

LOCAL GOVERNMENT COMMITTEE

Wednesday 5 June 2002
(*Afternoon*)

Session 1

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LOCAL GOVERNMENT COMMITTEE

16th Meeting 2002, 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)
*Iain Smith (North-East Fife) (LD)
*Elaine Thomson (Aberdeen North) (Lab)
*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)
Tricia Marwick (Mid Scotland and Fife) (SNP)
*John Young (West of Scotland) (Con)

*attended

WITNESSES

Tom Aitchison (Society of Local Authority Chief Executives and Senior Managers)
Peter Daniels (Society of Local Authority Chief Executives and Senior Managers)
Leslie Evans (Scottish Executive Finance and Central Services Department)
Jon Harris (Convention of Scottish Local Authorities)
Ian Mitchell (Scottish Executive Finance and Central Services Department)
Mary Newman (Scottish Executive Finance and Central Services Department)
Gillian Russell (Office of the Solicitor to the Scottish Executive)
Douglas Sinclair (Society of Local Authority Chief Executives and Senior Managers)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Neil Stewart

LOCATION

Committee Room 1

Scottish Parliament

Local Government Committee

Wednesday 5 June 2002

(Afternoon)

[THE DEPUTY CONVENER *opened the meeting at 14:05*]

Item in Private

The Deputy Convener (Dr Sylvia Jackson): I begin by welcoming everybody to today's meeting of the Local Government Committee.

Item 1 is to ask the committee to agree to take in private item 4, because it relates to a paper on proposed bids to the conveners liaison group. The bids are for civic participation initiatives and for external research to support phase 2 of our inquiry into "Renewing Local Democracy: The Next Steps". Papers for the conveners liaison group are considered in private, so the bids should also be considered in private. Is that agreed?

Members *indicated agreement.*

Local Government in Scotland

Bill: Stage 1

The Deputy Convener: Item 2 concerns the Local Government in Scotland Bill. We are pleased to have with us witnesses from the Scottish Executive: Leslie Evans, head of the local government constitution and governance division; Ian Mitchell, head of branch in the local government constitution and governance division; Mary Newman, head of branch in the local government finance and performance division; and Gillian Russell, senior principal legal officer in the office of the solicitor to the Scottish Executive. The witnesses may say a few words first and then we will ask questions.

Leslie Evans (Scottish Executive Finance and Central Services Department): I will provide a quick overview of the bill, then we will be happy to answer questions. I believe that the committee has been given a copy of the slides to which I will refer.

First, why do we need a local government bill? The bill is an important strand of the Executive's on-going commitment to modernising government. The bill is intended to help to drive real improvements in the quality and accessibility of public services, which are services that the public seek, receive and experience every day. The bill will also ensure that those services are tailored to local needs. We want to encourage a more can-do, innovative and creative approach to the way in which local government does its business. The legislation has also been introduced in answer to specific reports such as the McIntosh report and in answer to calls from local government for more power.

The bill demonstrates trust in local government by providing additional powers and duties, but those are set within a sensible framework of ground rules. In essence, the bill is about what councils do, not what they are or how they are constituted. It is about giving local government the right tools and a clear framework within which it can carry out its work. The duty of best value emphasises the importance of quality and continuous improvement in local government business. The duty of community planning will ensure that community involvement and joined-up working inform local government's actions. The extension of controller of audit functions will revise the audit process to reflect the new duties and powers that arise from the bill. The power to advance well-being encourages a can-do approach and creates greater legal certainty for local government in taking its decisions. Finally, the bill's miscellaneous items will tidy up a number of small, specific policy issues.

The guidance, which will form an important part of the bill, is currently under preparation by two task forces. The best-value task force is looking after the best-value guidance. A sub-group of that task force is looking after the power of well-being guidance. The community planning task force, which is chaired by Alice Brown, is considering the production of the community planning guidance. An outline of the draft contents of the guidance will be submitted to the Local Government Committee before the committee finishes taking evidence this summer.

I want to turn to the evolution of the bill. A deliberate decision was taken to accommodate into one bill the three main policy strands of best value, community planning and the power to advance well-being. We took that decision because we believe that the three strands are closely interrelated. Councils can use the power of well-being within the overall discipline of best value. Local government will also exercise its duty of community planning within a best-value framework. The community planning process, with its shared vision and its joined-up approach to the planning and delivery of services, may well result in local government choosing to draw on the freedoms that are offered by the power of well-being to meet the new conditions.

Two of the bill's provisions are applicable to all three policy strands. First, the bill includes an overarching requirement to encourage equal opportunities and to observe equal opportunity requirements. Secondly, the bill includes a power to repeal or modify legislation that hinders the implementation of the measures that are contained in the bill.

The bill's three policy areas are of a particular kind. They impact on the culture of organisations and on how people in those organisations go about their business. The application of those policies will continue to evolve after the print on the bill is dry. That is why the key principles of the policies are embodied in the bill but guidance and regulations will set out clearly how local government goes about using the legislation. By doing so, the guidance and regulations will bring the bill to life, so to speak. In that way, we can ensure that the legislation is kept current, relevant and helpful to local government now and in the future.

As we developed the bill, we were listening and learning. We learned from the way in which England and Wales framed the legislation, which was in two bills, and decided to integrate the three policy strands in one bill. We framed the power of well-being and the community planning provisions only after talking to the Local Government Association in England and Wales and colleagues in Whitehall about their experience to date of

working within the legislation.

We have also listened to those who will be charged with implementing the legislation in Scotland. We met more than 32 key stakeholders, representing local government and the business and public sectors, and we received more than 120 written comments. The consultation process continues. Last week, we met Glasgow City Council to take its views on the provisions of the bill as introduced. As the draft guidance is developed over the summer, we will continue to listen. We are keen to hear the views that will be expressed during the parliamentary process.

The legislation has developed thus far in the way that I have outlined. We want to ensure that the bill will become the useful tool for local government that we intend it to be. We are happy to answer the committee's questions.

The Deputy Convener: We will begin with a few general questions, the first of which is to ask what are the key objectives of the bill in outcome terms? In essence, what is the meaning of the bill for communities in Scotland?

Leslie Evans: As I mentioned in the presentation, the headline objectives are greater consultation, more innovation and better services that are tailored to local needs. The bill will impact on communities as they will be consulted, and that will give them a greater opportunity to influence the nature and delivery of the public services that they receive every day. In particular, communities will be able to influence the quality and experience of the services that they receive.

Communities will be able to make cases for special circumstances, including the needs of communities of interest or of place. They will also have greater access to knowledge about how their council operates and how well it works with its colleagues in the public sector and other community planning partners. Communities will have an opportunity to see that information at first hand and to hold their council to account.

In the longer term, we see the bill having a real impact on the quality of services, which will be more joined up and more focused on the needs and wishes of the users. We have examples of where that is already beginning to happen through policies such as community planning. Unless the committee would like to hear the detail of those examples, we will arrange to send them in written form.

The Deputy Convener: That would be useful.

I want to ask the obvious question, which is why does not the outcome in relation to the power of well-being appear first, supported by the best-value and community planning outcomes?

Leslie Evans: It is for reasons of drafting. The

way in which the bill is ordered is not intended to send out a subliminal message. The order has been mentioned to us on a couple of occasions but the draftsmen decide the best way to lay out a legislative tool for future interpretation. If that is felt to send out a difficult or different message, we will take that on board.

Elaine Thomson (Aberdeen North) (Lab): In your presentation, you said that one of the reasons for having the Local Government in Scotland Bill is to fit in with the modernising government agenda. A large part of that is about bringing different partners from the private and public sectors together. Given that we are trying to move towards more integrated and flexible provision by partners, why should not a common best-value framework be applied across all public agencies?

14:15

Leslie Evans: As you know, best value is rolling out to all of the public sector. We do not have to do that through this legislative vehicle, which is about best value for local government. Other tools are at hand to enable us to roll out best value to other members of the public sector. Although the vehicle might be different, the outcome will be the same. The public sector partners will also be under a duty of best value. In rolling out best value to the public sector, we hope to ensure that any guidance that is given out to those organisations will lean heavily on the local government guidance that we are developing and will certainly be complementary to it.

Elaine Thomson: So, for any joint arrangements that local government enters into with other public agencies, the Local Government in Scotland Bill and the existing legislation will bind any partners to best value.

Leslie Evans: The bill will bind local government to the duty of best value. That will direct all of its actions, including whatever it does in partnership. The public sector partners, who will also be under a duty of best value, will also adhere to the principles of best value. The partnership working that local government and its partners are undertaking will be subject to the principles of best value. As I said before, the vehicle might be different but the outcomes should be the same.

Mr Kenneth Gibson (Glasgow) (SNP): If a key aim of the bill is empowered and accountable councils, why is so much of it taken up with arrangements for regulation and ministerial powers of direction and intervention? Do you agree that that sends mixed messages about trust and parity of esteem?

Leslie Evans: No, I do not agree. Part of the problem is that the intervention arrangements

appear to take up a certain amount of the bill because the bill is quite short; the problem might be the perception.

As I said, we are using regulation for a deliberate purpose. We intend to ensure that the legislation remains current and flexible. We can do that through the use of initiatives such as regulations and guidance. That is valuable in ensuring that the legislation remains up to date on how the duties and powers are being used by local government.

The bill supplies the framework, along with new powers and new flexibilities. It must also outline the boundaries. The powers of ministerial intervention are fairly tightly circumscribed. The process is stepped and ministers cannot act without taking into account the case made by councils against the intervention. Ministers are probably likely to act only if they are asked to do so by the independent Accounts Commission for Scotland or, in exceptional circumstances, if the intervention is needed to protect the public interest from substantial harm.

Mr Gibson: Will the Scottish Executive be bound by the best-value provision in the bill?

Leslie Evans: The Scottish Executive has accepted the duty of best value, but it is not laid out in the Local Government in Scotland Bill. As the accountable officer, the permanent secretary is under a duty of best value. Other public sector organisations will be placed under a duty of best value through the provisions of the Public Finance and Accountability (Scotland) Act 2000. So the answer is yes—the Executive will be under a duty of best value, but not through the provisions of the bill.

Mr Gibson: What balance is expected between quality of outcome and cost of service? Is not securing the outcome the fundamental issue?

Leslie Evans: Yes, the outcome is a fundamental issue. However, we want to get the balance right and we see that as being the responsibility of local authorities in taking into account their circumstances. They will have to get the balance right between the quality of outcome and the cost of service. We will advise them in guidance that they should take account of the experience of the people who use their services. The quality of service that service users experience will be the best way, or a good way, of indicating whether the quality balance is right.

Mr Gibson: But if that means only cost-effectiveness, why not say that? What does it add to the existing value-for-money duties that councils have? Are the four Es—efficiency, effectiveness, economy and equality—sufficient to achieve best value, or does best value entail effective community planning? If that is the case, should not

the definition be more holistic?

Leslie Evans: Best value is about more than cost-effectiveness; it is about management and the pursuit of improvement. Value for money and cost-effectiveness are much more static duties, whereas best value is much more of a live management tool.

On the four Es, we see the duties of best value and community planning as complementary; however, they are not the same thing. As we are aware that community planning is a new duty, we have deliberately laid it out to ensure that local government has a clear understanding of that duty. If it were homogenised under the best-value duty, there might be a danger that it would not be so clearly articulated. We will certainly ensure that the guidance on both issues is interrelated and clearly demonstrates how best value and community planning are complementary.

Mr Gibson: Previous drafts provided that authorities need not pursue further "continuous improvement" if they were satisfied that it was not practical or cost-effective to do so. The bill does not include that provision. Is the view now that the capacity for improvement is infinite? If not, at what point can councils reasonably conclude that they can go no further? You might be aware that committee members have visited local authorities and they have said that the continuous pressure to achieve better quality at less cost ultimately militates against best value.

Leslie Evans: We concluded that the reference to "continuous improvement" did not need to be made, which is why we took it out of the bill. We are aware that local authorities are under pressure to continue to find out how they can improve their performance. That will be articulated in the bill's best-value provision.

That said, we doubt whether any authority thinks that its service is perfect. I think that the guidance will reflect our feeling that we should not expect local authorities to think only about cost or delivering services quicker or cheaper. They might also want to think about their relations with staff or with contractors, their treatment of customers and so on. As a result, there are several ways in which continuous improvement in quality can inform the way in which best value develops within local government services.

Mr Gibson: But how will local authorities know when the optimum point has been reached? They have continually been told that they must keep improving, and for years now they have been saying that it is becoming more difficult to do so. In fact, many of the councils that members visited in the Parliament's early days said that they were daft because they had made many efficiency improvements straight away and were then

encouraged to make other substantial improvements, whereas other local authorities had made very minor improvements. Those councils felt that, by trying to deliver the best from the resources available, they were being penalised. Obviously, everyone continually strives to improve, but sooner or later a council must reach a point at which quality of service declines because it is trying to do more with the available resources.

Leslie Evans: We do not intend local authorities to consider only resource restriction when finding out how to do things cheaper, although many local authorities will continue to consider that option. However, one would not expect any service provider ever to think, "That's as good as we can get it." That is not good management practice in the private sector and I do not think that it is the case in the public sector either. Councils often consider more inventive and creative ways of improving services, perhaps simply by ensuring that there is sufficient investment in staff training to respond to services' needs.

Mr Gibson: But often councils are expected to do so with relatively fewer resources. Surely we cannot continue to improve services while relative resources are declining.

Leslie Evans: I agree, but councils are taking decisions every day about the service delivery priorities that they want to develop. For example, they take decisions about concentrating on one area of service delivery at one stage and on another area at another stage. That is part of good management practice.

I do not know whether Mary Newman has anything more to add on that point.

Mary Newman (Scottish Executive Finance and Central Services Department): I think that Leslie Evans has covered the ground. The duty will be on the authority, and every authority makes daily decisions about relative priorities. It could be that certain areas are given more attention than others at certain times.

In the early days of best value, some service directors galloped off. Part of the guidance that they received in their authorities was that the first priority was to look for cost savings. That was not an instruction from the Executive; we left it up to authorities to decide their priorities. There is no problem if authorities start to consider whether their objectives need adjustment; all the continuous improvement management mechanisms encourage organisations to do that.

Mr Gibson: You touched on guidance. Is it intended that there will be guidance over and above that which has already developed around best value? If so, how will ministers consult local authorities and involve them in that process?

Leslie Evans: The ministerial guidance is intended to be as short as possible and will act as a signpost to the guidance that is being developed as part of the task that the best-value task force has in hand. We have already talked to the best-value task force, which met for the first time last week. We intend to progress the guidance in partnership with the best-value task force in the first instance, but we would need to consult separately on any subsequent guidance that ministers decide to issue.

Mr Gibson: Should ministerial guidance override generally accepted good practice? Under what circumstances would that be likely?

Leslie Evans: We would expect ministerial guidance to be consistent with good practice; we would certainly not expect there to be circumstances in which ministerial guidance went against good practice. Such guidance is more likely to be to do with management priorities than to cut across guiding principles or examples of good practice.

Mr Gibson: The issuing of directions by ministers is the end point of enforcement and is based on an undefined concept of substantial harm to the public interest. What criteria would define substantial harm over and above a minister's own judgment? What objective tests must be met?

Mary Newman: We have tried in the bill to describe the circumstances in which ministers could act. In the current intervention system, there is a financial test for direct labour organisations, for example, which are subject to intervention if they do not hit their targets. We have tried to integrate with ministerial activity the exposure and hearings process of the Accounts Commission, so that one can probably lead on from the other.

However, it occurred to us that there might be occasions on which trouble is so severe and so abrupt that there might be grounds for immediate intervention. That might be necessary to stop a complete haemorrhage of funds or to ensure that action is taken and that the council is stopped and asked to restart. There have been occasions in DLO interventions when the urgency with which action was taken was a real issue.

There have been other problems with authorities in the past few years when there has been public clamour for immediate action by somebody. The Accounts Commission process is, quite deliberately, a staged process that involves quite a lot of negotiation. Ministerial intervention is also a staged process, the first stage of which is to ask an authority to put the case that nothing need be done. We wanted that to be clear and we thought that Parliament should decide the grounds on which ministers should intervene. We drafted the

words:

"to protect the public interest from substantial harm".

However, we are quite open to suggestions as to how to improve that wording. We want something that is pretty clear. Ministers will be, as they are now, subject to judicial review, subject to being hauled over the coals if they get it wrong, and subject to protests. However, we would like the bill to make it clear that the powers will apply in crises when immediate action is needed. For the sake of ministers and authorities, everybody must be clear about whether grounds for intervention exist.

Mr Gibson: Are the intervention powers in the bill consistent with those in other recent legislation, including the Housing (Scotland) Act 2001 and the Community Care and Health (Scotland) Act 2002? If not, will those acts be amended?

Leslie Evans: They are consistent, in that they are all last-resort interventions that have been tailored to the circumstances of each act as it went through Parliament. We do not see any contradiction or conflict between the existing intervention powers in the acts that you mentioned and those in the new bill.

The Deputy Convener: Sandra White will deal with audits, inspection and regulatory bodies. I ask the witnesses, when answering the questions, to deal with some of the issues that Kenny Gibson raised relating to best practice. You suggest that best value will now include management of contract issues and so on. How will you monitor that best practice and pass it on to other councils? That will be very important.

14:30

Ms Sandra White (Glasgow) (SNP): In answering Kenny Gibson's first question, you talked about integration. I will ask a couple of questions on that. Some of the auditing, inspectorial and regulatory bodies deal with improvement, efficiency and effectiveness. You said that integration involving councils and outside bodies is very important. Many different regulatory bodies deal with aspects of best value, so how will their work be integrated?

Leslie Evans: Some integration has already taken place, but we are conscious that integration is a key issue. A joint scrutiny forum has been set up to improve co-ordination of scrutiny of best value among inspectorates and so on. Where legislation can help, we will make use of it. For example, we are considering an amendment to the bill for stage 2 that would make changes to the duties on the police and fire inspectorates in order better to assist their scrutiny of best value. We are conscious of the issue and we want to encourage and develop exchange of good practice and co-

ordination of the way in which inspectorates scrutinise best value.

Ms White: You say that an amendment will be lodged at stage 2.

Leslie Evans: Yes. An amendment will be lodged regarding the duties on the police and fire services. Such an amendment has been suggested.

Ms White: Are current audit, inspectorial and regulatory arrangements compliant with the best-value partnership working requirements of the bill?

Leslie Evans: Yes, they are in that we are all under a remit to make continuous efforts to improve what we do.

Mary Newman: Some initiatives have recently been undertaken to join up inspection in areas such as community care, to ensure that the inspection bodies work together and co-ordinate their work as much as possible. Each inspectorate usually has its own statutory basis and specific duties, which tend to be specialised according to the subject. There are also regulators such as Communities Scotland, which take a slightly more interventionist approach.

We wanted to keep best-value audit as audit rather than as inspection, partly because a good deal of inspection already goes on and partly because most inspection work considers professional standards. There is no reason why the inspectorates cannot look for best value while they do that. A successful approach has been taken by the inspectorates and Audit Scotland. All the inspectorates are working bilaterally with Audit Scotland to ensure that there is no duplication. When a social work inspectorate goes into an authority, it looks for signs of best value. Audit Scotland will feel that it can rely on the reports that come back. There is wholly integrated inspection of local authorities' functions as education authorities, whereby members of Audit Scotland go in as part of the inspection team. They produce a single report. As a consequence, education has not so far been subject to performance management and planning audit for best value.

We are trying to get a holistic overview of authorities. We still hear from authorities the complaint that the situation is like buses in that inspections all come at once; authorities have problems timetabling inspection activity. Sometimes, if the social work inspectors are in at one end of the council and the education inspectors are in at the other end of the council, it is not a hassle for many people apart from those who are at the corporate core, who have asked us and the inspectorates to re-examine the situation.

Ms White: You mentioned Communities Scotland, but we know that it cannot be

investigated. Do you intend to make such agencies compliant with best-value partnerships and subject to audit inspection?

Mary Newman: They already are. A concordat between Communities Scotland and Audit Scotland was developed following the passage of the Housing (Scotland) Act 2001. That concordat indicates who will consider what problems and how any overlaps or differences should be sorted out. Recently, I asked how the concordat was working and was told that Communities Scotland and Audit Scotland have a good and thriving relationship.

Ms White: Do auditors receive specific training to familiarise them with the requirements of other statutory and inspectorial regimes before they audit arrangements for best value? Those regimes impact directly on how councils provide and account for services. Has a specialised training unit been set up?

Mary Newman: Auditors are professionally qualified and consider performance issues. They are not qualified in the duties of the inspectorates. However, there is a great deal of close working between the auditors and the inspectorates, which are increasingly aware of where they may tread on each other's toes. The Accounts Commission for Scotland and senior staff at Audit Scotland are left to sort out what their auditors need. They are aware of the issue that Sandra White raises. They sit on the joint scrutiny forum and hold direct discussions with the inspectorates, without much reference to us, about what they need.

Ms White: So auditors receive no specific training in the best-value arrangements and how those arrangements impinge directly on councils. Is that issue highlighted?

Mary Newman: As members know, the best-value regime has so far developed voluntarily. We do not direct authorities on what they should do, beyond that they should comply with the core framework of best value. We leave them to discuss with their inspectors and auditors what that means. We have little appetite for being directive about what auditors should look for. They are appointed because they are specialists and experts in the field; their work is certainly beyond my competence.

Ms White: We are discussing the Local Government in Scotland Bill, which was written by the Executive. You say that it is for the auditors to determine whether each council has complied with the best-value regime. There is no specific indication that auditors should be trained in the ways in which councils present best value.

Mary Newman: The audit duty is being amended so that it formally accommodates best value in the bill. It is for auditors to discuss their

professional needs with the Accounts Commission—the independent body that exists to commission and direct audits. We know that the Accounts Commission, senior staff at Audit Scotland and those who deliver audit on the ground have discussed what it is appropriate to ask for, what that might mean in resource terms and audit fees, and what the auditors feel competent to do. The main responsibility of auditors when they audit best value is to consider performance arrangements.

Ms White: I am trying to get my head round the provisions in the bill that deal with enforcement and the role of the Accounts Commission. Correct me if I am wrong, but you seem to be suggesting that auditors do not have to be trained in the specifics of a best-value regime, and that each council does its best to provide best value. However, ministers also have the power to tell councils that they are failing to conform to the best-value regime. How do you know that councils are failing to provide best value if auditors are not trained in the specifics of best value? I want to have a clear understanding of the position as regards enforcement.

Mary Newman: We are saying that the Executive and ministers will not be directive about what auditors should do. It is the job of the Accounts Commission to direct auditors; it has the expertise to do that. The Accounts Commission's task is to arrange audit of local government, which formally must include best value. The Accounts Commission is thinking very hard about how best value can be audited and because it has audited best value for the past two years, it has been considering the issue for two or three years.

At the moment the Accounts Commission is in discussion with representatives of the Convention of Scottish Local Authorities and the Society of Local Authority Chief Executives and Senior Managers. At the first meeting of the best-value task force, it spoke about what is needed to develop the next stage of the performance audit. We are glad that that is happening and will do everything that we can to facilitate and encourage it. However, the Accounts Commission takes the lead on that, not us. That is why the bill will not say that ministers will take powers to direct how the audit should go. That is the function of the Accounts Commission and we are happy with that arrangement.

There will be two grounds for ministerial intervention. One will be on reference from the Accounts Commission, which might have tried, through its processes, to convince an authority to put something straight or to address a perceived problem in best value. The Accounts Commission can, in its findings, recommend to ministers that further action or direction is needed. Even at that

point, ministers will have to consider whether direction is needed to protect the public interest from substantial harm. The case would have to clear that threshold.

I can envisage instances in which an authority might disregard the advice of the Accounts Commission, which was set up and its members appointed to advise authorities on whether they have problems. There might be a public-interest issue if the Accounts Commission's advice was disregarded.

Also, ministers could intervene by issuing a notice and resorting to direction because an immediate and urgent problem had arisen. Therefore, immediate action would be needed to protect the public interest from substantial harm. At that point, ministers will have to consider carefully whether the situation is critical or whether they should step back and leave the matter to the normal process of the Accounts Commission.

The Deputy Convener: I will ask a question that I asked previously. I understand that we have been talking about enforcement. Will there be room in the Accounts Commission's inspectorial role for identifying best practice and passing it on to different councils? If not, is there, or should there be, other machinery that could be used for that?

Leslie Evans: There will be a couple of opportunities for doing that. COSLA will, in implementing the bill, play its usual role for councils as a clearing house for good practice and examples of best practice. Another possibility on the horizon is that the white paper "Renewing Local Democracy: The Next Steps" sets out a proposal for an improvement function. There is consultation on that proposed function, but the white paper does not identify the kind of process or its structure. Depending on how an improvement function materialises and whether the current consultation process favours it, such a function might become a vehicle for the exchange of good practice and the dissemination of examples of best practice in how local government and other public sectors manage the bill's policies.

Mary Newman: The best-value task force met last week and discussed its remit and its approach to best value. The task force agreed that there should be three levels of guidance in future. There could be ministerial guidance, backed by joint guidance produced by the task force, on the characteristics that go with pursuing best value. There might be ministerial guidance on the requirement for effective people management. There could be task force guidance that training should be linked to business objectives and that there should be a relationship with staff and regular appraisals for staff.

The task force will also want to endorse or publish guidance that examines case histories and best-practice examples, because there are a great many of those. The task force has already produced some guidance on best value, as have the constituent members of the previous task force, which were COSLA, the Accounts Commission and the Executive. We have tried to identify best practice and to share good practice stories among councils, because it is easier to follow guidance if there are real-life examples of how best value is delivered. There is a lot of effort throughout Scotland to share good practice, but we feel that we could always do with a bit more.

It is likely that instead of having one clearing house, there will be guidance from the best-value task force. Some of the professional bodies are becoming increasingly enthusiastic. The Federation of Property Societies phoned me and said that it wanted to issue guidance on property management and to associate that guidance with best value. There will be growing enthusiasm for specialists to issue best practice guides and there will be the work that will be done if we set up the improvement function.

The Deputy Convener: How do you see all that being co-ordinated? You seem to be talking about various guidance from several sources. From what you have said, I appreciate the importance of the task force. I take it that the Accounts Commission will take on board the guidance and that it will modify its agenda when it goes out to audit. Will the Accounts Commission try to tie it all together?

14:45

Leslie Evans: We intend the guidance that we bring out to accompany the bill to be integrated. As Mary Newman said, the best-value task force is looking after the best-value guidance, but there was a deliberate decision to ensure that it oversees the power of well-being guidance as well, so a sub-group of the task force is developing that. We felt that that was important, because the power of well-being will operate very much within the framework of discipline and best value. Similarly, the community planning task force will be related to and will acknowledge the importance of the other policy strands of the bill.

The task forces and all the people involved are very much aware of the importance of ensuring that the guidance is not in silos and that there are common references. In fact, Audit Scotland is represented on the best-value task force and has a representative on the power of well-being sub-group. There is a strong link. We do not want to reinvent the wheel.

Elaine Thomson: I have a question about non-commercial considerations and local authority contracts. If a contractor thinks that a non-

commercial consideration will limit its ability to comply with a contract, will the local authority be entitled to conclude that that is not the case? Further, if there is then a dispute between the contractor and the local authority, how will it be resolved?

Leslie Evans: The changes that section 10 will introduce will allow issues to be considered in certain circumstances, on the basis of what local authorities choose to do. They may wish to include those issues in their contract considerations, but they are not obliged to do so. The process is one of negotiation, as with any contract, and local authorities have freedom to decide what they want to take into account when issuing tenders and negotiating contracts with contractors. There are plenty of opportunities for exchanges to take place. It is up to the parties to resolve disputes on the basis of what the local authority is seeking to do with the contract and the conditions that it wishes to apply. The bill will loosen up the things that can be taken into account as part of the contract process, but will not impose obligations.

Elaine Thomson: I have a question on the relaxation of restrictions on trading. Does the provision that councils can trade without restriction with contractual partners

“to support a pre-existing contract”

exclude building such arrangements into the design of new contracts—what might be seen as greasing the wheels?

Mary Newman: I had not considered that until somebody talked about it. Most partnerships are a series of linked contracts. We are leaving it to parties to decide whether they want to build reciprocal clauses into contracts. Contract law and European Union procurement law lay down obligations with regard to how far that can go. We are saying, in a sense, that that will be down to negotiation.

The bill is drafted so that contracts to provide goods and services will be secondary to pre-existing contracts to provide services to authorities. That will push authorities into having separate contracts. We want authorities to be reasonably transparent about what they are doing in terms of greasing the wheels—one hand washes another. The primary purpose of the arrangement that a local authority has with another body is to provide services to the authority. We are making possible the secondary contract, which eases the way, as something that does not count against the limits on income.

The situation is one of those chicken-and-egg scenarios. In this instance, the chicken, or the first thing, has to be the contract to provide the authority with goods and services. The restraint is not on an authority entering into that kind of

contract. We are allowing the income that authorities receive through such contracts not to count against any limit that might have been set on their commercial services income.

Elaine Thomson: Will the provision include public-private partnership schemes?

Mary Newman: Yes. Most PPP schemes are a series of linked contracts.

The Deputy Convener: I have a couple of questions in the same vein. Will you define commercial income and significant trading activity for us?

Mary Newman: Significant trading operations are referred to in the best-value accounting code of practice, and count as proper—

The Deputy Convener: I am sorry, but will you speak up a little bit?

Mary Newman: A significant trading operation is an operation that the authority deems to be significant after consultation with its auditors. The significance or materiality is decided in discussions with auditors about the totality of the spend, turnover or activity in a given area and about whether the authority should consider an operation to be a material operation. We are not being prescriptive, because a lot of the decisions depend on where we are, what we are doing and how we compare to others, and that has to be determined locally. That is accounting practice. Auditors are already thinking about materiality and we understand that the accountancy profession is thinking about whether it has to say something more about significance or materiality. We leave that to it.

Commercial income is not necessarily profit. We wanted to liberalise the trading regime. At the moment, authorities can provide goods and services only to trading partners that are on a designated list that is set by a statutory order. If they have surplus capacity they can trade it on. We wanted to allow authorities to trade with anyone, but we have very little evidence of the effect that that might have at either a macro level or a micro level. We have little information about how well authorities will manage the change.

We have provided for local authorities to set limits on how much income they can generate through trading activity with the private sector or partners that are not public—where the trading is not for public purposes, but is about selling goods and services commercially. The draftsman has called that “commercial services income” to distinguish it from income from trading that has a public purpose. The authorities are not trading for public purposes; they are competing in the marketplace and are selling surplus goods and service to whomever they like.

The business sector has put it to us forcefully that authorities have substantial advantages over some small business competitors. They have pre-existing assets and relatively unlimited liquidity. How are we to ensure that they will not abuse their market position in a monopolistic way? We do not know. We have no reason to believe that authorities will abuse the trust or the powers that we give them, but we are conscious that we might need to take the steps in stages with them. First, we need to establish a baseline of how much surplus authorities are trading to their public partners under the existing arrangements. We will work out from that whether we need to push out the limits and how much desire there is for authorities to trade.

The bill sets up a framework for further negotiation, which will have to continue over the next few months or the next year—however long it takes. That will involve close working with local authorities to ask what is an appropriate limit to set, what is an appropriate amount of money to make, whether a limit is needed at all and how authorities are beginning to configure their trading activities. We are not being prescriptive with compulsory competitive tendering. We are no longer telling authorities that they must configure their activities in a certain way. We need to establish the ways in which the market settles and how activities are configured should authorities wish to trade.

The Deputy Convener: If I have understood you correctly, you are saying that there will be negotiation to identify criteria to allow the bill to work.

Mary Newman: We have said that we think that limits should be relatively simple—perhaps a percentage of the turnover that one could make from trading surplus in the private sector. Some of that will depend on the size of the trading operations and on the area in which the authority seeks to operate. That is one of the reasons why we have also provided for a ministerial consent—we can see that a one-size-fits-all limit will not always work. We could end up with extremely difficult and complicated tables depending on the size of the authority and so on. We do not want to get into something that one needs algorithms to interpret—we want the situation to be pretty clear. That work will have to happen after the bill is published.

The Deputy Convener: Do you think that the criteria will be open to challenge on the ground of unreasonableness?

Gillian Russell (Office of the Solicitor to the Scottish Executive): Ministers would have to act reasonably in setting the limits. There would be potential for challenging the limits if they were unreasonable in the Wednesbury sense—so

unreasonable that no reasonable minister would set such limits. The test would be quite tough to overcome. Regulations on that basis could possibly be challenged.

The Deputy Convener: If we assume that a council is compliant with EU and UK competition law and so is not subsidising a trading operation and is a competitive player in a market, why should its ability to trade be limited at all? Does not that create market distortion?

Leslie Evans: Unsurprisingly, that issue came up as part of the consultation with the business sector. Local authorities have a predominantly public purpose. They are not established with public funds to put people out of business—if that happened, it would be unintended. We want to ensure that local enterprise and small businesses are not stifled, unintentionally, by local authority operations. However, we are also aware that we are in a period of transition from compulsory competitive tendering to a self-disciplined regime. The regulations are a useful tool because they will be open to consultation and will be kept under review to ensure that any restrictions are kept live and relevant to the operating circumstances. That is part of the transition process.

The Deputy Convener: Does not restricting commercial income by ministerial diktat limit the power in part 3 of the bill to advance well-being?

Leslie Evans: It would not cut across that directly. As I have said, we do not want local authorities to become profiteering concerns. The power of well-being offers an element of cost recovery—one can take back the charges that it costs to provide the service and perhaps a little income.

John Young (West of Scotland) (Con): I apologise for being late. First, I did not know that my colleague Keith Harding had a flu virus, which seems to be affecting a large percentage of the Stirling constituency. Secondly, I was told that the meeting began much later than it did.

I want to ask about section 14 on proper accounting practices. Is that a reference to the best-value accounting code of practice—BVACOP—as proposed in the consultation paper on the bill?

Leslie Evans: Yes, among others.

John Young: What evidence has the Executive gathered on the costs and benefits of adopting the code and the practicality of auditing and enforcing it? Does the best-value accounting code of practice demonstrably deliver best value in practice?

Leslie Evans: Ultimately, that is an issue for the accounting profession, but the code has been wholly adopted in England and Wales and we

understand it to be in partial use in Scottish local authorities. The feeling seems to be that it contains useful and appropriate advice for the circumstances that we are talking about.

John Young: If activity-based cost attribution is the core of the matter, how far and to what level of detail would that be taken?

Leslie Evans: That is up to the relevant accounting and auditing professional bodies. The bill refers simply to proper accounting practices.

15:00

Mary Newman: The position is not wholly to do with activity-based costing. Following discussion, the BVACOP steering group decided not to move further in that direction for the moment. Some swithering is going on about activity-based costing in the accounting profession at the moment.

Authorities are already audited according to proper accounting practice. The accounting profession has thought of the hole in their statutory duties—their not having a duty to observe proper accounting practice—as an accidental omission. Local authorities in England and Wales have had the duty for a long time. We were being put under pressure to include the reference in the bill, and to boost references to the codes of practice of some of the professional bodies, such as the code of practice on Treasury management, which the Chartered Institute of Public Finance and Accountancy produced. Once we started considering the matter, we realised that there were benefits to the approach. A lot of guidance that has been adopted by the profession and which is used by authorities does our job for us, in a sense. We do not need to have a large amount of prescription in the bill because the authorities are already observing the codes, as they have an obligation under their audit and proper accounting obligations to do so.

Apart from those reasons, we included the reference in the bill because it allows proper accounting practice to float in the direction that the professions dictate. The professional bodies do a lot of work and continually review their standards, guidance and codes of practice. They consult people and have legal obligations and we can rely on their activities in that regard. We could find no particular reason why we had not taken the approach before.

John Young: How difficult would it be to apply the code in the proposed form? I imagine that it would be easier to apply when dealing with small authorities such as Stirling Council and East Renfrewshire Council than when dealing with the authorities in Glasgow or Edinburgh, which must have immense ranges of finances and accounts. Do you anticipate any difficulties in applying the code?

Mary Newman: Glasgow is a good case to talk about because the director of finance and the director of accountancy are on the BVACOP steering group and have been using the best-value accounting code of practice for two or three years. When we started talking about including it in the bill, it came as a surprise to chief executives, as their finance people have been doing the relevant work. We are asking senior management to place more reliance on the best-value accounting code of practice. The information is being collected and should be being analysed. The fact that CCT was in force obscured some of the trading elements of the best-value accounting code of practice because it was necessary to bow to a statutory requirement to do something else. We are removing the statutory requirement to have CCT-type accounting and are leaving the profession to decide what is sensible.

Elaine Thomson: Perhaps I should have listened harder, but I have a supplementary question. First, will adopting the code of practice place a duty on local authorities to adopt the accounting practices, such as activity-based costing, that are increasingly used across most of the private sector? Secondly, will a duty be placed on local authorities to use standard and uniform accounting practices across all the different local authorities? Will that mean that it will be straightforward to compare costs, such as how much it costs to sweep a street in Aberdeen as opposed to in Stirling or elsewhere?

Mary Newman: If you were to ask the professional bodies, they would say that the code, which is about allocating costs to service expenditure headings, is similar to activity-based costing but is not quite the same. ABC is more of a private sector approach to management accounting and goes into slightly more detail. In a sense, the best-value accounting code of practice is a management accounting tool. The code asks authorities to assign expenditure to service expenditure headings. In a way, it helps them to budget.

The professional bodies would say that that professional practice has been in force at least partially in Scotland since the beginning of 2002. The bill will not enforce observance of the code in any significant way because finance directors are already considering such matters. Finance directors are already beginning to assign expenditure and to budget in that way because their professional obligations are such that they must try to account properly in accordance with the guidance of the relevant professional association or institute.

Sorry, I missed part of the question.

Elaine Thomson: The second part of my question was about standardisation and uniformity

of accounting practice across all the local authorities in Scotland. Also, are you saying that the code goes some of the way down the road towards management accounting and activity-based costing, but not right down to the bottom level of detail?

Mary Newman: Several approaches can be taken. Management accounting techniques can go in and out of fashion. Activity-based costing became all the rage for a while in the private sector. Some private sector organisations will definitely still use activity-based costing, but that is an internal decision for them. Activity-based costing is about how costs are allocated and the basis on which costs are assigned to activities. For example, costs might be assigned on the basis of floor space or man-hours or time charts.

BVACOP should lead to slightly more standardisation. Indeed, I think that it already has. The feedback that we get from the field is that such a system is a reasonable tool for the local authority sector—it was designed with that sector in mind. That is one reason why best-value accounting is now recognised by the appropriate standards-setting bodies as part of the canon, as it were, of proper accounting practice.

The Deputy Convener: We will turn to community planning after John Young asks one more question.

John Young: I am interested in that most recent exchange. Does Mary Newman perceive any difficulties in the code's proposals? In her professional opinion, does anything stand out as being difficult?

Mary Newman: For a while there might be confusion about when a trading operation is a significant trading operation. The code says that trading accounts should be disclosed for significant trading operations. If the trading operation is insignificant, the authority should still keep trading accounts for it, but it need disclose trading accounts only for significant trading operations. Sometimes there may be a slight pressure to conclude that a trading operation is insignificant if the trading results are bad. The profession might need to resolve that issue.

The Deputy Convener: Can you think of any other issues?

Mary Newman: As with any other accounting device, those who are extremely clever and extremely determined could probably find ways round things that do not suit them. However, generally, the profession does not try to do that—being a member of the profession, I would say that.

The Deputy Convener: Lots of people want to ask questions now.

Mr Gibson: Surely what is significant in Orkney, which has a population of less than 20,000, will not be significant in Glasgow, which has a population of more than 600,000. How do you get the balance right?

Mary Newman: That is why we think that the decision is best left to authorities, with the professional advice of their auditors. If they have a disagreement, the auditors will say so. It is a matter to be resolved locally. I do not see how we could produce comprehensive guidance that tells people whether an activity is significant. It will depend on the local circumstance. A small trading operation may be the only game in town. That in itself might make it significant.

The Deputy Convener: Before we close this part of the discussion, will you give us more information about how you think the process will develop? Some definitions will be difficult to cope with in the first instance. You said before that you would be taking local circumstances into account and that there would be negotiation. Can you give us any background information on that?

Mary Newman: The Chartered Institute of Public Finance and Accountancy has offered to examine certain issues for us, to see whether it can resolve some of them. We know that the BVACOP steering group has issues in mind. Obviously, it wants codes of practice. The same issues about avoidance exist in England and Wales. We are moving from a system of prescription to a negotiated settlement. In some areas, the negotiations are just beginning. We are not the only people who have a view on the matter. That is the change. We have acknowledged that.

Ms White: I want to pick up on the issue that the deputy convener mentioned following my questions about whether there would be specific training. The situation was that it would be up to each individual council and would depend on how it got on with the Accounts Commission. The situation now seems to be the opposite of that. Only councils will use the audit code of practice under the best-value regime. Lots of councils and other agencies want best value to be extended to other public bodies. When there is partnership between local councils and other so-called public bodies, will you clarify that best value will apply to both of them and that BVACOP will apply only to councils and not to other public bodies?

Mary Newman: The professional associations will have to address that issue. So far in the UK best value has been a local government thing, although it has many similarities to other modernising initiatives. The push in Scotland to extend best value across the public sector—which has already happened to an extent, as it is already in accountable officers' memoranda—will affect

the way in which accounts are done. It should not make a major difference, because a lot of the things that underpin best value are good practice in modern management and financial reporting.

The best-value accounting code of practice has been written specifically for local authorities, in that it talks about the services that they deliver and will offer service expenditure headings to do with education, social work, trading and so on. When the profession develops guidance for health, or other matters, different areas might be covered, but the guidance will be similar. I am sure that the management arrangements for management accounting in health will not be desperately dissimilar to those in other sectors. It is all about relying on the profession's latest estimate of where good practice lies.

Elaine Thomson: I have one small further point, which follows on from the issues that Sandra White raised. Will the code of practice help to drive more openness in how financial information about local authorities is communicated to the public? Local authority finances are impenetrable for most people. Increasingly, efforts are being made to open up the Scottish budget and make it more understandable. Does the code of practice fit in with what we are trying to achieve at a higher level, in the Scottish budget? If the Scottish Executive allocates £20 million to education or whatever, people want to know how that money is being spent by their local authority. People might also want to compare what is happening in their local authority with what is happening in the local authority next door. Will the code of practice help to make that information more accessible?

15:15

Mary Newman: The best-value accounting code of practice helps local authorities to account for their own management purposes. It also says that if there are trading accounts and an operation is a significant trading operation, those accounts ought to be publicly disclosed. Therefore, the code provides specifically for disclosure of trading. It is meant to improve the allocation of costs and the quality of financial information.

On public accountability, perhaps section 15 of the bill will improve the quality of information that is made available to the public. Currently, we require authorities to publish only their annual accounts, which is the historic view of financial accounts. Even in respect of a company's accounts, the annual report on accounts does not say much. It will tell the reader the general asset base, the general turnover and whether a profit was made, but not much on a smaller level.

We will discuss with the best-value task force and a sub-group of that task force what guidance will need to be issued to support the public

performance reporting measures, with which section 15 deals, to get information out to stakeholders. In section 15, we have taken the power to issue regulations as well as guidance, as certain things can be left to local authorities in respect of ways and means. The local authority will have a duty to publish information about itself and get it out to relevant people. Decisions about how to do that and at what intervals should be up to the local authority. We are taking the power to regulate so that we can say that particular information should be issued as a bare minimum.

In the bill, we have tried to be clear about that information. We have said that the regulations may include provision for around six items—I think that two of them relate to finances. Of course, we will discuss with the best-value task force whether we have got that right or whether other things ought to be covered by regulation. Our ambition is to keep the list of what is needed to a bare minimum rather than say, “We will tell you exactly what to report to everybody at all stages.” We are trying to say that if nothing else is done, people have a right to know A, B and C.

Last week, we had a preliminary chat about that matter with the best-value task force, which thinks that the approach is decent. It certainly wants to consider whether we have included too many things in what we might want to regulate or whether we have not included some essentials.

The local authorities were more interested in the guidance because they have found performance reporting more difficult than they expected in respect of working out how to get information out in a relevant, timely, clear and explanatory way that captures people's attention. They will look for a lot of guidance on good practice.

Leslie Evans: The best-value task force has a Scottish Consumer Council representative. I am sure that it will be interested in how user-friendly the information that is provided by councils will be and how that will be covered by the guidance. I am sure that that will be uppermost in its mind and I suspect that it will make its views clear.

John Young: I have a question to which there might not be a definitive answer. As far as I am aware, the accounting profession has a general code of conduct. How does that code of conduct differ from what is proposed in the bill? I appreciate that the accountancy profession may largely deal with companies, shops and businesses, for example, whereas, in the main, we are talking about local authorities. Are there differences in the codes of conduct, or do other angles that do not exist in the commercial sector have to be taken into account by accountancy firms?

Leslie Evans: Are you comparing the code of

conduct with BVACOP?

John Young: Yes—if it is possible to make a fair comparison.

Mary Newman: I do not think that the two can be compared, as BVACOP is technical in respect of where costs are put and assigned in an analysis of financial information.

There are at least three accounting professions. Some members of those professions are wholly engaged in work with the private sector and some are wholly engaged in areas that are not to do with audit—there are specialists who are internal auditors or management accountants. CIPFA is the association for public finance accountants and auditors. The accounting professions' codes of conduct are pretty strict in relation to probity and reliability of judgment. An auditor who signs off accounts on an audit is giving an opinion. If he gets that opinion grossly wrong, he could be struck off. In that sense, the accounting professions are quite self-regulatory. Does that help?

John Young: It helps to a certain extent. Thank you very much. The question was not easy.

The Deputy Convener: I realise that we are getting a little bit short of time and that we ought to give Mary Newman a rest, as she has been answering rather a lot of questions. We might have a few more questions. Would it be possible for us to send them to you in writing and for you to reply in that way?

Mary Newman: That is not a problem.

The Deputy Convener: I am pleased that we will now turn to community planning.

Ms White: I am sure that we will all have plenty of questions about the accounts and BVACOP.

Community planning is dear to the community and to local government. Community planning is defined in the bill as a process whereby services are “provided” and the “planning” of provision takes place. Does the process include resourcing and management of delivery and performance? I am not necessarily asking whether you will be giving local councils any more money.

Leslie Evans: Yes is the short answer. As it was originally drafted, the bill used the word “planned”. As well as using the word “planning”, the bill that has been introduced deliberately refers to services being “provided”. We certainly expect the process to include resourcing and managing the delivery of performance. We will expect the agencies that are involved in community planning to set out their joint vision as part of a community plan, if they feel that that is appropriate—it is not essential. We will expect them to set out their responsibilities, what they will do, what the time scale will be and what specific outcomes or

milestones they anticipate on the way to realising their vision. We will want to know how they will monitor and evaluate that framework. We will regard that as part of the process.

Ms White: You seem to be saying that you will be linking community planning and performance outcome agreements. Is that what you mean when you talk about linking the outcome?

Leslie Evans: There is no such link at the moment, but we are considering local outcome agreements, which are being piloted in areas such as the better neighbourhood services fund and the rough sleepers initiative. We think that local outcome agreements are a potential vehicle and we have talked to COSLA about that. I know that the community planning task force is interested in how local outcome agreements can be developed to enhance and support the process of community planning.

Ms White: Are you saying that you will link community planning with performance outcome agreements or that you hope to link them?

Leslie Evans: We definitely think that local outcome agreements should be linked to the community planning process. We just have to agree on how to implement that linkage. It is quite a complicated and lengthy process to bend local outcome agreements to fit what the Executive asks of a community planning partnership and how it delivers. That relates to the issue of national priorities being linked to local priorities.

Ms White: You mentioned partnerships and partners participating in the process. Are you saying that it will be a duty for partners to participate in the process? Will it be a duty not just to take part in planning but to deliver the plans? Will an opt-out agreement be allowed if partners say that they cannot deliver or that they wish to help in planning but are not prepared to fulfil a duty? Will there be an opt-out for any of the partners?

Leslie Evans: The partners that are identified to have a duty must comply with the duty. The inclusion in the bill of "planning" and "provided" reflects the importance of that.

As a result of consultation, we felt that community planning was about much more than just the process of producing a plan—it must produce outcomes and the improvements that will come about as a result of the community planning process should be taken into account. We will expect the core partners to be engaged in that process. We will develop the guidance with that idea in mind.

Ms White: So the guidance will say that if a certain agency has a duty, it must follow that duty through. The agency will have a duty not just to

participate, but to follow through the plans.

Ian Mitchell (Scottish Executive Finance and Central Services Department): As Leslie Evans mentioned, you do not have a copy of the guidance, but it will be supplied to you as soon as possible so that you can get a feel for the nature of the duties. One aspect of the duty of community planning will be to set challenging outcomes along with individual agency and partnership responsibility for delivering the outcomes. To that extent, all partners to community planning will be committed to the process and will be committed to the explanation of the duties in the bill.

Ms White: I understand what you say about the duties and about bodies being committed to outcomes. What would happen if one partner disagrees with part of the plan, but the rest of the partners agree, perhaps 10 to one? Does that partner have a veto or does the bill build a vote into the process so that, if the majority says that the plan should go ahead, it will go ahead even if one or two partners say that they do not like part of it?

Ian Mitchell: If we view community planning as a process and not just the production of a plan—that idea came out strongly in the consultation—every partner that participates in the community planning will have to go through the process of setting a joint vision for the area, setting targets and engaging in consulting and co-operating with community bodies. There is no opt-out from engaging in the process of community planning as we will set it out.

However, we would be naive to think that there will be no disagreements between community planning partners on how a particular project is delivered. For example, there might be a disagreement between a national perspective and a local perspective. Community planning partners will not be bound on individual decisions in the community planning partnership, but they will be bound by the process. If they do not comply with the process as set out in the bill and in the guidance, we have measures that can pull them up on that.

Ms White: Do you mean that the Executive can intervene if a partner is not pulling its weight?

Ian Mitchell: Yes. The bill contains provision for that. For local authorities, the Accounts Commission for Scotland and, for other bodies, the Auditor General have powers to make a report on partners that do not comply with the duties that are set out in the bill and the guidance.

Ms White: You mentioned partners and communities. Will the bill prescribe which community organisations can be part of a partnership? Will community organisations be selected—that is probably the wrong word—and

will the local council select them, or can all community organisations enter into the process?

Ian Mitchell: In a spirit of trust, the bill gives the local authority discretion on which organisations it deems appropriate to consult and with which organisations it deems it appropriate to co-operate. We think that that is right because of the sheer extent and range of organisations that could be defined as community bodies.

However, the guidance will make it clear that the process is about effective engagement of communities. The community planning task force has been working very hard on that. The guidance will set out clearly that community planning is not about the usual suspects or a one-off, annual consultation exercise. It is about giving communities the capacity to engage continuously and in a manner that best suits the communities themselves.

Ms White: I was going to mention the issue of the usual suspects, which you referred to. Are you saying that the councils will decide which community bodies will be involved and that the consultation will not be wider?

Ian Mitchell: Ultimately, the councils will decide whom they should consult and with whom they should co-operate. That is reasonable in view of the sheer scale and number of bodies that may be defined as community organisations.

Leslie Evans: We have some examples of some innovative approaches being taken to avoid the trap of consulting only the usual suspects. We will not go into detail now, but we could forward some of those examples to you. We know that in Aberdeen and Renfrewshire there have been some interesting ways of trying to bring the community into the community planning process realistically and meaningfully. That means that those communities are much more likely to buy into the process, as they will get something out of it. We can send details of that.

Ms White: That would be lovely.

John Young: Subsections (2) and (4) of section 17, which is entitled "Community planning: further provision", indicate that the duty on prescribed partners to participate in community planning can be modified. Why and under what circumstances would ministers modify that duty?

15:30

Ian Mitchell: The provisions to which the member refers have been included in the bill because they would allow us to add bodies to the list in section 17 if, over time, we found that those bodies were not participating or engaging sufficiently in the community planning process through other means. We also envisage the

provisions being used to add new bodies to those listed in section 17—we do not know what new bodies will come on stream in future. The bill will give us the ability to make the duty to participate in community planning specific to a region of Scotland, if a new body has a specific geographical remit. The two subsections to which the member refers are designed to provide us with options for the future.

John Young: Section 18 is entitled "Reports and information". Reporting requirements seem to be focused on arrangements and process, rather than on outcomes for communities. Is that intended? If yes, why? If not, where is outcome or impact assessment defined and required?

Ian Mitchell: It is not intended that reporting requirements should relate exclusively to arrangements and processes. The bill sets a framework for reporting. We are giving local authorities, as facilitators of their community planning processes, the scope to decide the means by which they will report and how frequently they do so.

The bill's provisions on community planning may be compared to a duck paddling under the water. The community planning task force has done a great deal to provide guidance on specific outcomes for community planning. It has attempted to develop cross-cutting indicators for issues such as tackling crime, which are within the domain of more than one organisation. Such indicators will form an important part of local outcome agreements between national Government and local government.

Under the reporting requirements, clear outcomes will be expected both from partnership activity and from individual partner contributions to that activity.

The Deputy Convener: The next set of questions relates to the power to advance well-being.

Iain Smith (North-East Fife) (LD): I will try to get through my questions quickly, to advance the well-being of us all.

The policy memorandum states:

"The power to promote and improve well-being is deliberately drafted in a broad sense to ensure it encompasses a wider range of actions which might contribute to the well-being of an area."

That is very welcome. However, is there not a danger that the Executive's aspirations will be constrained by other aspects of the bill? If a council decided to generate employment and income through a trading activity—perhaps in an area of rural unemployment—in order to advance the well-being of that area, would the limitations on commercial services that part 1 of the bill imposes

still apply, even if the surplus income from that trading activity were ploughed back into improving employment services? How does the statement in the policy memorandum tie in with part 1?

Leslie Evans: The commercial service income provisions in the bill would still apply, but the council could rely on the power of well-being to justify the venture. The authority would be able to apply to the minister to have limits set through regulation breached where it regarded such action as important. In the example that the member gives, the authority could apply to the minister to have the regulations that will be set under the commercial income provisions in the bill breached on economic or social justice grounds.

Iain Smith: The potential danger is that significant trading activity is obviously related to a council's size. In some of the areas where councils are more likely to want to use the power, that activity will almost automatically become significant. The willingness of local authorities to consider such examples may be constrained, because they will be concerned that they will fall into that situation. Will the guidance cover that, so that councils will not be put off looking at possible well-being opportunities, simply because they may fall foul of legislation on commercial activities or significant trading activities?

Leslie Evans: We want the guidance to be as positive as possible and to create as few restrictions as possible. At its meeting last week, the power of well-being guidance sub-group was at pains to agree that it wanted the guidance to emphasise the openness with which we anticipate the power of well-being being used, rather than any restriction. We did not want the guidance to end up inadvertently restricting the power as you have outlined.

Iain Smith: Another aspect that may similarly constrain the ability of councils to develop the well-being provision is contained in section 23(5), which refers to not allowing

"a local authority to raise money by levying or imposing any form of tax or charge, by borrowing or otherwise."

Does that not impose a constraint on local authorities in developing partnerships with the private sector to improve services in specific areas, such as through business improvement districts, which the committee considered as part of its local government finance inquiry? Would it not be possible for local authorities to pursue such partnerships as a way of improving services?

Let me give another example. At the moment, there is a problem in my constituency with common areas and play areas within a private housing development. Those areas have to be maintained by the residents under the rules for that development, but the residents are concerned

and feel that such areas should really be maintained by the local authority. It might be possible for that responsibility to be transferred to the local authority under the power of well-being, but it might be constrained by the limits on charges. Is there not a danger that section 23(5) is too limiting on local authorities that are considering innovative ways of providing new services?

Leslie Evans: We certainly want the power of well-being to provide an innovative power. Section 23(5) is included to distinguish between the power of well-being as used for purely commercial purposes—to be exploitative, if you like—and as used for innovative and creative purposes. The intention is that authorities can charge under the power of well-being at a reasonable rate and put the income back to defray costs. That is clearly set out and that is clearly the intention for the power of well-being. The commercial income provisions clearly still apply, but when it comes to initiatives such as BIDs we must differentiate between what is a tax and what is a charge. The power of well-being is very much about charges, and there is a clear connection between what one pays as a charge and the service that one receives in return. A tax, on the other hand, is much more general in terms of what one puts into the big pot and what one gets back out of it. BIDs are slightly different in terms of their potential connection to tax, as opposed to charges, but the intention behind the power of well-being is certainly that there should be a reasonable charge to defray costs. That is the signal that we have put out deliberately; we do not see the power of well-being as grounds for local authorities to expand their commercial activities unnecessarily.

Iain Smith: I accept that. It should not be about expanding commercial activities, but I am concerned about whether section 23(5) is too restrictive in the way it is phrased. It could be so restrictive that section 23(6)(b), which says that councils can impose "reasonable charges" could contradict section 23(5). How do you sort out that distinction between charging—as opposed to taxes—and "reasonable" charging?

Gillian Russell: Section 23(6) qualifies section 23(5), which stipulates that a local authority cannot raise money by levying or imposing tax. However, under the provisions that are set out in section 23(6), an authority can set and determine "amounts of council tax" and, as Leslie Evans has pointed out, impose "reasonable charges". There is no complete veto on councils' ability to raise money, but they can do so only in limited circumstances.

Iain Smith: I accept that that is the intention; however, the provision itself might not be entirely clear. That means that solicitors might receive the most charges from this provision, because they

will go to court for clarification if someone challenges the assumption that a council is charging a reasonable charge.

Leslie Evans: Fair enough. We are also still listening to views on how the bill plays across the whole area of charging, and acknowledge that we will probably have to carry out further work on that issue. It is the one area that will need a little more detailed attention over the next few weeks. We will take your comments on board.

Iain Smith: I have a further question about borrowing. How does the power of well-being fit in with the provision pertaining to prudential rules, which has not been included in the current draft of the bill but was mentioned in the original consultation on the bill? Would such rules not allow for borrowing to be considered as part of a well-being project?

Leslie Evans: Is that connected with capital consent?

Iain Smith: Yes. By definition, borrowing relates to capital.

Leslie Evans: Although the provision has not been included in the draft bill, it forms part of the "Renewing Local Democracy: The Next Steps" consultation document. That will help to prepare the ground work for the introduction of an amendment at stage 2 to revise restrictions on capital consent. The provision relating to prudential rules will certainly come into the bill at that stage.

Iain Smith: The bill says that

"ministers may, by order, extend the meaning of 'well-being'".

If it is accepted that well-being is already broadly defined, how does one extend something that is already defined in such a general and broad way?

Leslie Evans: We are concerned that court rulings, for example, might result in the inadvertent narrowing of the interpretation of the power of well-being. We want to guard against such a situation, which is why we have changed the word "amend" in the initial draft to "extend". Although we are holding a strong line in this respect, we intend to ensure that the power remains as wide as possible in case something like a court ruling comes along and restricts it.

Iain Smith: Section 23(4) restricts the use of the power to "unreasonably duplicate" another statutory agency's functions. What is the distinction between "reasonable" and "unreasonable" duplication?

Leslie Evans: The policy intention behind the provision is that, if agreement is reached between bodies, both should play a complementary part in providing a service. That is fine. Furthermore, if

one party agrees that another party should carry out a function on its behalf, that would not be regarded as unreasonable duplication. We expect a benefit of the community planning partnership to be that partners will get better at understanding what each other does and at negotiating with each other about what they should do. As a result, there should be a clear understanding about how each plays its role in certain services. However, we are aware that certain services have an interconnection between two agencies, and we certainly expect organisations to play a complementary role and have a clear understanding of how services are delivered together.

Iain Smith: Would it not be more advantageous for the bill to make it clearer that a local authority that wished to use the power of well-being to provide a service for which another statutory body was responsible, and had that body's consent, would be permitted to do so?

Leslie Evans: Certainly the guidance will make it clear what "unreasonable duplication" means. We have deliberately included the phrase because it is a legal term that has a particular meaning. The guidance will flesh it out by saying that, where a local authority and another partner come to an agreement about how a service should be delivered by the local authority as opposed to the partner and consent is thereby given, that will not constitute unreasonable duplication.

Iain Smith: Section 23(6) refers to

"defraying the costs incurred by the local authority in supplying goods or providing services."

Would that allow a council to provide goods or services at cost if that promoted well-being? An example might be providing fuel at cost in a rural area, or providing food at cost in a deprived urban area.

Leslie Evans: Yes, although obviously we would expect local authorities to be taking that decision in the light of best-value discipline to make sure that it is best value to do that. It also means that, in considering the use of the power of well-being, a council would have to ensure that it would be beneficial to persons in the area, including to competitors. The decision would have to be made in the round and certainly within the discipline of a best-value framework.

The Deputy Convener: I thank Leslie Evans and her team. This has been a mammoth session and you have done very well. Thank you for your offer to send material to the committee. You made that offer near the beginning of the meeting so I cannot remember exactly what the material is. Colin Mair, our adviser, has also been with the committee. I am sure that he will have additional questions and that he will be chewing over the

Official Report for the bits that he might have missed when he was out of the room.

15:46

Meeting suspended.

15:54

On resuming—

The Deputy Convener: I am sorry that we are running so late. I hope that the witnesses have not been waiting too long. I see that Corrie McChord is not with you. We gather from what John Young told us earlier that Keith Harding, who is a member of our committee, has flu, like many people in the Stirling constituency. I do not know whether Corrie McChord has also come down with the flu, has another engagement or what.

Anyway, I welcome Jon Harris, who is director of policy and legislation at COSLA; Tom Aitchison, who is the chairman of SOLACE and the chief executive of City of Edinburgh Council; Douglas Sinclair, who is the vice-chairman of SOLACE and chief executive of Fife Council; and Peter Daniels, who is chief executive of East Renfrewshire Council. We also have with us Colin Mair, who is the adviser on the bill to the Local Government Committee.

The witnesses can speak for a few minutes, after which members will ask questions.

Tom Aitchison (Society of Local Authority Chief Executives and Senior Managers): Jon Harris will kick off, then we will take it on from there.

Jon Harris (Convention of Scottish Local Authorities): First, I give Corrie McChord's apologies. He does not have flu. He got back from Brussels on time but, unfortunately, something arose this afternoon that required him, as leader of Stirling Council, to attend. He phoned me at lunch time and asked me to give his apologies. I also agreed to say what he would have said as a short introduction.

COSLA and SOLACE welcome the bill's repeal of CCT and the new statutory framework for best value, the duty of community planning and the power of well-being. Our point is that those three elements are inextricably linked. We hope that amendments that we will propose in our submission will help achieve that linking.

The Deputy Convener: Would anyone like to add anything?

Tom Aitchison: I do not want to add to Jon Harris's points. I just want to say that local government as a whole is pleased to see the bill. Some of us go back three, four or five years with

our involvement in community planning, so we are pleased that the issue of community planning is a major aspect of the bill. As questions develop, we can expand on our thoughts on all that.

The Deputy Convener: Lovely. Thank you.

I will fire off with a question on paragraph 1.1 of your response. How would you like the three elements of the bill to be interlinked? Is that more than a presentational issue? I should say, as I do not think that you were present earlier, that the Executive officials said that the bill was just drafted in that way. Would you like the definition of best value widened to include elements of community planning?

Jon Harris: The issue is a bit more than a presentational one. We sometimes lose sight of the objective, which in our view is to deliver and enhance community well-being. We regard the best-value and community planning processes as tools to facilitate that well-being. We would have preferred to see up front in the first section of the bill a focus on well-being, then the bill moving on from there.

Douglas Sinclair (Society of Local Authority Chief Executives and Senior Managers): There is occasionally a tension in regard to the bill being about local government as opposed to local governance. For example, some of the biggest opportunities for best value lie across the boundaries of organisations, but that is not recognised in the bill. The duty is placed only on councils. That is an example of where the connection is not made. Another example is the duties placed on councils to produce the community planning report. That report is about community governance and should be an obligation that is placed on the community planning partnership. It seems to me that a permanent tension between two different agendas runs through the bill.

The Deputy Convener: Would you like the definition of best value widened to include elements of community planning?

Douglas Sinclair: Yes.

The Deputy Convener: On paragraph 1.6 of your response, under what circumstances could a minister be meaningfully subject to a duty of best value? How would that be enforced? Is it not the Parliament's job to hold ministers to account?

Peter Daniels (Society of Local Authority Chief Executives and Senior Managers): The notes accompanying the bill seem to rely on the Public Finance and Accountability (Scotland) Act 2000 to give ministers a better opportunity to extend best value to other parts of the public sector than the bill does. However, I am not sure how the 2000 act will do that, given that it deals

with matters such as resource budgeting and accounting and payments from the Scottish consolidation fund.

The 2000 act also has provisions about the Keeper of the Registers of Scotland and the Auditor General for Scotland and the act establishes Audit Scotland and the Scottish Commission for Public Audit. That is what the Public Finance and Accountability (Scotland) Act 2000 is about. It is not clear what part of the act could be used to extend best value to the rest of the public sector. SOLACE would have preferred the Local Government in Scotland Bill to have had a provision requiring ministers to do that.

16:00

Ms White: This may seem a silly question but lots of people have asked us this question in the Parliament. I know that we are dealing with the Local Government in Scotland Bill and that the criterion for its provisions is that they should deal exclusively with local government, but is the bill the right place to extend the duty of best value to all public bodies? Various officers have asked us that. Should such a provision be incorporated in the bill or in another piece of legislation?

Peter Daniels: Both COSLA and SOLACE would have preferred the title "Local Governance in Scotland Bill". That would have been more sensible if the intention was to extend best value to other parts of the public sector. Other parts of the bill that do not deal with best value, such as the part that deals with community planning, mention other public bodies such as Scottish Enterprise and the health boards. The bill imposes a duty on those bodies to participate in community planning. I do not see why such bodies cannot be mentioned in the part of the bill that deals with best value.

Douglas Sinclair: There is a wider dimension to the issue. Arguably, it concerns not only local governance but the governance of Scotland as a whole. As Peter Daniels has said, the duty of community planning is laid upon a number of bodies, but no mention is made of the duty on the Executive. Community planning has a national as well as a local dimension. To be effective, community planning must have the potential to link the national dimension to the neighbourhood dimension. Where will ministers be held to account for their obligations towards community planning? Local government has a part to play in helping the Government of the day, whatever its colour might be, to meet its national objectives.

In our written submission, we articulated the potential for community planning to make the link between national objectives and local objectives, provided that the number of national objectives are

relatively limited, that the objectives are agreed and that there is space for the community planning partnerships to deliver the things that are important to areas such as Edinburgh or East Renfrewshire. That potential exists, but one of our concerns is that ministers have perhaps not seen it. What Scotland lacks is a planning framework to link national priorities with local priorities.

Ms White: That point came across at the conference that we attended in Stirling. We heard about the need for involvement of local communities in the health boards and in the police. I cannot say that I disagree with you. If we get a chance, we can ask the minister the pertinent questions that you have raised.

In what way are the powers of intervention under previous acts that you have cited in your submission inconsistent with those under the Local Government in Scotland Bill? Your submission mentions that

"The level of intervention should be appropriate to the failure identified".

In your opinion, should we be using more carrot and less stick?

Jon Harris: We would like the bill's approach to intervention to be a much more graduated approach that supports continuous improvement, although ministers must obviously have powers to intervene if, at the end of the process, a council fails to implement. For example, we feel that the power in the Housing (Scotland) Act 2001 to send in management teams looks like a first resort instead of a last resort. That is not compatible with the bill's approach. We suggest that the powers in the 2001 act might be examined. In the process of rationalising those powers and focusing on one system of intervention and enforcement, further repeals might be considered. Elements of the Community Care and Health (Scotland) Act 2002 might similarly be considered for repeal.

Ms White: I am not saying that interventions always occur as a result of a misdemeanour, but the greatness or the smallness of the misdemeanour should be taken into account rather than that just happening across the board. Interventions should not depend simply on the Executive's decision.

Peter Daniels: The problem is that both the acts that we mention in our submission are very specific in the form of intervention. The Housing (Scotland) Act 2001 allows ministers to appoint housing inspectors to report on the performance of the council's housing functions. As a result of an inspection, the council might be required to produce a remedial plan. If ministers do not accept the remedial plan, they have the power to appoint a manager to come into the council to exercise its housing functions.

The Community Care and Health (Scotland) Act 2002 permits ministers to direct local authorities and the national health service to discharge their functions jointly. Ministers can require councils to make payments to NHS bodies in certain circumstances. We are hoping that the Local Government in Scotland Bill will lead to regulations being drawn up by the best-value task force, to set out a graduated process of intervention, culminating in the discharge of a council's functions by another person or body. However, that would be the very last stage in the process. We are looking for the housing inspection regime and the regime established under the Community Care and Health (Scotland) Act 2002 to be brought within a general regime, which we hope we can agree in the best-value task force.

Ms White: So you are seeking a more holistic approach?

Peter Daniels: Indeed.

Ms White: Paragraph 2.9 of your submission mentions the relaxation of rules about contracts and so on, as well as the Local Government Act 1988. What substantial matters are contained under the sections of part II of the Local Government Act 1988 that are not proposed for repeal? You mention those bits that you are happy with, but are there any sections that you would like to be repealed that it is not proposed to repeal?

Peter Daniels: Part II of the 1988 act deals with public supply and works by contract. Section 17 requires councils to exclude non-commercial considerations in awarding contracts. There are eight non-commercial considerations in that section of the act. The Local Government in Scotland Bill removes the requirement not to have regard to non-commercial considerations from three out of the eight, but leaves another five in place. Section 18 of the 1988 act allows councils to have regard to race relations matters and that provision will be retained. That is good and we agree with that approach. Section 19 allows ministers to specify other matters as being non-commercial.

It is not a particularly strong issue in SOLACE. Some of the non-commercial considerations that will remain, such as a contractor's involvement in particular countries or the interests of a contractor in irrelevant fields of Government policy, are not things that SOLACE would go to the wall on. What is significant is the generality of it. The climate in which councils work and co-operate with the Executive today is very different from that in 1988, when there was constant confrontation between councils and the Scottish Office. It is a question of trust. It would not be the intention of a council to exclude a contractor because he had work in Iraq, for example. Councils would not usually have regard to such considerations. However, the bill

leaves those five areas in place and we can see no good reason why part II of the 1988 act should not be abolished.

Jon Harris: To add to that from a political perspective, the focus is an issue of trust in terms of what procurement practice is subject to best value. I do not think that a council would try to justify not procuring goods or services from a contractor who had traded in Iraq on that basis. If you are going to retain legislation—which we believe would contradict the ethos that we are trying to promote under the new duty of best value—you will have to justify why you are keeping it. We do not see that that is justified at this point.

John Young: Perhaps I should declare an interest—I am a council tax payer in East Renfrewshire. It is not often that we get a chief executive in the firing line.

Peter Daniels: I am aware of that.

John Young: I shall try not to ask Peter Daniels any awkward questions, although I cannot promise.

My question refers to paragraphs 2.10 and 2.11 of your submission. Do you believe that there should be no restriction on councils' ability to trade? That may be an awkward question for officials. It may even have a political dimension—I am not sure.

Peter Daniels: We would not say that there should be no restriction whatever on councils' ability to trade. As leaders in the community who have an interest in supporting local businesses, authorities would not want to set themselves up in competition with private companies in a way that might force them out of business. Our aim is to support local contractors. I am not sure that there is an easy answer to the question. Trading where competition is fair, where councils are signed up to best value and where competition is part of best value is one thing. However, allowing authorities unfettered discretion to trade or undertake work in the private sector that is not core to their functions is probably not something for which we would argue.

John Young: If the council leader had been here, I would have followed that up with a supplementary question. However, I will not do that with Peter Daniels; I will not ask him to say yes or no, for obvious reasons.

What are your views on the bill's proposals for trading operations and accounts in section 12? Do you endorse what is contained in section 12?

Peter Daniels: Half an hour of your earlier questioning was devoted to BVACOP. Originally, we were concerned about the overuse of BVACOP by the Scottish Executive. However, I do

not think that BVACOP is particularly significant for local authority managers. Basically, it is a statement of good accounting practice. By focusing on total costs, it allows councils to compare the actual cost of a service with the costs of that service in other councils on a consistent basis. That is one of the great strengths of BVACOP.

Our early concern about BVACOP was that it was seen by some as a back-door method of retaining CCT, by ensuring that councils were obliged to keep a set of trading accounts for former CCT services. We are now persuaded that that is not the case. We do not have any worries about the application of BVACOP. It represents good accounting and management practices and the code applies only to councils that operate on a commercial basis. If a council did not operate on a commercial basis but decided to provide, say, a cleansing service by means of a voted budget, BVACOP would not apply. Councils would not be required to disclose a trading account if they chose not to operate on such a basis.

Iain Smith: Perhaps I should declare an interest too, as a council tax payer in Fife. More important, Douglas Sinclair is the returning officer, but that will not stop me asking awkward questions if necessary.

I appreciate the fact that there are no accountants present. However, paragraph 2.14 of your submission says that you would like clarification of the weight that is attached to the views of the professional accounting bodies regarding the interpretation of proper accounting practice, because, under section 14(2)(b), the bill proposes that a minister could override professional standards. Can you clarify your concerns about that aspect of the bill?

Jon Harris: We are seeking clarification. Why is there a provision that would allow a minister to override professional practice and in what circumstances would the minister choose to do that?

Iain Smith: Are you saying that you would like us to ask the minister that question?

Jon Harris: Yes.

Iain Smith: How could community planning link the national and the neighbourhood levels? What changes to resourcing, management and the delivery and audit of public services would be necessary to achieve that?

16:15

Douglas Sinclair: That goes back to my earlier point. There is a lack of a national planning framework in Scotland. Scotland is an institutional mess—we have 32 councils, eight police

authorities and so on. Our arrangements do not make sense. There is no mechanism to join up Scotland-wide priorities, which means that each part of the Executive adopts a silo mentality and has its own set of priorities, as can be seen in the document, "A Smart, Successful Scotland". Some of those priorities are important and they should be joined up. As I said earlier, local authorities recognise that what they do impacts not only on their area but on the wider national agendas such as those in "A Smart, Successful Scotland", those that relate to improving the environment, those to do with social inclusion and so on. However, there is no mechanism whereby, periodically, the community planning partnerships and the First Minister can sit down and jointly agree the four or five key priorities for Scotland and the half dozen targets that we want to commit ourselves to delivering and want to be judged on. That takes us back to the fact that the Scottish Executive does not deliver services and improvements to those services; the health service, the voluntary sector and local government do that.

The lack of such a mechanism is a big gap in our institutional landscape. The gap could be filled, but I do not think that ministers have yet realised the potential of community planning. My worry is that ministers may think of community planning as simply a way in which their agenda can be delivered rather than recognising that community planning partners must also be given space to work on the issues that are important locally. That is an issue for bodies such as the national health service, which is keen to play a part in local community planning but is constantly sucked towards the national agenda and national targets. However, I think that a balance can be achieved and that it is possible to link the national and the neighbourhood levels.

Community planning is not a terribly good title for the concept and will not mean a lot to the average man and woman in Newburgh, for example. The concept is about community delivery, making a difference in communities and working, planning and delivering together. It has the potential to make a difference to people's lives in communities and to create a better Scotland.

Jon Harris: We have started the process of developing an outcome agreement between the community planning partnerships and the Executive around the set of priorities that Douglas Sinclair mentioned. It might be useful if we forwarded that to the committee as part of our written evidence.

The Deputy Convener: That would be interesting. I was just about to ask you to do that.

Iain Smith: How could the national interface that you suggest be prevented from becoming a top-down, rather than a bottom-up, process? How

could you ensure that the planning was genuinely community based?

Douglas Sinclair: Part of the national agreement between the community planning partnerships and the Executive would be a recognition that the Executive had to provide the space to allow the community planning partnerships to deliver the things that are important locally. In the introduction to our submission, we said that the position of SOLACE—rather than the position of COSLA—is that there should be a provision in the bill to enable ministers to incorporate community planning partnerships to put them on to a statutory basis. Community planning partnerships should not be given responsibility for doing everything as, for example, the health service should continue to be responsible for areas that it is concerned with. However, we would like money that comes down and is used across the boundaries—drug action team money or social inclusion partnership money—to be allocated to a constituted community planning partnership.

A community planning partnership would be approved by ministers, but would come into being only when all the partners wanted it—there would be no point in trying to impose it. In Fife, for example, all the key community planning partners would have to agree that they wanted to become an incorporated body. That would then send a powerful message to the community that the partnership meant business. Agreement among partners would also make the business of government easier because cross-funding streams would be a mechanism to make things happen in a co-ordinated way.

Iain Smith: Where, in such bodies, would democratic accountability lie?

Douglas Sinclair: The principal player—the chair of the partnership—would be the council, so there would be democratic accountability through elections and the community planning annual report. Over time, one can see the role of the councillor changing: the councillor would act as the advocate for the citizen not only vis-à-vis the council but vis-à-vis the community planning partnership.

The Deputy Convener: We are keeping John Young busy today—he is here as a substitute for Keith Harding, who has the flu.

John Young: What is the witnesses' understanding of the distinction in the bill between reasonable and unreasonable duplication with regard to the power of well-being? Will what is meant be clear to managers and leaders? I am referring to section 23(4).

Would you like me to repeat the question?

Tom Aitchison: No, we are just working out

who will give you an answer.

John Young: Toss a coin.

Jon Harris: In paragraph 4.2 of our submission, we mention that the English equivalent of section 21(2)(e) says that there has to be agreement among the various partners. We suggest that adding the words "with their consent" to section 21(2)(e) would provide for that and would therefore remove the need for section 23(4), which talks about unreasonable duplication. We think that arrangements should be consensual. If consent were given, by definition, you would not be seen as duplicating, because who would give consent if you were duplicating each other's activity?

John Young: That is a fair comment.

Douglas Sinclair: It is not as though there will always be conflict between community planning partners; they may actually agree that the council should do something instead of the other partners.

John Young: That is a fair comment too.

How will communities be involved in decisions that are taken under the power of well-being? Who decides what is good for a community's well-being? Is that linked to community planning? I believe that that refers to section 21.

Jon Harris: The power of well-being is clearly linked to the process of community planning, a key element of which is engagement with the community. That does not refer to just one community—there are many communities of place and communities of interests. We have to consider how they would define their well-being. The council should use the new power to provide that well-being if the duty or responsibility to do so was not stipulated in other legislation.

John Young: Having been a councillor for 35 years, I have noticed a difference among the general public. They are far more aware of what they can do—particularly in planning matters—than they were in the 1960s. Have you found that too?

Tom Aitchison: We would agree with that. Clearly, elected members are elected to take decisions, but most councils in Scotland now consult widely in their communities—through focus groups and the classic range of consultation mechanisms. A broad-brush approach is taken to ascertaining community views before elected members take their decisions. We can reassure you that members do not just slam into decisions—they take a structured approach. As you say, there is a very intelligent public out there nowadays.

Iain Smith: I want to follow up on some questions that I put to the Scottish Executive

witnesses. Does the part of the bill that deals with the power of well-being, as drafted, live up to the Executive's policy intent—that the power should encompass a wide range of actions that councils may undertake to promote well-being? Or are there constraints—in that part of the bill or elsewhere—that act against that intent?

Jon Harris: In general, we believe that the bill provides the power to promote and improve well-being, but we have made two suggestions about where we would like to see improvement. Paragraph 4.1 of our submission makes the point that the lessons of the English legislation have been learned. That legislation got into difficulties by restricting the application of the power in respect of well-being, not just by explicit restrictions, but by implicit restrictions. We hope that the current definition will avoid us going to the courts in respect of the application of the power.

Tom Aitchison: Intellectually, the Executive appears to have a desire to go in that direction. Words and phrases such as “caution”, “take it step by step” and “creative responses” have been used, which is fair, given the circumstances of the past five or 10 years. Intellectually, the argument about promoting the power of well-being has, in a sense, been won. We are working on the mechanics and the practicalities.

Iain Smith: Will the bill as it is drafted encourage local government officials and lawyers in particular to use those powers, or will there be caution that they may be subject to challenge in the courts as a result of the limitations in the bill and the guidance that may be produced?

Jon Harris: We would see the power to advance well-being promoted as a power of first resort. There should be changes, in that one would no longer have to spend legal resource to find a way of achieving something. If that something was demonstrably well-being, we would say to our councils that they should go for it and that they should no longer have to find legal niceties in respect of existing statute. The issue is about changing the culture and promoting innovation and new ways of working. It is inevitable that that will challenge existing ways of working. The proposals are part of that process.

The Deputy Convener: Perhaps this will go over ground that has been covered, but can you propose three key additions and three key deletions to the bill?

Tom Aitchison: We should have anticipated that question.

Douglas Sinclair: I will mention one proposal while my colleagues think of two others. I return to a point that Iain Smith made. Why should the power of well-being lie only with a council? Why should it not lie with the community planning

partnership in the course of time? One can see the process as evolving. SOLACE would want to see such a proposal as an important addition to the bill.

Tom Aitchison: We have one proposal each.

Peter Daniels: My proposal would be an amendment to the miscellaneous provisions section of the bill. It relates to church representation on cabinets where local authorities have adopted a cabinet and scrutiny form of political management. In East Renfrewshire Council—which is my council—we have found it difficult to depart from the idea of an education committee. We abolished all our committees in 1999 and set up a cabinet and scrutiny model of political management, but as a result of the 1994 legislation, we are required to have three religious representatives on our cabinet. The City of Edinburgh Council took counsel's opinion and was advised that not only would church representatives need to sit on its cabinet, they would have to sit on the scrutiny body. Therefore, there would be three church representatives scrutinising a cabinet that consists of the same people. We need to sort that out.

East Renfrewshire Council's cabinet is five strong. As a result of the requirement to have three church representatives, three eighths of our cabinet would have consisted of non-elected members. We have looked desperately for a way out of that and it is likely that we will suggest an amendment at stage 2 to deal with the issue. We want authorities to have the discretion to place church representatives on either the cabinet or the scrutiny side as the authority sees fit. Our intention is not to dispense with the requirement to have church representatives, but to give councils that have a streamlined form of political management some discretion regarding where to place them.

Jon Harris: From COSLA's perspective, the principal addition to the bill should be to extend the duty of best value and to better integrate it in the community planning process.

I have another proposal, which would be a miscellaneous provision. In our response to the white paper on democratic renewal, we have considered extending people's rights so that 18-year-olds can stand for election as councillors. I would add that provision as a priority.

Tom Aitchison: In general, councils should have as much discretion as possible and reserved powers should be kept to the absolute minimum, which would allow us to do our job properly.

16:30

The Deputy Convener: I thank the witnesses for their evidence and for the material that they

have agreed to send us. I hope that if we think of any other questions or they think of any more answers, we will communicate.

Jon Harris is certainly not the weakest link, but we will lose him now because we are about to discuss the white paper on renewing local democracy. Peter Daniels, Tom Aitchison and Douglas Sinclair will stay with us for item 3 on the agenda. I thank Colin Mair, who is the adviser on the Local Government in Scotland Bill.

Peter Daniels: I ask permission to leave—although I am a representative of SOLACE, Tom Aitchison and Douglas Sinclair will deal with the white paper.

The Deputy Convener: That is no problem.

“Renewing Local Democracy: The Next Steps”

The Deputy Convener: Agenda item 3 is the white paper on renewing local democracy. I invite the witnesses to make any points that they want to make before we move to questions.

Tom Aitchison: I want to make a couple of qualifications. The SOLACE executive saw the draft written submission that members have received on Friday of last week. The submission is incomplete in a number of areas and there was discussion on a number of points. Members must bear with us. The submission will change on a number of points before it is completed, although the changes will not be huge in terms of substance or tone. There are points to be refined further before the paper is submitted to the Executive in response to the consultation.

We welcome the white paper, but we are concerned that the matter has taken such a long time to reach the point at which decisions might be made. We want to make a plea that decisions on issues such as members' remuneration should be expedited as quickly as possible. Those issues have been discussed since the McIntosh report, which was begun before the Parliament was formed. Three or four years is a long gestation period. We must try to get on with things and break through the logjam. The Executive and the Parliament must take some decisions because frustration is beginning to appear.

Douglas Sinclair: We have tried to bring out some of the positive aspects of the paper, but there is disappointment and frustration because the white paper raises issues that have been the subject of extensive and repeated debate. There is an expectation that matters will progress and that the questions will not be asked one more time.

Ms White: In one part of your written submission, you welcome the decision not to reduce the number of councillors, and in another part, you criticise the Executive—many of us do that from time to time—for not giving any reasons for rejecting Kerley's proposals for reducing the number of councillors. Will you explain more fully why you welcome the Executive's decision not to reduce the number of councillors? You talk about the council in East Renfrewshire, which is run on an executive model. Do you envisage a time in the near future when it may be appropriate to reconsider the number of councillors?

Tom Aitchison: You have put your finger on a point that colleagues in SOLACE discussed at some length last Friday. The wording of the response will change in due course. Most members of SOLACE welcome the declaration

that there is to be no further major review of local government boundaries or functions at present and welcome the decision not to have a cull of councillors, as I think Kerley called it.

The criticism of the Executive is not logically inconsistent with that welcome. It points out that, although Kerley put forward the argument for reducing councillor numbers, we cannot detect a logical or convincing reason why that argument was rejected in the white paper. We are not saying that we accept the argument for reducing councillor numbers; we are pointing out that, although the recommendation was made after Kerley consulted local authorities and other interested parties extensively, the Government sidestepped giving a response to that recommendation in the white paper. I hope that that clarifies the situation.

Ms White: I was not criticising you.

Tom Aitchison: I know that you were not.

Ms White: It was just a point that I picked up. Do you envisage that all councils will eventually be run on an executive model, as in East Renfrewshire and other areas?

Tom Aitchison: We have been through that point with the MacNish panel—the leadership advisory panel. The need for a different, diversified approach to local government in Scotland to reflect the needs of individual councils comes through all the time. The last piece of research that I saw stated that about six or seven councils had adopted the so-called executive model. Others have streamlined their more traditional committee systems. It is horses for courses.

Perhaps, as experience is gained, more councils will move towards the executive model. I do not think that that can be guaranteed or taken for granted. Perhaps somewhere in the bones of your question is the issue of whether there is any link between the internal management structure of councils and the payment or salary levels that councillors are granted. Perhaps the line of questioning is heading towards that point.

Douglas Sinclair: On the leadership advisory panel, Alastair MacNish made the point that further modernisation of the decision-making structure requires modernisation of the allowances system. I am sure that Tom Aitchison agrees that we will not make progress on modernisation of the decision-making structure unless we reform the allowances system. There is something fundamentally wrong with the basic allowances system: two thirds of Scotland's councillors get a special responsibility allowance, which is simply a reflection of the inadequacy of the basic allowance. That causes huge confusion about roles and responsibilities.

Ms White: Somebody else will ask a question about that, so I will not elaborate on it. I know my views on the matter. Having been a councillor for 10 years, I think that councillors should get proper remuneration.

The Deputy Convener: I will raise a few points about removing barriers and getting more young people into council work. What can be done to remove barriers to young people standing, such as a lack of interest in or knowledge of political issues, or the tradition of uncontested wards in some areas?

Tom Aitchison: Although we are discussing local government, political parties nationally have a role to play, but perhaps we should put that issue to one side for today. The question brings us back to remuneration—whether employers should be obliged to grant time off for those members of staff who wish to stand for a council and what support can be given once a person is elected to a council.

You mentioned encouraging young people to stand. The question takes us to encouraging women to stand and the support that should be provided for child minding and duties of that ilk. Support services for council members vary considerably throughout Scotland. Some councils provide excellent support and others struggle financially to make councillor support a priority because of other priorities. Development in such areas will assist in encouraging more people to stand for councils. It would not guarantee that more would stand, but it would be a positive step forward.

The Deputy Convener: Have you discussed with private sector employers or other public sector bodies career breaks and secondments, for example?

Tom Aitchison: SOLACE has not initiated such discussions. We could respond more fully by reference to our individual responsibilities in Fife and Edinburgh. Some employers have been excellent. Large employers might consider having a member of staff who is a councillor a good reflection on their companies or organisations.

As the committee probably knows, the Minister for Finance and Public Services is holding a roadshow on the white paper. A longish discussion has been held among the Lothian authorities about whether employers should be obliged to take a member of staff back after that person ceases to be an elected member. A relatively young man who works in the information technology industry said that if he was out of the industry for four or eight years, his skills would be gone by the time the employer was due to take him back, so that proposal was not necessarily considered a major step forward.

What matters is the support that can be given to a person who is thinking of standing for election. That takes us back to salary. If remuneration were reasonable for the average elected member—if such a thing exists—that would ease the burden on a person who was quite young and was trying to build a professional or business career alongside a political career. If the job was anchored by a decent salary and pension provision, that might help someone to make a better-informed choice.

John Young: As I mentioned, I became a councillor in 1964. I recall that organisations such as the NHS allowed employees far greater latitude to play their part in public service than many private companies did. I was fortunate in some ways, but I had to work extra hours and sacrifice holidays. Some were worse off than that. People who worked in factories and in industry were not allowed to enter committee rooms or council chambers until they had got rid of their dungarees. They had to have suits hanging in cupboards somewhere. At that time, doing the job was difficult for many people. I strongly support awarding salaries and pension schemes. However, a difficulty arises with pay structure when we compare large councils such as Glasgow, Edinburgh and Aberdeen with the very small councils.

The Deputy Convener: Will our witnesses say a little more about citizenship legislation?

Douglas Sinclair: Tom Aitchison is right to emphasise the need for a decent salary and pensions. Rosemary McKenna was a councillor in Cumbernauld and Kilsyth District Council; she had had a teaching career. Giving all that up—a decent salary and a decent pension—and taking a chance on being elected is a pretty difficult choice. Tom Aitchison was right to say that large employers tend to adopt fairly good practice, but practice is inconsistent. I know of councillors in Fife who work for small employers and are put under considerable pressure.

We need the right to participate in council work to be enshrined in statute—in citizenship legislation. As we say in our submission, employees have time off to participate in the children's hearings system, but not to be a councillor. That contradiction seems odd.

The Deputy Convener: Would you like to add to what you said about the role of political parties? The Scottish Parliament provides an example of the involvement of more women. Do you have any other thoughts on that?

Tom Aitchison: No. I do not especially want to go there, unless you want me to.

The Deputy Convener: We will come back to that.

Tom Aitchison: As you said, we are talking about encouraging young people and women to become involved. I know how that is organised in the major political parties in Scotland. As our paper says, the most recent survey said that the average councillor was aged 53, male and white—all those relatively stereotypical attributes. To change that, we can remove some institutional barriers in local government. Political parties must think about how they choose candidates. They must widen the profile. Ethnicity is another obvious consideration. The political parties must try to ensure that councillors reflect to a greater extent the composition of local communities.

John Young: During the silver jubilee celebrations in 1977, I lied to the Queen—I admit that. My party had gained power in Glasgow—that was unusual for us—and I was the leader. The Queen asked me, "How many women councillors do you have?" I did not have a clue, so I said, "Seventeen, Your Majesty." We later discovered that the number was 12, but I felt that it was better to give the wrong answer than no answer at all.

The Deputy Convener: I do not know how Keith Harding will follow you.

John Young: Perhaps he does not want to.

The Deputy Convener: Kerley recommended that councils should review their business arrangements to facilitate the involvement of more councillors who have other responsibilities. To what extent have councils' reviews achieved that aim? Apart from implementing the measures that you outlined in your submission, does the Executive have any other role to play in achieving that aim?

Douglas Sinclair: Sorry, I missed the last part of your question.

The Deputy Convener: The question is how far you feel you have gone in reviewing your business arrangements—for instance, by having some of your meetings in the evening, when child care facilities might be more available, rather than during the day. We are thinking of such support in much broader terms. That is the type of issue that we mean when we talk of examining business arrangements.

16:45

Tom Aitchison: Since reorganisation in 1995 and 1996, most councils have tried to modernise their business arrangements—to use the jargon—to reflect the needs that you refer to. Evening meetings are an example of that. From a structural point of view, many councils, including my council, have opted much more for area-based committees. I know that that is also the case in Fife. The question to ask is whether that trend

requires to be accelerated and, if so, how that should be done, as we have been discussing.

Councils have a genuine desire to support their elected members, wherever they can. In a sense, the elected members are what determine the quality of a council. We have a huge commitment to the public to support elected members. As I have said, several councils have put a lot more money into councillor training and IT support for elected members, which makes their job easier to do, both in the office or from a more remote location. Those are two practical examples of support—child care is another. Such support is beginning to be given across Scotland. The white paper asks whether a bigger push is necessary to knock down some of the remaining barriers, to make it as easy as possible for people to stand for council and to allow them to play a meaningful role when they are elected as councillors.

Douglas Sinclair: The other dimension to that is how we can better support councillors once they have been elected. In our submission, we make the point that the way in which councillors do their jobs varies considerably. Some councillors deal with complaints from the beginning of the process right to the end, whereas others intervene only if the complainer has used the council's complaints procedure to the full. A detailed analysis of how councillors do their constituency job has not been carried out.

We articulate the potential that exists for supporting groups of councillors—for example, by having a worker to support four or five councillors in an area. That would make the job less demanding and more attractive to someone who wants to combine being a councillor with pursuing another career.

Tom Aitchison: There is an interesting point to make on that subject, although the committee might think that I am being a bit fanciful or adopting a bit of a blue-sky approach. A year or two ago, the Scottish Leadership Foundation published a report that made the point that Douglas Sinclair makes—that much of councillors' time tends to be taken up with complaints on behalf of constituents. If we could manage to make authorities much more efficient in the future—I am using coded language for making much greater use of new technology—complaints would not have to go via individual councillors but could be dealt with more directly.

That would free up elected members for exercising the wider community leadership role that Douglas Sinclair mentioned. Such a role relates not only to local authority work, but to the wider community planning partnership, which involves trying to achieve a balance between leadership, advocacy and other kinds of decision-making roles. That poses other questions. For

example, if some or all elected members are to take on that role, how in turn will they be supported and remunerated for it?

The Deputy Convener: That might even offer some help to MSPs in their constituency work.

Tom Aitchison: Who knows?

The Deputy Convener: Iain Smith will ask about electoral reform.

Iain Smith: You would be disappointed if I did not raise the issue of electoral reform. One of the big issues in the McIntosh and Kerley reports and in the responses to them was the councillor-ward link. In your submission you refer to

"a strong identifiable and direct link between the Councillor and his/her constituents."

What do you mean by that and do you think that that link is stronger in single-member wards or in multimember wards?

Tom Aitchison: I think that SOLACE will probably masterfully avoid coming out in favour of a particular voting system. Our executive held a straw poll and some hands went up for the retention of first past the post and others went up for a proportional representation system.

In attempting to answer your question, I might contradict what I said about the advocacy role of members. There is a strong feeling in SOLACE that the person who is identified with the local ward has a strong profile. I know that I am, in part, ducking your question about whether that is stronger or weaker under the single transferable vote system or any other voting system. However, there is concern that a reform of the voting system might make that profile less understandable to the community at large and make the picture overly complex.

Iain Smith: After what you have just said, I am reluctant to press you on this next point. Kerley obviously placed a big emphasis on the first two principles that were recommended by McIntosh—the councillor-ward link and proportionality. Do you agree that those are the two key issues? If so, do you agree with Kerley that the STV system best supports those principles?

Tom Aitchison: I agree that those are extremely important criteria. I shall try to give a frank answer to your question. SOLACE accepts the fact that having a Scottish Parliament that is elected by proportional representation makes it logically and intellectually more difficult to sustain an argument for the retention of a first-past-the-post system in local government. The question would be asked: what is so distinctive about local government? Nonetheless, there are some differences and I do not think that SOLACE would come out in support of the STV system as the recommended voting system for the future. Some

individual members might support it, but the organisation as a whole would take the view that it is not core to what we would like to put to you and to the Executive in due course, in our response to the consultation paper.

Douglas Sinclair: Our job, as chief executives, is to make whatever electoral system is in place work. What that system is is a matter of political choice.

Tom Aitchison: Our minds are exercised more by the experiments south of the border and in the recent Stirling by-election to increase voter turnout at local government and other elections. We state in our submission—or perhaps it is another paper that I have—that our understanding is that a PR system might increase the vote by 5 to 7 per cent. That is an argument for considering PR seriously. However, postal voting and other means of making it easier for people to vote might have a greater impact on the turnout and, therefore, the support that is given democratically to councils and members of the Scottish Parliament.

Iain Smith: I want to press you further on the councillor-ward link. I recently had the privilege of observing the Irish elections. We spoke to several people—politicians, academics and election administrators—who believe that the single transferable vote system and multimember wards increase the link between the members and the community because there is competition for places. Do you accept that such a system might improve the situation?

Douglas Sinclair: That is a fair point.

Tom Aitchison: I would not dispute that.

Iain Smith: Let us move on to the issue of the representation of women and black and ethnic minorities. Point 10 of your submission states that the additional member system of the Scottish Parliament fails to address that issue effectively. I know that some of the issues are not connected directly with the voting system and that party-political selections and other procedures may come into the equation. However, do you think that an STV system might result in greater representation of minority interests than would be secured by a first-past-the-post system or an additional member system?

Tom Aitchison: In theory, yes. If the voting system is changed, most political parties will rethink their strategies for selecting candidates. Almost inadvertently that might open up opportunities for more women and people from different cultural backgrounds to be considered as candidates. I am not saying that that is the rationale for the change; however, if the change is made, there is a kind of dislocation, which opens up opportunities for new blood to enter the political system.

Douglas Sinclair: There is a growing recognition in local government that, despite what we say, the Parliament is more representative of Scotland than local government is and that there is not a long-term future for that situation. Local government has to become more representative of all our communities—we make that point in our submission. The issue for the Scottish Parliament to determine is the way in which that can be achieved.

Iain Smith: Your submission makes several points about the problems that have resulted from AMS, particularly in relation to multirepresentation—people are represented by councillors, MPs, constituency MSPs and list MSPs. Do you think that STV and multimember wards would cause more confusion among the electorate or would that system help to clarify the situation?

Tom Aitchison: This might be a slightly bureaucratic point that we are making but, as chief executives, we receive correspondence from three or four different political parties or members of Parliament on the same subject. Perhaps we have to learn to live with that as part of the price of a modern democracy in Scotland. I am not sure that the general public would be confused under STV—we need to discuss that further. There would be a hiccup when the system was introduced, given that two or more members drawn from the same large STV ward might pursue the same issue. That does not sound right; it is not the best use of resources or the best way of tackling problems. However, that might be a transitional issue, which will be resolved when the new system beds in—only time and research will tell. At the moment, there is a sense of frustration among colleagues who have been dragged all over the place by different people on a similar issue.

Iain Smith: Some might argue that having many different levels of representation would increase competition among politicians, therefore giving the public better representation. Politicians can no longer afford to be complacent—we cannot sit back with a safe majority.

Tom Aitchison: In my experience in Edinburgh, not too many councillors can sit back and be complacent. I take the point about competition—a market philosophy might have some unforeseen benefits.

Douglas Sinclair: I wonder whether “competition” is the right word, when what we are talking about could be seen as unnecessary duplication. That is what it seems like on our side of the table.

The Deputy Convener: I was going to ask about that. The Scottish Parliament has protocols,

but it seems quite obvious, certainly from the information that I receive from list MSPs—your comments seem to confirm this—that those protocols are not working. Do you think that there should be stricter protocols under a multimember ward system?

Douglas Sinclair: That would be useful. Without stricter protocols, competition would be inevitable, with the result that constituents would get the same answer five times. I do not see the point of that. That is also an issue between MPs and MSPs; I get the sense that some MPs do not recognise that devolution has really happened in Scotland.

The Deputy Convener: Perhaps we will not go into that.

John Young: I served in a multimember ward in the days of the Glasgow Corporation. We had three members per ward in those days and I sat with Teddy Taylor and a Labour councillor called Tom McAlmont. We worked well together. However, the neighbouring ward had three Conservative members—or Progressives, as they were called—who were always at one another's throats. It is also true to say that in my party, years ago—I dare not say that it is true today—women were the worst enemy of women candidates. Women on selection committees in the Tory party often vote against women. However, I will come to my question. What is an adequate basic allowance?

Tom Aitchison: Personally, I do not think that £12,000 is adequate. I tried to engage my colleagues in discussion on the issue last Friday—unfortunately Douglas Sinclair was unable to attend. If you are familiar with the local government salary scales, you will know that £12,000 is more or less the bottom entry point for GS1—a general grade—office workers. It is not a terribly good signal to our community that we value, in a certain sense, a councillor at the same level as a low-paid GS1. However, if we are to pay what seems to the public a large amount of money, that will provoke a backlash. When we discussed the matter on Friday, my view that about £15,000 to £20,000 was an appropriate rate for the job was supported by most of my colleagues who were present. That amount has a better feel to it and might begin to break down barriers.

John Young: This may be a difficult question, but how should the allowance be determined? Should it be according to the number of hours involved or in comparison with other public sector roles? It must be difficult to equate the roles, because there is no real comparison between the chairman of a planning committee of a major local authority, such as Edinburgh or Glasgow, and the chairman of a committee from a small rural

authority. That is the problem. Should the number of hours involved be brought to bear? Should comparisons be made with other public sector roles?

17:00

Tom Aitchison: Eventually, a national review body should take responsibility for setting salaries and/or allowances so that the issue is taken out of the hands of people locally. It is difficult for local elected members to be seen to be setting their own schemes.

In response to your first question, I was talking about a flat-rate salary for every elected member in Scotland. Beyond that, we are beginning to talk about how to measure and reward the responsibility that is associated with a particular portfolio. Hours spent at work are a possible measure but are not a complete measure. We talked last week about how, if people apply for a job on a quango, they may have to devote three days a week if they are the chairman, but a day and a half or a day a week if they are an ordinary member of the committee. There are milestones and measures that could help. You will know from your background in local government that the number of hours worked does not necessarily equate to the level of responsibility.

If the committee wishes and if it has time, I can tell members about my council. We have a reasonably well worked out scheme, which has a scientific basis. I like to think that in due course we can take that scheme to a national body, although not necessarily for endorsement. If proper principles are followed in putting a scheme together, a top and a bottom salary level can be created. The top should probably be a salary equivalent to that of a member of the Scottish Parliament for lord provosts and council leaders in the big councils. Different bands of responsibility can be factored in between the top and the bottom.

John Young: You have answered the first part of my next question, so I will deal with the second part of it only. Would independent local panels be more able to take account of local circumstances, such as the size of wards or even the structure of councils?

Tom Aitchison: That is an interesting point.

John Young: The first part of my question was whether we should have a national body or some other body.

Tom Aitchison: Edinburgh and Glasgow are unique in this respect. A number of business people in the city are gobsmacked by how little councillors are paid for the duties that they undertake. That is not to say that members of the

public will not argue the opposite—that councillors are overpaid and get lots of money.

I suppose that the answer depends on who is on the panel. If a business group was on the panel, it would probably argue for an appreciable increase in the current salary or a new salary level. People who are drawn from the community might have to recognise that there is a price to be paid for democracy. If we want to attract good-quality people to local government in future, the figure of £15,000 to £20,000 that I am talking about is not unreasonable. I know that beyond that the responsibility element will kick in, but I am talking about the basic proposed salary at the present time.

John Young: We may have touched on my final question, but should remuneration for all councillors in senior positions—not just council leaders—be linked to MSPs' salaries and be banded by population and financial turnover? That would bring in the big local authorities as opposed to smaller local authorities.

Tom Aitchison: Personally, I go along with that. Some colleagues believe that the pressure of being the leader of a relatively small council is just as great as being the leader of a large council—that may or may not be true. Our salaries as chief executives reflect population size and the scale of activity, so logic says that those criteria should also apply to council leaders and senior members of councils. I go along with your suggestion.

Douglas Sinclair: Leaders, conveners and provosts would prefer these things to be set objectively and nationally. One of the criticisms that could be made of the consultation paper was that it asked councils to consider setting salaries themselves. I do not think that that can be done; salaries must be set independently and objectively.

John Young: I have spoken to a number of councillors in Glasgow from all parties and one of the issues on which they have strong views is a pension scheme. Some councillors provide lengthy service and they want a pension scheme like the one in the Parliament, although I do not know whether that is possible.

The Deputy Convener: You started to talk about support for groups of councillors. Can you give us more detail on that?

Douglas Sinclair: I have always been struck by how councillors do their job and by the very different perceptions that they tend to have of their constituency roles. Even senior councillors whom I know get engrossed in dealing with constituency complaints from beginning to end, despite the support that exists within the council to help councillors with the complaints procedure. On the other hand, some councillors will say to their

constituents, "Have you exhausted the council's internal procedures? If not, please do so. If you are still unhappy, come back to me." There is much inconsistency in how councillors do the job. It would be helpful if we were better able to clarify the job.

MSPs have support, but I acknowledge that it would be unsustainable and inappropriate to give councillors one-on-one support. For example, in North-east Fife, the council could provide someone to do a lot of the initial investigation of constituency complaints for the three or four councillors in Cupar. That person could put all the papers in front of the councillors, who could then make a judgment. That would remove from councillors some of the administrative drudgery, such as telephone calls and so on, that makes life pretty demanding. It seems to me that councillors' work-life balance—and possibly their work-work balance—would benefit from that approach, because it would allow them to have a life in which they can do other things.

We should challenge the view that being a councillor nowadays must be a full-time job. However, if it is not to be a full-time job, the support mechanism, the salary, the pension and the whole package needs to be in place. We should not examine only one aspect. It would be fine to get salaries and pensions sorted out but, if work pressures remain demanding, how will we create an environment that allows for a councillor who accepts that the salary and pension are reasonable and who still wants to carry on doing a part-time job? It would be worth carrying out some fairly detailed research into that.

Tom Aitchison: Douglas Sinclair was primarily talking about councillors' local constituency role. Over the past two years in Edinburgh, we have moved towards establishing an executive, with seven scrutiny panels and six local development committees. The executive is well supported through chief officers, including me, and is regarded as the primary decision-making vehicle in the council. However, the scrutiny panels, some of which are chaired by opposition parties, are looking for more dedicated support and research support. I am not talking about the committee clerking role of the past; the panels want officers who have an enabling role and who can chase up information and do background research.

Those issues are also beginning to emerge on the local development committee side. I get the sense that they want not so much a chief executive for each parliamentary constituency, but someone who can chase up complaints, make sure that information is transmitted back into the main organisation and be a fixer who gets things done. Members in Edinburgh are increasingly saying, "We are trying to do a meaningful job, but

we require support to do that job.” We want to give them that support, but it comes with a price tag and councillors will have to juggle—as MSPs do—front-line services and the demands that go with them with the support services that are required. If we are to take democracy seriously, we will have to find a means of cracking that problem. We should treat elected representatives as important people in the community by giving them reasonable support to do their job locally and/or through the council as a bureaucratic organisation.

The Deputy Convener: I will follow that up with an obvious question. If you are considering providing research support, would you take the adventurous step of making that support available across the political boundaries that exist between councillors? Alternatively, as happens at the Scottish Parliament, are you envisaging a much more political researcher role?

Tom Aitchison: There are a couple of responses to that question. In the City of Edinburgh Council, I have tried to resist the argument that the scrutiny panels should have dedicated staff who support the scrutiny function only, because that would fragment the organisation. Douglas Sinclair, other colleagues and I have been trying hard for years—probably for a lifetime—to build so-called corporate organisations.

I envisage a clear development opportunity for middle managers, who could work to support a scrutiny panel for a year or two. That would allow them to gain experience of working with elected representatives. They would not leave their day jobs, but such roles would enrich their experience.

Douglas Sinclair mentioned Cupar. I do not know whether the councillors in Cupar represent more than one political party, but he made an interesting point—I refer also to Mr Young's point—about whether members from the same political party could cope with such a proposal. The opposite might be true: councillors who are not from the same political party might get on better. I take the point that there are relationship issues, to an extent. We can build structures until we are blue in the face, but things will not change. As I judge the mood at the moment, political parties want their information to be contained within their political groupings, rather than shared among groupings.

Douglas Sinclair: Support for constituency work would be a lot easier if information were shared. The public are not interested in politics; they want solutions to problems.

John Young: I have the same feeling. As a list member, I feel divorced from a specific electorate, which I have not felt previously in politics. That is a disadvantage of PR, although Iain Smith might not

see it that way.

Iain Smith: I have never supported the list system. It is a compromise that is needed for proportionality. Let me know if you want to join the campaign for STV in the Scottish Parliament.

John Young: Since 1847, there have been 300 different methods of which only half a dozen are workable.

The Deputy Convener: Before we break up, I want to finish by returning to one area of questioning. Have you approached the Executive about additional resources for support or training for councillors and, if so, what was the response?

Douglas Sinclair: No. However, as is mentioned in our paper, we have made a commitment to producing another paper on the idea of the improvement function, to which Leslie Evans and her colleagues referred. The improvement function aims to improve the skills of employees and councillors. That is the appropriate area in which we can explore the issues further.

The Deputy Convener: Thank you. That is excellent.

Iain Smith: In the white paper, the Executive acknowledges that many councils are making their processes more accessible to the communities that they represent, but it would like to encourage other councils to share best practice. How do you see that being developed? How can councils share best practice?

Tom Aitchison: My reply to that question will be a variation on Douglas Sinclair's remarks about the improvement function. Best practice is a huge issue for Scotland. We need to do a lot more to share best practice and we are trying to do that through SOLACE. Chief executives have fantastic information at our fingertips and people can come along and cherry-pick that information because, at present, we do not put that information together. SOLACE is trying to take strides towards changing that so that we can build on the well of experience that sits in local government.

If we were to move towards an improvement function, one of the possibilities would be for some sort of clearing house to be set up, because that would create greater awareness of who does what in Scotland. That would give us a greater opportunity to learn from each other, rather than reinvent the wheel time after time—a process that has costs attached to it. Douglas Sinclair is working hard on the improvement function. In due course, we will be able to give a full response or provide a summary for the committee on how we see the function working in forthcoming years. We will submit a separate paper to the Executive.

Douglas Sinclair: I would like to add a quick postscript. Last week, Andy Kerr announced a

tranche of money in round 2 of the modernising government fund. One of the interesting things to note was the number of local authority consortium arrangements. As Tom Aitchison said, there is a willingness not to reinvent the wheel, but to work together. That is particularly the case with information and communications technology. The rigidities of local government reorganisation are beginning to loosen up.

The Deputy Convener: If we go on for much longer, the discussion will become a fireside chat. We are going to have to say goodbye to Douglas Sinclair.

We have more questions for Tom Aitchison. They are similar to those that we asked all the SOLACE witnesses, but we would like to benefit from his expertise on the City of Edinburgh Council in particular. He might have something to add that would give us more detail about what is happening in Edinburgh.

Tom Aitchison: I could say a couple of things that might help in that respect. The City of Edinburgh Council has 58 members of whom 31 are Labour, 13 are Liberal Democrat, 13 are Conservative and 1 is a Scottish National Party member. I work in a multiparty environment, whereas colleagues in other parts of Scotland tend to work in environments in which one party dominates.

Every councillor in Edinburgh receives a special responsibility allowance. I will leave details of the scheme with the clerks, if that is of interest to the committee. The leaders' allowance is set at 100 per cent—the Lord Provost gets more than that for other reasons—the so-called cabinet members are on 75 per cent, scrutiny chairs and local development chairs are on 50 per cent and a large number of members are on 25 per cent.

Members might think that that does not look right and that it is an abuse of the system—how can every single member carry a special responsibility? I take that point in part, but the City of Edinburgh Council is trying to be inclusive and to acknowledge, as I said in my opening remarks, that each political party brings a lot to the council. It is therefore important to acknowledge that the opposition members, as well as those who are in power in the administration, carry responsibility. The question of SRAs is important for the City of Edinburgh Council and for all other councils.

I was asked earlier how much elected members should be paid. The bottom SRA is about £6,000 and when that is added to the basic allowance, councillors get about £12,000 or £13,000. Even if we followed the Kerley recommendation and went for a basic salary or allowance of £12,000 or £13,000 we would not immediately financially disadvantage a quarter of the council members if

they were no longer to receive a special responsibility allowance. The more we increase the allowance beyond that, the greater the number of people who would not be financially disadvantaged, if under a revised scheme the number of special responsibility positions were more restricted than in the current Edinburgh scheme. It is important for committee members to have that relationship at the front of their minds when considering remuneration.

17:15

It was said that we need to tackle the question of pensions for council members. There are two broad models for that. Either we pay enough to allow the individual member to make his or her provision for a pension separately from the local government scheme, or we try to find a means by which elected members can join the local government pension scheme. I am not an expert on pensions, but the City of Edinburgh Council and SOLACE are examining those two options as part of their final response to the white paper. Pensions are a real issue for councillors.

SOLACE feels strongly that severance arrangements should be in place for councillors who have given long service. I heard about a councillor in the north-east of Scotland who is in his 90th year and who has given 50 years of continuous service. He would leave with nothing at the moment, which does not seem to be morally right. We are trying to bring new blood into councils. Perhaps we should have some sort of transitional arrangement for those who have given 12, 15 or 20 years' service. That is worthy of much more positive action than the white paper contains.

Two years ago, the City of Edinburgh Council employed John Curtice of the University of Strathclyde to model different voting systems in relation to Edinburgh. As things stand, the big loser in Edinburgh is the SNP. It polls just less than 20 per cent of the vote, but has only one seat. In those terms, the party is grossly underrepresented. From memory, the Labour party polled about 33 or 34 per cent in 1999, but has 31 out of 58 seats.

We have tried to model a system that is based on STV constituencies of three, four or five members. I will leave the research on that with members, because it tries to redress the balance. A city such as Edinburgh would probably always have a hung council. It would be hard for any party under a PR system to win outright in Edinburgh—that is the nature of the beast. Either I can leave the details of that with the clerk for the committee to examine in due course, or I can go into more detail now.

The Deputy Convener: It will be useful if you leave the details with us.

John Young: The situation in Edinburgh is interesting. In Glasgow there is only one Conservative councillor, one Liberal councillor, two SNP councillors, Tommy Sheridan, and about 70 Labour councillors. There is no chance of the administration changing. Even with PR it might be difficult, but at least it might be a step forward to get greater representation. Even some members of the Labour party in Glasgow think that, although not all of them.

Iain Smith: You suggested that a new system could be established whereby a national committee sets a basic salary at a reasonable level. How do you see the special responsibility element—extra salaries for leaders and committee chairs—being set? Would that be done through a local committee, or would it require national endorsement?

Tom Aitchison: I think that I said earlier that both the entry point—whether it is £12,000, £15,000 or £20,000—and the top of the scale could be set using comparison to the salary of an MSP. That would give a top and a bottom. It creates a cap. The City of Edinburgh Council would be in that category. The Lord Provost and the council leader would be on the same salary as an MSP. There are questions in Kerley about quotas—whether a fixed number of councillors in a council should draw down an SRA. I do not think that that would work. I have a council of 58 members. My neighbouring council, Midlothian, has about 18 members. The numbers game does not work easily. This goes back to an undercurrent of this afternoon's discussion, which is that we should trust local government to handle the matter maturely and properly.

Such a system might work if a scheme were drawn up locally by a council and implemented when it was judged by a national body to be reasonable. Once a scheme was in place, there would be a need to amend it from time to time when, for example, control of the council changed politically and its internal structure changed. I am not certain whether it is in the SOLACE submission or the City of Edinburgh Council one, but it has been suggested that once the scale is set, annual salaries could be inflated in relation either to the local government pay award or to the pay award for members of the Scottish Parliament.

The Deputy Convener: We are told that in New Zealand the total resources that are available for remuneration are set by a national body. Local authorities then determine the details of the scheme, within certain guidelines. That seems to be more or less what you are suggesting.

Tom Aitchison: Yes, although what I suggest is

slightly different in that I argue for as much discretion as possible within a test of reasonableness. I hope that councillors would act properly and would be aware of how they will be perceived by the general public. If they went crazy with allowances, that would require some third-party intervention.

I have been in New Zealand and I know the scheme to which the deputy convener refers. It is not easy to determine a national quantum such as that. If, after the election next year, my council is hung and the Lib Dems form part of the administration, they will want to change the current executive style of government. I guess that they would want to go back to a so-called streamlined system. If that change was beginning to happen and by-elections were to change more the political situation, we could bounce around regularly, which is not good for local government. There must be a set of principles and a general awareness of the cost of such changes. There must be reasonableness to make the system work on the ground.

John Young: Is New Zealand a special case? A former council colleague of mine, who went to teach in New Zealand, was in Edinburgh a few weeks ago. She told us that teachers' pay scales there were extremely low compared with here. Are there any examples of responsibility payments in the large English cities, excluding London, which is a special case? Are there examples from places such as Manchester, Liverpool or Birmingham? Do we know what payments they get?

Tom Aitchison: I have with me a paper that was produced for a London authority recently. It argues for slightly less than the Kerley level. An example that springs to mind is Cardiff, which became a cause célèbre some years ago. Cardiff has a joint Lord Mayor and council leader; it is one and the same person—Russell Goodway. He was initially paid about £66,000 or £67,000, which caused a lot of newspaper comment in south Wales and in local government and the press nationally. Eventually, after reconsideration, the salary was reduced. I think that it is now about £50,000.

I believe strongly in the role that cities have to play in our national life and, in particular, our national economy, although I would say that, would not I? I know about the kind of burden that a city council leader carries; it is potentially huge. In Edinburgh, the leader is responsible for the council budget and a suite of local authority companies; for example, we own 90 per cent of the local bus company. We have businesses worth probably £1 billion or more, about 18,000 to 20,000 employees and massive political visibility and accountability. I do not think that a salary of £40,000 or £50,000 is inappropriate for those responsibilities.

The Deputy Convener: I gather that the National Assembly for Wales recommends remuneration levels in Wales. Would you like the Scottish Parliament to have a similar function?

Tom Aitchison: I have always argued for maximum discretion for councils—we are big businesses. I am not arrogant enough to believe that we can sort out all our problems—we cannot. We are in a partnership with Parliament and the Executive, but we need to move away from the 1980s and 1990s control mentality of parts of national Government towards local authorities. A question for national Government is posed by the famous McIntosh expression, “parity of esteem”. The task is to decide what that expression means and how local discretion that reflects local circumstances can be reconciled with consistency throughout Scotland. An independent pay review body might be able to straddle those two requirements.

The Deputy Convener: I have a final general question. Will you outline briefly the recent changes in the City of Edinburgh Council’s political management arrangements and how that has affected the work loads of councillors in different positions?

Tom Aitchison: The first part of the question is easy to answer, but I am not sure that the second part is as easy.

Edinburgh council was like the vast majority of Scottish councils in that we had a traditional committee system that probably originated in Victorian times. We had education, social work and transport committees. I think we had about 13 or 14 major committees and about three or four times that number of sub-committees. That was the situation after the 1999 election.

We now have a single-party Labour executive of 13 members. As Peter Daniels said earlier, when we meet to discuss education business there are three church representatives at the meeting and two from the teaching profession—from the Educational Institute of Scotland and another teaching union. We have seven scrutiny panels that are organised around thematic structures, such as children and young people and development of the city. Labour councillors chair some panels and Conservative, SNP and Lib Dem members chair others. That is a genuine attempt at inclusion.

The panels have the power to call in executive decisions within five days of a decision’s being taken, which freezes the decision until the call-in process is discharged. The panels can also undertake what we call commissioned reviews that are based loosely on the Westminster Parliament select committee model. The panels can examine in depth several topics by calling in witnesses, as

the Local Government Committee is doing today, and by working out policy recommendations for the full council as a corporate body.

The third strand, to which I have referred a couple of times, is that we now have local development committees—LDCs—that are based on the parliamentary constituencies in Edinburgh. There are six, but there will be five when the current review concludes. The fourth strand, which is sometimes forgotten, is the regulatory side of planning, building control and licensing.

On the second part of the deputy convener’s question, I suspect that the work load of some people in the Edinburgh council executive has not diminished; rather, it has increased in the past year or two. A member can choose how actively to pursue his or her particular portfolio, but the work load of the key positions of leader and deputy leader has increased a lot in the past couple of years.

The system is generally supported by the Conservative group. However, the system is not liked by the Liberal Democrat group, which feels that it is alienated from the mainstream work of the council. I think that its members feel that their only route into that work is through the scrutiny panels and the LDCs. However, the Liberal Democrat group feels that there is not the same degree of specialism as there was under the old committee system, in which a member could be, for example, an expert in transportation or social work.

I do not think that any member’s work load has diminished because of the new system. Probably, work loads have generally stayed the same, but they have increased for a large number of people.

The Deputy Convener: Thank you. I believe that members are happy not to ask further questions. We have exhausted everybody. Thank you, Tom—you can go.

Tom Aitchison: It has been a long day.

17:29

Meeting continued in private until 17:38.

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