear implications for training and education if we are to make staff fit to be registered and re-registered. There are major implications for us and for the large group of social care workers, many of whom do not have ready access to courses and qualifications. For some, there is not yet a clear qualification route. One of the council's jobs will be to create those pathways. Managers and planners in social care organisations will have to develop training for staff to ensure that they are fit for registration.

Mr Harding: Does that mean that there will be large cost implications for local government from such additional training?

Carole Wilkinson: Yes. The explanatory notes to the bill suggest that some of the training resources that are available will meet requirements. That is fine up to a point, but additional training resources will have to be allocated to local authorities and the voluntary and private sectors to meet needs.

Mr Harding: Will you seek central funding for that?

Carole Wilkinson: Yes.

The Deputy Convener: I would like to check what the witnesses are saying, because it is useful. You are considering all social work, rather than just social workers. Are you saying that there could be much wider registration than the bill expects and that there should be a time scale for such registration to give people confidence?

Carole Wilkinson: Yes, if that is helpful. When the initial drafts of the bill were produced, it was clear that small cohorts of staff were lined up to be registered first. Field social workers and some residential care staff were priority groups. Many bodies, including ours, made representations that the number of staff ought to be increased and that some groups of staff should be included sooner than originally planned. Those representations were taken on board. The clear message is that the intention is to create an inclusive register that covers all staff. Our concern is that the bill may not help people to understand that that process will be gradual. We remain unsure about the timetable. If it were clear which staff were registered, there would be comfort not just for people such as us, who manage services, but for the public, and, I suggest, for the committee.

Sandy Cameron: We recognise that registering a work force in excess of 100,000 people on day one would be extremely difficult. However, mechanisms could be identified to require people who were not placed formally on the register—by

the council in partnership with employers—to sign up to the codes of conduct at least. That would make it clear that, if they breached those codes, the council would be notified of that breach. Subsequently, employers would be expected to check whether a council held the names of new employees on such a list. Such a clear and formal mechanism would protect the rights of those people as well, because it would let them know what they were engaged in when they joined the work force. It would be more important to put that in place than to set a lengthy time scale.

The Deputy Convener: You said several times that image is important. I think that you said that the title and meaning of “social worker”, and the phrase “social care”, needed to be expanded. Will you explore that issue a bit more? Jacquie Roberts said that she might return to it.

Jacquie Roberts: It is important for members of the public to know that the qualified social worker undertakes statutory tasks that require in-depth training and skills for quite risky assessments of potential risk to people in the community. We must set out a list of tasks that qualified social workers are expected to undertake. That could be clarified in the regulations.

Social care is a broad definition. We support the definition of social services workers. We anticipate an increase in the number of social services workers, especially given the recommendation of the joint future group that an increasing number of vulnerable people should be cared for in one way or another in their own homes, rather than in hospitals.

The Deputy Convener: That is a good point.

Sandy Cameron: The prescription of the title “social worker” is welcome. The term is applied—often in the context of negative publicity—to people who are not qualified social workers. The legislation provides for people who hold a social work qualification—currently the diploma in social work—to be eligible for entry to the register.

However, the use of the title and the eligibility for entry to the register do not deal with what can be done only by people on that register and holding that qualification. An unscrupulous employer might decide not to bother with the hassle of having people who are on the register and, instead of calling their employees social workers, which would be an offence, might call them—for the sake of argument—community care workers. According to such employers, those workers will do everything that a qualified social worker can do. That would be misleading to the public, in their requirement for a professional service.

Social work is a difficult task; it is not readily defined. However, it is work that needs to be done and attention must be focused on going beyond

the current provision in the bill to require the council to define those areas of activity that only people who are on the register would be authorised to undertake.

Iain Smith: You raised some concerns in your written submission about the complaints procedure and the local interface. Could you expand on what you would like to be introduced—through the bill or the regulations—to ensure that there is an adequate complaints procedure and adequate local involvement in the services?

Carole Wilkinson: The issue is less about whether procedures are adequate than about the inevitable link between the procedures. For instance, under the statutory social work complaints procedure, a young person might complain about abuse or neglect by a social worker. That could end up being investigated as part of the child protection complaint. Clearly, a complaint against a member of staff has to be dealt with under the council's or the organisation's disciplinary procedures—their personnel procedures.

We need to have a means whereby those procedures do not trip over each other. An employer does not want to miss out procedures, but they also do not want to undermine procedures that might help them to deal with the member of staff if they are found to be guilty. If a criminal offence has been committed, the police would not wish us to undermine their investigations in any way.

At the moment, in a local authority service, most of that procedure is contained within the local authority. Once the commission, as an external national body, has complaints procedures to deal with the homes that it regulates and once the council has procedures to deal with the staff whom it registers and requires to adhere to codes of conduct, the process will be even more complicated.

We must ensure that everyone understands those complexities and has in place protocols to help us to make the links, so that all the procedures work in the protection of vulnerable people, which is what could fall by the wayside. In doing that, we must also ensure that the new council and commission consult widely before they put their procedures in place, so that they do not miss any of the important elements of that complicated process. The statutory complaints procedure is some years old; it dates back to legislation from the early 1990s. It might be appropriate for the Executive to revisit that and to check that it fits with the 21st century and with the council and commission.

Sandy Cameron: Currently, local authorities have advisory committees for the registration and

inspection function, which comprise elected members and representatives of providers, service users and carers. That local interface would be lost under the new legislation. Until now there has been local influence over the standards that are set and the performance of the registration and inspection function.

Although we are not advocating a mechanism at local authority level, we think that local authorities should be brought together at least on some geographic level. It is important that there should be an effective local liaison and co-ordination mechanism between the commission and the council and the local authorities, health boards and other local interests. The commission could establish local co-ordination sub-committees under the chairmanship of a member of the commission to ensure that there is a mechanism whereby the local voice can be heard on the performance of the body, the standards that are being set and the issues that arise from service delivery.

Mr Gibson: Do you have any concerns about the omission from the bill of some services for young children? I am thinking of nanny agencies, recreational clubs, uniformed organisations and so on. Should such services be included in the bill?

Jacquie Roberts: In an earlier submission, we suggested that nanny services should be included. We also highlighted the fact that the bill does not mention adoption and fostering services. The intention, as we understand it, is to include adoption and fostering services in the range of services to be registered, so we have some concerns.

Sandy Cameron: There is a wider concern, which the bill does not refer to, on the implementation of the consultancy index, as recommended by Lord Cullen's inquiry following the Dunblane tragedy. That would provide a mechanism for vetting people in a wide range of agencies. We think that there needs to be a close link between that index and the functions included in the bill, to ensure that there are no gaps that people can fall through.

Mr Gibson: And to ensure that those who should not be working with children are excluded.

Sandy Cameron: Yes.

The Deputy Convener: It has been mentioned elsewhere that simply to have a central commission and council and then the regional set-up might not be sufficient and that we might need something at local level. You mentioned the importance of local liaison and co-ordination. Do you see that as filling the gap, or do you think that there should be more at local level?

Sandy Cameron: A structure could be put in

place to allow a national body to consult locally. We would not want to move away from the positive drive towards setting national standards that apply across the whole country. There will be local variations because the country varies in geographical dispersal—different types of services are appropriate to different areas. However, the standards that Scottish citizens expect to receive should be the same throughout the country.

Local access is also important. From the early stages of the white paper, there seemed to be a fixed point about the new bodies having five local offices. We do not see why five is a particularly important number. It is important that, as early as is possible within the proper mechanisms, the bodies are appointed and can begin work on the detail of how they are deployed. Once they are in place, they must take into account how many local offices they need to ensure that the public and local services have proper access.

Close local liaison will be important. At present, if a local authority decides, as a registration body, that it will take action to deregister a service, it must also take responsibility for picking up the pieces and make alternative arrangements for service users. The commission and the council will not have the resources to do that. They must therefore work closely with local authorities and health boards on local issues. Ensuring that those aspects are properly structured into the way in which the new bodies deploy themselves will be crucial from the outset.

The Deputy Convener: Thank you very much for giving evidence. The points that you have raised have been extremely useful.

We now welcome witnesses from the British Association of Social Workers. I introduce Ruth Stark, professional officer, Dorothy Sutherland, Scottish convener of the BASW, and Liz Timms, deputy chair of the UK organisation. The witnesses have five to 10 minutes to outline some ideas based on the information that they have given us. We will then ask questions.

14:45

Dorothy Sutherland (British Association of Social Workers): Good afternoon. The BASW welcomes the bill. I will pass on to our professional officer for Scotland, who will speak to our submission.

Ruth Stark (British Association of Social Workers): The paper that we submitted welcomes the introduction of a commission and a separate council. We may want to return to that issue later, as we have clear ideas about there being two separate, independent bodies.

On page 2 of our submission, we have listed

some of the issues that we noted from the bill, the explanatory notes and the policy memorandum. First, we would like fieldwork services to be included in the work of the commission. We make that recommendation in particular because some social workers are left working to the commission and the council, as regulatory bodies, but a whole body of social workers are left working to just the council. We feel that that creates an unnecessary division within the work force. We also support ADSW's submission that a wider range of services should be included, including fostering and adoption.

We were puzzled by the fact that the bill includes the code of practice for employers in the work of the council. Logically, the code would seem to be the work of the commission on services, because it is about what employers do. We therefore suggest that the code fits more properly with the work of the commission.

We note the issues in relation to naming—"social workers" being those with the diploma in social work, with others being called "social service workers"—but feel that, although the distinction may be clear in the bill, it may not be clear to the media, either when people speak to the media or when the media describe what social service workers do. There will probably have to be further clarification in the primary legislation.

On the way in which the council and the commission work together, one of our concerns is that when someone makes a complaint there should not be trial by media before there has been a proper investigation and proper deliberation of the matter. The matter should be dealt with by the council or the commission, or both, whichever is appropriate.

We have concerns about the role of Scottish ministers and the council under section 41, especially in relation to the training of social workers. We wonder whether some of the provisions in section 41 might undermine the role of the council in determining standards that would be set for social workers and social service workers. We have highlighted the subsections that we are concerned about.

We welcome the new structure, which we have advocated for 20 years. We want a regulatory council for the work force. However, we also want investment in the work force—in people as well as in structures. We are concerned about the training and retention of social service workers. We are currently losing social workers and social care workers faster than we can replace them, so we are heading for a recruitment crisis in Scottish social services. That follows on in some respects from the problems that people are facing in England. The south-east of England, in particular, has severe problems in the recruitment of social

service staff.

Mr Gibson: In your submission, you mention alternative wording for section 41. Do you have a specific alternative wording in mind?

Liz Timms (British Association of Social Workers): I will not go back to the detail of the bill as I do not have it in front of me. We suggested that reference be made to the qualifications of those workers defined as social workers, such as the diploma in social work, the certificate of qualification in social work, or their equivalents—we must remember that the bill has to cover workers qualified in Britain and workers from other countries with equivalent qualifications who enter Scotland to work in social work. Should the rest of the UK take a different route, which I do not expect it to do, such a provision could take account of any differences.

Mr Gibson: You state in your submission that

"BASW seeks from this legislation an independent scrutineer that will safeguard social work service users".

Will you expand on that?

Ruth Stark: Before we move on to that, I will add to our response to your question on the wording of section 41. We suggest that the functions in paragraphs (b) and (c) of subsection (1) should be functions of the council—they should be moved from the part of the bill that is about the Scottish ministers to the part of the bill that is about the council.

Mr Gibson: That is helpful.

Ruth Stark: I also draw your attention to section 41(1)(e), which mentions occupational standards. The bill needs to explain that more fully. I do not have a new wording for that, but it is why we referred to what the JM Consultancy paper said about what social workers do. This is not only about occupational standards; it is about how people who are social workers make decisions about other people's lives. That is professional decision making, but the bill makes no reference to professional standards, which is a key area for social workers.

Liz Timms: For us, the key thing is that professional social workers will exercise professional judgment and have professional autonomy within the confines of their employment responsibilities. However, we understand that such judgment and autonomy are professionally accountable and that the thinking of professional workers stands independently of employers and politicians—professional workers make professional judgments based on their professional training.

Ruth Stark: That is why we feel it important to differentiate between the commission, which deals

with services, and the council, which deals with the workers. Otherwise, there might be a conflict of interest. For example, a task that an employer might interpret as occupational might be interpreted by the council as professional. Such problems must be sorted out properly and fairly, which is one of the reasons why we advocate the establishment of two separate bodies.

The Deputy Convener: I call Keith Harding—

Mr Gibson: Hold on—I have not had an answer to my supplementary question about the independent scrutineer that was mentioned in the submission. Can you expand on your comment that

“BASW seeks from this legislation an independent scrutineer that will safeguard social work service users in all sectors”?

Ruth Stark: That has emerged from our experience. Because there has never been a council or commission in the way that the bill proposes, there has been a series of well-publicised public inquiries into what social workers do and do not do and where the buck stops. Although we want something that will act as a scrutineer of our work and examine how we operate, we are also looking for a fair, inquisitorial system instead of a system that is adversarial, as some inquiries have been. If we are going to have a system that will scrutinise what we do, please let it be just.

Mr Gibson: Is it your hope and expectation that such a system would improve retention levels and help to attract more people to the profession?

Ruth Stark: Absolutely. One of the current difficulties is that social workers perceive that the buck stops with them. A code of conduct for the employer will allow us to say, “Hang on—that is an issue for the employer, not for us.” Although we will put up our hands and admit responsibility if we get something wrong professionally, there are other issues to consider, such as organisation and employment structures. We need a clarity that has not previously existed.

Mr Harding: What are the implications of the bill for social work as a profession? I do not see how the bill will begin to address your recruitment problems.

15:00

Liz Timms: I am not sure that the bill will directly help with such problems; I think that they will have to be dealt with in other ways. That said, we hope that the bill, which is a major step forward, will set standards and increase public confidence. Furthermore, we hope that, as a result of a climate of increased public confidence in social work services—and in social services generally—more

people will want to be associated and work in such an area instead of in an area that has frequently been demeaned and attacked by the press. We have not often had a strong base from which to defend standards. The bill will help us to defend standards of service to the public. I hope that that will lead to increased recruitment.

A crucial result of the bill, which will affect all social service workers and about which we are pleased but a little apprehensive, will be to require workers to take responsibility for their practice. All workers will have to take responsibility for their own practice and be accountable for it, ultimately to the council. That is difficult for social service workers across the range, who are not well provided with training at the moment. However, professional social workers are qualified and I think that it should be possible to call us to account for our practice, wherever we practise. The bill will make it clear that we are individually called to account. We will have to register and account for our practice individually. That represents a major change. We will not be able to tuck our practice away under our employer's responsibility to help us to practise, but will have to account for it ourselves. That is important, but it will require much training and support, and good investment in staff.

Mr Harding: Do you envisage a major resource implication for training?

Liz Timms: Yes, although I do not know how major that resource implication will be. I am not an expert on the details of the financing, but I expect that there would be large cost implications from the training of the wider field of social service workers—there is training already for professionally qualified social workers. However, we understand—the bill is a little unclear on this—that re-registration will require continuing professional development. We would like that to be made clearer in the bill. If that is the case, that will have a cost implication. Will the cost of that development fall on individual workers, on agencies that employ them, or somewhere else? The salaries of social workers are not adequate to cover substantial costs of continuing professional development.

Ruth Stark: The basic grade social work salary range is £17,000 to £23,000. People who are being paid salaries in that range are asked to take on duties in relation to mental health, child protection, the elderly, people with dementia, and criminal justice work. In all those areas, people on relatively low salaries are making key decisions.

Mr McMahon: I would like to clarify what you seek from the bill. The conclusion of your submission says:

“There is concern amongst members that some of the

measures that would lead to the transparency of the Commission and the Council could be contained within the legislation rather than in the subsequent Rules and Regulations."

Would you rather that those measures were included in the bill, or would you prefer that they were omitted from the bill but included in regulations?

Ruth Stark: We would rather that those measures were included in the bill. For example, issues such as the standard of proof that will be required in considering whether to deregister somebody—it is suggested in the explanatory notes that the standard of proof should be the balance of probabilities, as used in civil law—should be addressed in the bill. We are talking about a proper scrutinising council and about service users who are vulnerable people—often they are children and young people; if the bill does not specify the standard of proof that we will accept as the one by which we will judge, it is devalued.

Mr McMahon: Is there not a danger that if such matters are included in the bill, later changes—new standards or developments in social work—will require new legislation, rather than a change in guidance? Would not that make it more difficult for the social work profession to develop?

Ruth Stark: Yes.

Liz Timms: We are talking not about occupational standards, but about the standards of proof when action is taken to deregister someone. As I understand it, there are only two standards of proof: the balance of probabilities and beyond reasonable doubt. The explanatory note shows a desire for the standard of proof to be the balance of probabilities. We do not understand why that has been left out of the primary legislation, for someone else to decide upon later. That decision should be committed to the primary legislation—we want to commit the bill to taking the balance of probabilities as the standard of proof.

Mr McMahon: Is that what your conclusion is driving at?

Liz Timms: Yes.

Ruth Stark: In children's hearings, before action is taken in respect of a child, the standard of proof that must be satisfied is the balance of probabilities. Why should we have a different standard? We are talking about people who could be looking after children. The standard must be the balance of probabilities rather than the criminal standard of proof.

Mr McMahon: That complicates the matter for me. We are talking about subjective choices. Can legislation contain such subjective decisions? Things are not as black and white as they might at

first seem. If that were to be put down in black and white, in the primary legislation, we would be tying the profession down to a specific set of standards and practices. If that were in the regulations, rather than in the primary legislation, it could be adapted at a later stage without the need to relegislate.

Ruth Stark: It depends on the standard that the Parliament wants to set. We are suggesting a relatively high standard of expectation for the work force to work to. The standard of proof for health care professionals, for the purposes of the General Medical Council and so on, is that of beyond reasonable doubt.

We need to consider the users of our services. They are not necessarily in the strongest of positions. We must decide where to set the quality level.

Iain Smith: I want to return to the issue of having two separate bodies, which we discussed earlier. You seem to be suggesting that the council be totally separate, as a professional council for staff, from the commission, which would set the standards for the service providers. What would happen if there were a conflict between the aims of the commission and the council? How would that be resolved if the two bodies were completely independent?

Liz Timms: I had the advantage of hearing the comments of the ADSW and I do not think that our views are that far apart, with the exception of the final decision.

We agree with the ADSW that it is essential to have the best communication between the commission and the council. We must monitor the implementation of the legislation, to ensure that the protocols are clear about that communication. We are saying that the commission and the council need to be distinct, not separate. The commission will deal with the regulation of standards of services; the council will deal with the registration and regulation of the work force. Those are two separate but crucially linked parts of social services, and the regulatory bodies also need to be linked but distinct, with clear and good communication between them.

In the development of any procedures following the implementation of the legislation, we will need to be careful in establishing communication procedures. We have no aversion to basing the commission and the council in the same headquarters; however, they must be conceptually distinct and regard themselves as distinct bodies. We are concerned about the sort of issues that might arise through fudging if there was only one body. There might be a lack of clarity in respect of what was happening to members of the work force and to the services. Because of the interlinking in

the operation of social services, between the work force and the agencies, there must be a distinction between the regulatory bodies, so that we can determine when we are dealing with a worker and when we are dealing with an agency or service.

Ruth Stark: There is also the issue of the way in which social services have been delivered in the past and the way in which they might be delivered in future. When I first started out in social work, in the early 1970s, most of those who were training to be social workers anticipated that they would be working with the local authorities and local government. Many of our colleagues have now moved out into the voluntary and independent sectors or have taken on individual work.

The way in which social services are delivered could change again over the next 20 to 30 years. This legislation is setting up two bodies that will co-exist over that period, so they must not only meet present needs and address the historical gaps in the regulations, but look forward to the way in which social services might be provided in future. Thinking ahead, I believe that it is important for the commission and the council to be distinct, as they have quite different jobs. There might be conflicts that will need to be resolved at some level, but bringing those two bodies together under one head would not be the answer.

Liz Timms: Such conflicts might be easier to deal with if the two bodies were separate, whereas there might be confusion if they were joined together.

The Deputy Convener: Let us talk about social workers and your association. Do you think that your association will change in any way as we adopt a more holistic approach? Will it take a broader view of social services?

Ruth Stark: Yes—

The Deputy Convener: I am sorry if that is a simplistic question.

Ruth Stark: No; I should have explained earlier that we have an open membership. Anybody can be a member of our association if they work in a social work service. We cover not only qualified social workers; some of our members are not qualified. That has been the case since around 1975. However, we have tended to be associated with social workers. We are changing.

15:15

Dorothy Sutherland: Convener, are you thinking about the partnership between health and social work?

The Deputy Convener: A number of changes have taken us towards a more integrated and holistic approach to care, particularly care in the

community. I am sure that that has been a topic of conversation in the association. Do you think that, as a consequence, the organisation's membership is likely to change? I am trying to get the bigger picture.

Ruth Stark: We are members of the International Federation of Social Workers and are aware that the debate that you mention is happening across Europe and the rest of the world. There is a band of people with one sort of qualification, whom we call social workers, and a raft of other people whom we call social service workers. At the general meeting of the International Federation of Social Workers, there was a debate about the inclusiveness of that organisation and our own. I think that we are moving in the right direction.

The Deputy Convener: Margaret Jamieson has arrived from the meeting of the Health and Community Care Committee. Although you have not heard the witnesses give their evidence, do you have any questions for them?

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): No.

The Deputy Convener: I thank the witnesses for attending.

Our next witnesses are from the National Association of Inspection and Registration Officers. Sue Wilkinson is the chair of NAIRO Scotland, Jim Gibb is the vice-chair of NAIRO Scotland and the head of inspection at Glasgow City Council and Elizabeth Norton is a member of NAIRO's national executive committee and is the registration and inspection manager with South Lanarkshire Council. I invite our witnesses to say a few words, after which we will ask questions.

Sue Wilkinson (National Association of Inspection and Registration Officers): I thank the committee for inviting us to appear. Our organisation represents people across the nation who work in inspection in social work, health and education.

We prepared our statement when we first knew that the bill would be published, so it might not reflect accurately everything that is in the bill. Having read documents such as "Aiming for Excellence", we welcome the setting up of an independent inspection and regulation service, we welcome the commission, and we welcome the council. We feel that the new service—so long as it is properly resourced, which is a key point—will offer better protection for vulnerable people, reassure users, carers and purchasers, and encourage improvement in the quality of care.

The new service will also create a level playing field because, for the first time, local authority provision will be regulated in the same way as

private and voluntary sector provision. You may wonder why that is important: if local authority provision is regulated, action can be taken to improve it and, should it ever prove necessary, to enforce it. At present, some organisations in the private and voluntary sectors feel that they operate to standards that are not necessarily enforced on local authorities.

We are pleased that all the services that are currently regulated will be included in the remit of the new Scottish commission for the regulation of care. We are also pleased that that will be extended, in particular to day care services and to home carers or domiciliary care services. Furthermore, we are pleased about the inclusion of adoption and fostering agencies. However, we are concerned about the omission of the registration of nannies and nanny agencies. I understand that that is not being done for reasons that relate to employment agencies, but I find it hard to understand the thinking behind that.

We believe that enforcement powers will be strengthened by the bill, and that the procedure for the closure of a registered home will be speeded up when necessary.

We are not altogether sure how the appeal procedure will work in practice. We cannot quite understand what will happen during the appeal process. For example, if an attempt was made to close a home for older people where standards were really unsatisfactory, who would look after the older people while the appeal was taking place?

As members will understand, it is natural that members of NAIRO Scotland and all other people who are employed in inspection and registration are a little worried about the transfer arrangements. We do not feel that we have received enough information about transfer. We have been assured that all those who wish to transfer to the new commission will be able to do so, but that might leave some people who will not be able to transfer. We do not know what will happen to them. There should be clarity at this stage, or at least over the next few months, about whether there will be proper arrangements for people who are not able to transfer.

You may ask why those people would not be able to transfer. The proposed set-up for the new Scottish commission for the regulation of care divides Scotland into five big regions, with a minimum number of offices. Administrative staff think it highly unlikely that they will be able to transfer to the new commission. That is a matter of concern for those of us who work in this service and who value the input of experienced administrative staff. We are therefore worried about the commission's structure.

We believe that local input is important in our work, that inspectors should know the area in which they are working, and that people with relatives in residential homes should know where they can go to speak to an inspector, to raise concerns and to get advice and guidance.

We are pleased about the regulation of early years service. There was talk that that would not move with the first phase, but now we know that it will—we are happy about that. Effective links are required with Her Majesty's inspectorate of schools and with local authority child care information services. The developmental role that is currently played by inspectors is necessary to encourage people, through information and training, to be not just childminders but good childminders, who are conversant with child psychology and with the best ways of bringing up young children. We hope that that developmental role will not get lost in the new commission.

We are pleased about the proposed links with health board colleagues and the proposal that we and health board colleagues will inspect jointly. In Fife, where I am an inspector, we already do some joint inspections, and we are glad that that is to be introduced across Scotland.

We are pleased about the bill's proposals on single care homes, although I have not seen laid out in any of the documentation so far the concerns that remain about the size of single care homes. Small residential homes exist at present, but will large nursing homes suddenly designate a corridor of their homes as the residential bit? What will happen to the small residential providers?

We welcome the fact that nurses will be able to be employed in residential homes. That is good. We welcome the opportunity for close multidisciplinary work. We also welcome national standards but, so far, we think that although some of the national standards concentrate well on outcomes for users, they are so vague in other places that they would be difficult to enforce. We are particularly concerned that, as the draft standards stand, there is no minimum size for the room that an older person will occupy as their last home.

I will move on to inspection, rather than taking up too much time. We are concerned that the bill proposes only one inspection a year, although it does say "at least" one inspection a year. At present, the accepted standard is for one unannounced and one announced inspection a year. We believe that it is not satisfactory to call a service excellent and to charge considerably more for it, while offering a lesser standard of inspection.

Inspectors must be familiar with the resources that they visit. To be absolutely frank, when I visit

a brand new resource that I have not seen before, it takes two or three visits before I get under the surface. It is easy for people to be given a false impression of good documentation, appropriate flowers and everything done up for the day, particularly when an inspection is announced. Inspectors must get into resources more regularly. Whether the people who use the services are old people, children, people with a learning disability or people with mental illness, they must become familiar with their inspector and have the confidence and trust to tell them if things are not right. Enough terrible scandals have happened in the past, particularly in homes for older people and children, and we want to avoid such scandals in future. I urge members to consider resourcing the commission for more than one inspection a year.

I mentioned enforcement, and I wish to say that we support lay involvement in inspection. Investigation of complaints is also important and we welcome the fact that more supported accommodation, which is usually in the form of small accommodation units for adults, will come within the inspection framework.

We are very supportive of the bill, but we believe that certain proposals should be strengthened.

The Deputy Convener: Do either of the other witnesses wish to speak?

Elizabeth Norton (National Association of Inspection and Registration Officers): We wanted specifically to mention section 21(7) of the bill, which provides in certain circumstances for the medical examination of residents by registered nurses or by qualified medical practitioners who are authorised inspectors. Our view is that that is outwith the inspectorial role and that it would be better for the inspector to be authorised to call for a qualified doctor or nurse to undertake an examination, either while the inspector is on the premises or subsequently. We do not believe that using the inspectorial role in that professional practice way would be helpful. Such a step would also create a two-tier inspectorate—some inspectors would be able to conduct examinations and some would not. If that were to be added to a framework where there is neither a professional qualification for inspectors nor a designated training programme, it would be a recipe for disaster.

As part of the establishment of the commission, we would like to see a designated training programme for people who are to undertake the registration and inspection of services. Although most people who undertake regulation have a professional qualification—either in health care, social work, social care or, in some cases, education—we feel that the regulatory role is distinct and needs a distinctive training programme. Local inspection units were set up in

1991, but there has not, over the intervening nine years, been a co-ordinated effort to provide a single training programme for people who undertake the regulation of care services.

15:30

Jim Gibb (National Association of Inspection and Registration Officers): I would like to add a couple of brief points. The proposed legislation seems to have some gaps, some of which are more serious than others. We had understood that adoption and fostering agencies were to be included, but they do not seem to be in the bill. That is something of a surprise.

I am concerned about the effect of some of the repeals in the legislation—in particular, that of section 65 of the Social Work (Scotland) Act 1968, which empowered local authorities to remove residents at the point of cancellation being agreed. That section appears to have been repealed and there does not appear to be a new equivalent power for local authorities. That is not a function of registration and inspection; it is a function of the overall care by local authorities. An element of the power needs to be retained.

Sue Wilkinson referred to the appeals process. We think that the move towards a sheriff rather than a tribunal is positive and should reduce the time scale. A criticism that arose over the case of the Glenglova residential care home in Glasgow was that the process of picking up and dealing firmly with poor quality homes led to situations in which it was possible for organisations to make an appeal and then to drag it out so that the matter could not be concluded and residents could not be protected effectively. As it stands, we think that the bill may mean that homes would be required to formalise any appeal within two weeks. We suspect that that is unlikely to happen. Therefore, the proposed legislation may not have achieved any streamlining over the current legislation.

It is important that some kind of time limit is applied, to force both providers and ourselves to produce the proof or the counter-proof that a particular course of action is appropriate. To return to the point that I made about section 65, if individuals need to be removed for their safety during that period, the local authority should have the power to do so.

Mr Gibson: I am glad that Mr Gibb made those comments, because he has answered one of the questions that I had planned to ask. He did so extremely well.

I also wanted to ask about fees for registration and inspection. In your submission, you write that “current funding arrangements need reform, but” you believe

"that funding the Commission from fees is flawed."

You say that you

"do not believe that loading all the costs onto providers, already seeking help to resolve the issue of funding long term care, is the answer."

You then urge that funding be spread

"across the whole community, including funding via direct taxation."

Does that mean using the council tax, or funds from the existing Scottish block? Or do you think that additional resources should come from Westminster?

Elizabeth Norton: There is a big national debate about the care gap. I know that the Parliament is considering the implications of the Sutherland report. Our view is that many providers, including local authorities, cannot take the strain of continuing to provide high-quality services and, in addition, of continuing to pay registration fees. Those fees may double over the next few years. The providers certainly cannot take the strain of paying fees to fund the whole cost of the commission. That is simply not practical. Already, lots of providers—especially small-scale providers—are going to the wall because of what they consider to be inadequate funding to provide care services. Simply adding the cost of regulation to their costs is not an answer.

There is a big question about where the resources for the commission for the regulation of care should come from. Westminster may be an option, but we are all clear that fees alone cannot resource the commission. Currently, the fees that we attract from registration are a fairly insignificant amount of the overall budget for a unit like mine.

Sue Wilkinson: I would like to draw the committee's attention to the bill's financial memorandum, which suggests that for a 40-bed old people's home, the annual continuation fee would rise to something like £7,200 by 2005. That is a lot of money if such homes are going to be inspected only once a year. Providers will say, "At the moment we pay £45 per person per year and we get two inspections. Our inspection officer is local and is on tap. They come in and go out and they advise us on our care planning, tell us about staffing and new health and safety legislation. Now you are saying that there will be only one inspection a year and that it will cost all that? That is unreasonable."

Mr Gibson: They will get half the service for four times the cost.

Sue Wilkinson: Yes.

Mr Gibson: Jim Gibb talked about a gap in service provision. You have spoken about—and

raised in your submission—your concern about a local office network. Will there be difficulty in accessing all the homes that will be covered by the bill if, for example, there are only a few offices? I am thinking about the more far-flung corners of Scotland. Will that add significantly to the cost of providing the inspection service?

Jim Gibb: We are talking generally about the gap between people's expectations and maintaining close links, and having an efficient and modern office structure. The Executive's emphasis so far has been on the use of efficient new technology and modern office methods, to the extent that five offices would be enough to cover the country. The majority of inspectors could expect to be home based or operate through hot-desking.

Our concern is not particularly that we protect inspectors and make sure that they have their own cushy office—that is not an interest. Our concern is to ensure that the inspection service is relevant and recognisable at a reasonably local level, but not in every town, because that would be nonsensical. If we say that the only point of contact that people can consider will be one of five offices throughout the whole of Scotland, the majority of the population will have no sense of belonging—they will not be phoning up an agency that means anything to them.

Mr Gibson: It would be faceless.

Jim Gibb: It would be faceless. It makes much more sense to have reasonably small groups of staff in manageable and recognisable areas that are close to the resource, and which have meaningful links with local authorities, health boards and service providers. Lay inspectors can be people who are physically close to the homes that they inspect, but who are also at a reasonable distance from a point where they can have meetings with the office prior to going into an establishment. In that way, there would be a relevant local service, rather than a remote national service.

Mr Gibson: Would there be one group per local authority, or do you have another figure in mind?

Jim Gibb: We think that there should be groupings of local authorities or groupings that are based on health board boundaries in such a way as to allow for continuity of current service provision. Ultimately, the boundaries do not matter too much, but we should not create a wholly new structure with wholly new boundaries. That would remove everybody from the line of vision and result in an inspection unit that would disappear from the face of the map, although it would still protect Scottish service users.

Mr McMahon: You touched on the area that I wanted to get into when you mentioned lay

involvement in inspection. Will an expansion in such provision improve standards? Will the increase in recruitment and training require additional funding? Will not that draw resources from other vital areas of inspection? Will the impact of expansion into the lay sector be compatible with resources?

Elizabeth Norton: We have for some time used lay inspectors in several council areas and they need some resources. We have recruited lay people as inspectors. We do not train them; we brief them about their role. That is different from training, because we do not want them to become quasi-inspectors. We want them to bring freshness, newness and a lay person's perspective to the inspection process. As well as resources for briefing people being provided, people are recompensed a bit for their travelling, for which we pay them a very small daily fee.

Lay inspectors have added much to the inspection process and have made the process more meaningful for people in the establishments that are inspected. Often, the lay people relate to particular groups of residents. For example, one of our lay inspectors is almost 80. She enjoys going to homes for older people, because she feels that she has something to offer in conversation and in finding out about the place. She also says—rightly—that she is spying out the territory for her future needs.

It is important that lay inspectors make inspection and regulation of care services more of a community business, to which everybody may provide input. The task does not belong out there, to be left for the professionals to get on with. Most people who have friends, relatives or even acquaintances who use care services become interested in those services. They want to know about them and get involved. Lay involvement and inspection are other ways of building up communities of interest in our welfare services and the social care network—that is good. The resources that need to be allocated would not divert a substantial amount from the training needs of inspectors.

Mr McMahon: I will take the issue further, to put the information on the record. Although it is not specifically the role of the lay inspectors, it sounds as though their role is almost like that of the mystery shopper or client who turns up unannounced to check whether somebody is doing something properly. When that information is garnered, it is used to improve provision, but does it improve the method of inspection?

Elizabeth Norton: I think that it improves the inspection process overall. We must remember that the inspection process is part of regulation so, to some extent, professional inspectors must write reports and report on the inspection process with

an eye to possible future enforcement or regulatory action. That means that the inspectors must be careful about how they report. Lay people are much more able to tell it how it is. Their reports can say, "I liked the home and I wouldn't mind living there." The average professional inspector would probably take two pages to say the same thing differently.

Lay inspectors provide a different perspective that must be valued for what it is, but it is not a replacement for professional regulation, which controls what happens in care services and makes it clear when action needs to be taken to make improvements, because there is a threshold below which no service should fall.

Sue Wilkinson: When inspecting residential schools, I have sometimes also found it useful to have a representative from Who Cares? Scotland. Such people are more on a level with the teenagers in the school than I may be, so the teenagers feel more comfortable telling that representative what it is really like to be a resident in the school. It is an added bonus that need not be too costly.

15:45

Mr Harding: In your submission, you say that the new legislation must

"Ensure that providers are only entitled to offer care services if they can demonstrate that they meet National Standards."

I would be interested to hear how that could be done. Will it be a barrier to new providers? I believe that we all aim to try to increase the provision of good quality care to meet the increase in demand.

Sue Wilkinson: I do not understand your question fully. We would want new providers—

Mr Harding: The implication in your submission is that providers cannot begin to practice unless they demonstrate that they can meet national standards. How would a new provider do that?

Sue Wilkinson: Suppose that a new provider wished to set up a home for older people. At present, we would expect to see either the premises or the proposed building plans. If we saw the premises, we would expect to be able to measure them and to ensure that there were sufficient bathrooms and alternative sitting spaces, that the rooms were right, that residents were able to see out of the windows and so on. We would consider whether the staffing arrangements that the provider intended to put in place met the needs of the client group for which they intended to provide. We would consider whether the manager was a fit person, which would mean police, health and qualification checks. We would

consider the documentation that they intended to provide and how they were going to manage care planning and we would consider their complaints service and what the general philosophy and practice of the service would be.

It is fairly easy for a good provider to demonstrate all those things before they start. They may not have financial records that would prove that they were solvent but, nevertheless, we would consider their financial background. If the provider had been in business before, we would expect to see their statements of accounts for, say, the past three years. There are plenty of ways of ensuring that people meet standards before they start.

Mr Harding: Do you consider that to be a deterrent to a newcomer?

Sue Wilkinson: No, I do not. A provider must do their financial planning on the basis that they will provide a good standard. There is no point in having poor providers. We have a responsibility to people who will be cared for, whether they are older people who have dementia, children or the autistic community. There are so many people that need protecting and it is our job to ensure that there are good services.

Mr Harding: What is the current system?

Sue Wilkinson: I have described roughly the procedures that we follow in the present system; I anticipate that those will be applied throughout Scotland in the new system. At present, each local authority and each health board has its own set of standards and there are variations between those standards. A simple example might be that one authority does not mind whether people who do not know each other ask to share rooms, but another authority says that a single room must be provided for every old person, unless they wish to share with a known partner or friend.

The idea behind national standards is that we get away from the lottery of care, in which some people get a good standard of service and others do not. That applies not only to the physical provision of the premises, but to the standard of the people who manage and own the premises and their staff.

Elizabeth Norton: In fact, the bill proposes something that our organisation has advocated for a considerable time, which is that the onus should be on the provider to demonstrate that they can meet the standards. That is different to current practice. If, for example, we as a registration authority did not wish to register somebody in South Lanarkshire because we felt that they could not meet the standard, the burden lies with us to prove that person's lack of fitness.

Under the proposals in the bill, however, the

burden of proof would lie with the provider, who must demonstrate their ability to meet the standards. I think that that is a good way forward and a big improvement on the current arrangements. As things stand, we might know that Genghis Khan is not very suitable as a care provider, but it would be hard to prove.

Iain Smith: Are you satisfied that the bill will ensure that those who provide inspection have a suitable qualification and that there is a consistent quality of inspection throughout the country? I am not clear about who inspects the inspectors.

Elizabeth Norton: That is one of the things that I mentioned right at the beginning. Because the scope of regulation is expanding, the regulatory role itself—the inspector's role—becomes more important. Service providers, as well as service users and their relatives, need to be satisfied that the people carrying out the inspections are properly trained and qualified to do so.

Until now, there has not been a proper nationally approved training programme and qualification for people who are engaged in registration and inspection. That must be addressed very soon, and preferably before the start date of April 2002. We recognise that there is now no possibility of a qualification being approved before that date, but it ought to be. The inspectors who hold a social work qualification will be registered with the council and anyone who is engaged by the commission as a regulator will be among the first tranche of staff to be registered. That is important, as it will be the first step towards developing a qualification for inspection and registration officers.

Iain Smith: Do you think that it should be a requirement of the bill that inspectors should be registered with the council?

Elizabeth Norton: It is already in the legislation, which provides that they will be among the first tranche of staff to be registered.

Iain Smith: I am sorry. That was not clear to me on skimming through it.

Sue Wilkinson: It is important that inspectors should be qualified not only as inspectors, but in other professions, and that a mixture of people should be involved. In the team that I manage, there are people from nursing, banking, occupational therapy and social work. There are also other occupations that lend themselves to the task. An additional qualification in inspecting skills may be required. We need people who are balanced and have experience in managing residential care.

Elizabeth Norton: Following on from the submission from BASW, NAIRO takes the view that we need two separate bodies—a council and a commission. Our thinking is that the commission

will regulate services that employ a range of professional groups, not just social workers or social care workers. We would expect care services to employ a range of health professionals, including nurses, occupational therapists and physiotherapists. Their professional regulatory body will obviously need to have protocols with the commission, as will the council.

It is fair that there should be a clear division between the commission and the council. The commission will probably have a role in gathering evidence for the council and for any action that it may want to take. It is right that the role of the evidence-gathering body should be separate from the one that applies the criteria and determines whether the evidence justifies taking action to deregister somebody. The functions should be split just as the functions of the police and the procurator fiscal's office are split because they carry out different functions. In terms of people's right to an independent and fair hearing, we think that it is better to have two separate bodies.

Margaret Jamieson: You mentioned single care homes, where individuals would remain throughout, and said that nursing staff might be employed as those people's needs altered. You indicated that you have some concern that an establishment could designate a corridor for those who require nursing care. You may well be aware that a review group is currently defining nursing care. Until now, such a definition has been elusive.

Do you think that we would enhance provision for the citizens of Scotland by providing a static environment for people who require a level of care that can no longer be sustained in the home? Do we ensure, by providing care in the one place, that people whose care must be undertaken in a residential establishment as their condition deteriorates are not disadvantaged by being moved around?

Sue Wilkinson: I absolutely agree that the single care home will stop people being moved on when their condition deteriorates, but we must be careful that single care homes do not become a catch-all for young people as well as old people. We must ensure that little residential homes do not disappear and all become large nursing homes—mini institutions—only parts of which are designated for residential care. The single care home is a good thing, but we must make absolutely certain that we get it right.

Elizabeth Norton: Our thinking is that the single care home is an excellent concept, in particular for older people, but that there are other groups of people who use residential settings, for instance adults with a learning disability, many of whom are just in the process of getting away from a medical model of care—getting out of large hospitals and into much more homely settings and communities.

It would be a pity if the single care home were seen as the answer to everything. Would it be appropriate, for example, for a 25-year-old with a learning disability to be cared for in the same environment as a person of 85 with significant care needs? I do not think so. Therefore, the single care home model cannot be applied to everybody.

I have some concerns about the medicalisation of social care. Lots of people have care needs, but they do not necessarily have corresponding health and medical needs—they may, but they may not. My answer is always to take the care to the person, not to put the person in a certain setting because care is available to them there. We should take nursing or medical care to people, rather than set up a system in which people have to be static to receive care.

Margaret Jamieson: I share your concern about people with learning difficulties being placed in establishments that are unsuitable. We are moving away from institutionalised care for such individuals.

Do you think that we can be a little more innovative in our approach to elderly residents whose condition deteriorates? Rather than everyone who is qualified as a nurse working in an establishment, could not nurses come in at specific times, whether for dressings or medication? Such care does not have to be supplied in the first instance by the local authority; it is an area for partnership working with colleagues in the acute and primary care sectors.

Elizabeth Norton: I have always held the view that if someone needs intensive 24-hour nursing, they should be in intensive care in a hospital. Nobody needs 24-hour, intensive, invasive nursing—most nursing practices are episodic and take place at intervals during the day, not constantly. It is a bit of a myth that people need 24-hour nursing care.

The Deputy Convener: Thank you for your evidence.

I had thought that we might have a break at this point, but there is a lot on the agenda so if everyone is agreeable we will charge through it.

Members indicated agreement.

Subordinate Legislation

16:00

The Deputy Convener: There are two Scottish statutory instruments before us today. The first is the Local Statutory Provisions (Postponement from Repeal) (Scotland) Order 2000 (SSI 2000/425).

The instrument was sent to committee members some time ago and no comments on it have been received. The Subordinate Legislation Committee has considered it; its report is included in the papers. It does not consider that the attention of the Parliament needs be drawn to the instrument. Does the committee agree that it does not wish to make any recommendation on the instrument?

Members indicated agreement.

The Deputy Convener: The second instrument is the Financial Assistance for Environmental Purposes (Scotland) Order 2000 (SSI 2000/430) and the Transport and the Environment Committee is the lead committee. No comments have been received from this committee.

The instrument has been considered by the Subordinate Legislation Committee; its report is included in the papers. Members will have noted that that committee wrote to the Executive about its obligation to comply with European Union rules on state aid and that, in its report, it drew that matter to the attention of the Parliament and the lead committee. Members have received the Executive's reply by e-mail. It explains the situation. No motions to annul have been lodged and no other action can be taken on the instrument.

Does the committee agree that it does not wish to make any recommendation on this instrument?

Members indicated agreement.

Petition

The Deputy Convener: Agenda item 6 is petition PE56, from Ian Cantwell. This is an on-going issue that the committee has discussed before. Members have received paper LG/01/1/1, which sets out the background. Members will remember that we wrote to the Executive to make the point about whether the assessors come under the powers of the ombudsman.

We have received a letter from Angus MacKay, which is annexed to the committee's papers, in which he states that

"it does not necessarily follow "

that the local government ombudsman has jurisdiction over assessors. There would have to be a judicial review to ascertain that.

We are examining the system of ombudsmen in the public sector. It is therefore suggested that we might like to incorporate a recommendation on this case in our paper.

Is it agreed that now this situation has been highlighted, it should be taken forward with the paper on the consultation on public sector ombudsmen that we will examine later?

Members indicated agreement.

The Deputy Convener: I now have to dismiss the official reporters. Thank you.

16:04

Meeting continued in public until 16:12 and in private thereafter until 16:28.

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