

# **LOCAL GOVERNMENT COMMITTEE**

Tuesday 18 June 2002  
(*Afternoon*)

Session 1

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## LOCAL GOVERNMENT COMMITTEE

18<sup>th</sup> 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

Gordon Blair (Society of Local Authority Lawyers and Administrators)

Professor Alice Brown (Community Planning Task Force)

Tom Divers (Community Planning Task Force)

Jimmy Farrelly (Scottish Trades Union Congress)

Caroline Gardner (Community Planning Task Force)

Norman Grieve (Society of Local Authority Lawyers and Administrators)

Jim Jackson (Community Care Providers Scotland)

Stephen Maxwell (Scottish Council for Voluntary Organisations)

Ian McKay (Scottish Trades Union Congress)

Alex McLuckie (Scottish Trades Union Congress)

Douglas Murray (Association of Scottish Community Councils)

Douglas Sinclair (Community Planning Task Force)

### CLERK TO THE COMMITTEE

Eugene Windsor

### SENIOR ASSISTANT CLERK

Irene Fleming

### ASSISTANT CLERK

Neil Stewart

### LOCATION

Committee Room 2



## Scottish Parliament

### Local Government Committee

*Tuesday 18 June 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:03*]

### Items in Private

**The Convener (Trish Godman):** Okay comrades, let us begin. Do members agree to take items 3 and 4 in private? Item 3 is consideration of a draft report on the first phase of the renewing local democracy inquiry and item 4 is discussion about a potential adviser. Do we agree to take those items in private?

**Members** *indicated agreement.*

## Local Government in Scotland

### Bill: Stage 1

**The Convener:** We now move to stage 1 consideration of the Local Government in Scotland Bill. I welcome Colin Mair, who is advising the committee on the bill. I also welcome members of the community planning task force, who are here to give evidence today. Professor Alice Brown is the chair of the task force and Tom Divers, Caroline Gardner and Douglas Sinclair are members.

Before we begin, I apologise for the heat in the room. We have opened the windows, so it will be a little noisy, but it might be a little cooler. Our witnesses should feel free to take their jackets off—we have all taken ours off. You have given evidence before, so you know the drill. I will ask you to give a short introduction and then I will open the meeting up for questions.

**Professor Alice Brown (Community Planning Task Force):** Thank you for that welcome. The committee has a submission from the task force, but I would like to make a few brief points to allow maximum time for questions and discussion.

The members of the task force who are with me head some of the task force sub-groups. Stuart Black, from Highlands and Islands Enterprise, heads up another sub-group but could not make it today. He sends his apologies.

The task force was established in March 2001 with a remit to facilitate the development of community planning in Scotland. It has a wide membership, representing a range of stakeholders that are likely to have an interest in the area. We have been operating on quarterly plenaries—we have met five times in plenary—and as sub-groups. We have four main sub-groups to consider, respectively, strategy, partnerships, engaging the community and ways in which to monitor and evaluate the success of community planning. In addition, we have been giving advice on the Local Government in Scotland Bill. That sub-group has been headed by Douglas Paterson from Aberdeen City council.

It has been very helpful to find evidence about what works in this country and other countries—the task force has been given research support for that. We have worked by listening, learning and exchanging ideas. The process is iterative. We take advice from others, hold seminars, meet key groups and speak to people in the Scottish Executive and the Convention of Scottish Local Authorities, for example. We are trying to influence people and to take advice. We have also participated in a seminar with the Local Government Committee. We have received

secretariat support from the Scottish Executive and from COSLA, but the task group is independent from the Government and we are free to offer our own perspective and advice. We have certainly felt free in that regard.

There is evident consensus about and commitment to the process. During the past year, talking to all the key players, I have been struck by the potential that they see for community planning to join up the agenda in Scotland. In a way, it is a commonsense approach to solving problems in Scotland. We want to link national and local agendas and to form a bridge between the two. The process is a two-way one—we must learn from each other and work to a common agenda. Ultimately, the aim is to make a difference and to deliver better public services in Scotland. The strong commitment to that agenda across the key players is evident. We welcome the Local Government in Scotland Bill as a demonstration of the Scottish Executive's commitment in that area.

There are many other areas for consideration, some of which we have identified in our submission. I emphasise that our submission is an interim document. Ideally, we would have liked to make our submission after our next plenary tomorrow. I hope that we will have another opportunity to debate the issue with the committee.

Community planning is linked to other developments in Scotland, such as the modernisation agenda and renewing local democracy. There is on-going work to be completed. We are currently working on the guidance, which we are trying to make helpful and useful for the various people involved. We also want to test some of our initial findings through pilots—Caroline Gardner might want to say something more about that. There is a real need to disseminate some of the knowledge that we have already gathered and to exchange ideas through regional events. As a result, we want to put on events in different parts of Scotland over the next year.

We have much work to do over the next nine months and there are question marks over what our future role, if any, might be. Ultimately, we want to change the culture and practice for the benefit of communities in Scotland.

**The Convener:** Thank you. If no other witnesses have opening remarks, I will kick off the questions. In paragraph 1.2 of your submission, you mention the need for effective community engagement in community planning. What does that mean? How do you effectively engage with whole communities of place or communities of interest?

**Professor Brown:** That is a challenging question, because communities can be defined in

many different ways. Another key question is how we engage with people who have never had a voice in the system. Although it is now relatively easy in Scotland to involve some of the key agencies and others, wider engagement is still a major challenge. The third sub-group examined the issue in some detail, so Tom Divers, who headed the group, might want to comment on that question.

**Tom Divers (Community Planning Task Force):** The sub-group has spent much of the past year attempting to identify a whole range of different approaches to the issue. We have been struck by the many different levels on which community planning operates and the need to tailor community engagement accordingly. As a result, we have considered a raft of successful approaches, including those that use community forums and established community councils. In other places, particular communities of interest have formed a focus and we have discovered good examples of work on specific interests.

In pulling together the guidance, which is a major focus of our current work, we hope to offer a menu of approaches. That will allow us to set out the different circumstances in which we believe, from the evidence that we have gathered, that different approaches might work. Different local partnerships will then be able to benefit from the knowledge and experience that we have built up.

We have been keen to consider one or two approaches that connect community planning at different levels—particularly some of the community planning work that happens at a relatively small locality level—into wider work at social inclusion partnership or local authority level. We want to work towards an understanding of the connections between those processes to ensure that there can be a cohesive set of decision-making arrangements.

We have been struck by the number of examples of efforts to support community capacity building and development that are sustained only by very short-term funding or that have no dedicated funding whatever. We are not here today to ask for millions of pounds, but one of the principles that has emerged powerfully from our work is the need for certainty about resource commitment, which would allow processes of community engagement and partnership development to be taken forward.

**Iain Smith (North-East Fife) (LD):** In paragraph 1.3 of your submission, you suggest that ministers should consider empowering community planning partnerships by making them legal entities. What would be the major advantages of incorporating community planning partnerships? What legal status would they have? What would their corporate governance arrangements be?

**Professor Brown:** We have discussed that matter at some length in the task force. However, I ask Douglas Sinclair to say a few more words about it.

14:15

**Douglas Sinclair (Community Planning Task Force):** Such a move would add to the legitimacy of community planning. The community planning partnership would be more accountable to its local community if the community was aware that it was allocating funds—for health improvement, for example. We are talking not about mainstream funding, but about cross-cutting resources, social inclusion partnership funding or the money that goes to the drug action teams.

Incorporation of the community plan partnership would strengthen the public's perception of community planning, which is not an easy concept. An incorporated community plan partnership could deliver a powerful message to its local community, as it could say that it would share power for the benefit of the community.

However, we do not believe that that model will work in every part of the country, as it is easier to operate where boundaries are coterminous. Incorporation of the community plan partnership should be subject to the agreement of all its partners before the minister's approval is sought.

I make the further qualification that the Executive needs to recognise that, if bodies such as the national health service in Scotland are to make an effective contribution to community planning, they must be given space to do so. Those bodies would not only deliver national agendas; local issues would also be involved. I am thinking of the contribution that key players want to make in Glasgow or Fife.

**Tom Divers:** Douglas Sinclair mentioned the work of the drug action teams. One of my responsibilities in greater Glasgow is to chair meetings of the drug action team. As I examine our role in progressing responsibility for the development and delivery of a corporate plan and in determining how the additional resources that have been made available are to be directed into improving treatment or prevention, I am often struck by the lack of meaningful accountability.

The drug action team partnership is held accountable for its funding, but the money is often routed through as many as 11 or 12 agencies. As we develop our corporate action plan, we have to consider accountability. I suspect that the issue will become more sharply focused as community planning takes root and the extent of resources that the partners are pulling together and committing to their local plans can be seen. We will have to address that issue at some point.

**Professor Brown:** I would like to add to the response to Iain Smith's question. Incorporation of the community planning partnership is one of the real challenges that we face. Once we start to talk about money for cross-cutting work, the question arises where the money comes from. Such funding requires the commitment of all the partners.

One of the advantages of the task force is its wide-ranging membership. The task force includes Tom Divers's extensive health experience; other members are from the police and the local authorities, for example. The wide-ranging membership has given us the opportunity to discuss how community planning would work in reality—we can talk about the concept or the theory, but the real issues are about how community planning will work on a day-to-day basis and what the benefits will be.

**Douglas Sinclair:** I will add a quick postscript. As well as being a tangible expression of community planning, incorporation would be a powerful expression of best value. In addition, it would underline the desire of the partners to make the best use of available resources across the agencies, as opposed to having the moneys come down to bodies through separate funding streams.

**Iain Smith:** Would incorporation of the community planning partnerships require the redrawing of the statutory responsibilities of the partnership bodies? How would it affect their accountability, particularly their democratic accountability? At the moment, it is clear that, if people elect a council, it is accountable. However, if a council is part of a partnership, where does the democratic accountability lie?

Douglas Sinclair touched on the issue of whether the community planning areas are the right scale for partnership incorporation. In essence, the areas are coterminous with the council boundaries, but he hinted that that might not always be the case.

**Douglas Sinclair:** We have to accept that the situation will evolve and that no one is terribly clear about that evolution. We can postulate that elections for the community plan partnership may be held 20 years down the line. We have to think imaginatively about such issues, but we do not envisage that the partnerships will deal with mainstream funding in the first instance. If we start in a fairly gentle manner, with the Executive's cross-cutting funds, that will itself pose a challenge for the Executive.

Iain Smith's second point touched on what Tom Divers said about community planning operating on a number of levels. It is clear that a number of issues go beyond the boundaries of any council area, however big it is. On transport, for example,

we cannot disconnect Fife from Edinburgh. There is also the city-region debate. We should perhaps be more flexible about the membership of community planning partnerships so that, for example, there are representatives on the Edinburgh community planning partnership from West Lothian, East Lothian and Midlothian. We must not be precious about boundaries. We must be more flexible and recognise that the most important point is to improve the quality of the services that we provide to our communities.

**Dr Sylvia Jackson (Stirling) (Lab):** I want to be sure that I have got this clear. I think that Douglas Sinclair is saying that, in the first instance, the partnerships might look at money that specifically comes down for cross-cutting issues, but that, as the partnerships evolve, they might consider money that comes to health, including the money that is allocated to primary health care, for example. Even at the moment, some of that money goes across services.

**Douglas Sinclair:** Yes. I would like that to happen, but it would be a challenge for the Executive. If it was collectively agreed in Fife that the money that currently goes to Scottish Enterprise Fife or to the national health service in Fife should be spent differently, what would the number 1 priority be? People might want to invest all the money in public health improvement. I exaggerate for effect, but there is potential for such developments. That ultimately depends on developing a relationship of trust, which must happen if we are to move community planning forward from being rhetoric to being something that makes a practical difference to people's lives.

**Tom Divers:** My sense is that we are already beginning at least to touch on mainstream funding. In my previous existence, I was involved with community planning partnerships in Lanarkshire that were working through the financial planning consequences of exit strategies from social inclusion partnerships. Under the financial plan that is in place in Lanarkshire, some mainstream funding is already being made available in the years ahead—as it is in parts of greater Glasgow—to ensure that some of the important programmes that have been developed under the SIPs banner can be sustained in the medium and longer terms. Without at times realising that those are the early steps towards broader community planning, we have started to face up to and address some of the issues. The clarity of support from the Executive for the concept that community planning is the major vehicle for the agencies to work together in developing the strategies will be one of the great benefits of the bill.

**Ms Sandra White (Glasgow) (SNP):** Good afternoon. I think that the last time we met was at the Local Government Committee conference in

Stirling. That event was interesting and fruitful. Questioners frequently raised the issues of community planning and working together.

I will follow on from something that Trish Godman said and bring in a point that Iain Smith made. We are talking about community engagement and communities working together towards community planning. Partnerships will be working with health boards and everyone else. We all know that everyone does not always work 100 per cent together. That is a big problem. Some folk want one thing for an area and other folk want something else. What would you do if different parts of the community had different interests or priorities? How would you get over that problem? Would you consider giving community planning partnerships a legislative basis, as Iain Smith suggested? In the community planning process, how would you deal with a divergence of views in the community?

**Professor Brown:** I see dealing with that as part of the process of formulating the plan and developing the vision for the area. If people are grown-up about the issues, they will recognise that in such discussions they cannot necessarily have everything that they want. I take your point that there might be circumstances in which some people will not engage in the process. That might take us on to the duties aspect. We are trying to develop a culture and an ethos in which individual or group interests sometimes have to be considered against the broader public interest of an area. That is part of a maturing process.

**Tom Divers:** We have taken some early steps in that direction. Last Saturday morning, the community planning partnership in East Dunbartonshire held a community forum, bringing together a range of diverse interests to work through, in half a day, the key priorities for the 2003-04 East Dunbartonshire community plan. That was done through several workshops in which individual groups made various suggestions about local priorities against what was articulated in the first year of the plan. The second half of the morning was used to decide on the priorities.

Such approaches are being adopted in different parts of the country. An important feedback loop ensures that there is a major annual stocktake of the progress and delivery of commitments. There is a fresh opportunity to reconsider priorities for the forthcoming planning period.

At Saturday's community forum, I was in a working group that began with 15 subjects that were issues within the communities. At the end of the morning, after all the groups had given feedback, it was decided that four key projects would form a chunk of the action plan for the next year. We are getting better at that kind of engagement.



**Caroline Gardner (Community Planning Task Force):** The task force working group that I chair has been considering how we can use information from the community planning partners to provide a picture that shows how the community differs across its localities or groupings, such as women or ethnic minorities. There is evidence that people who use such information well can make informed choices about priorities.

Practical things can be done in community planning to bring together the different information teams and create better geographical information systems. That information can make community engagement much more effective by focusing on areas in which people have an interest.

**Ms White:** I acknowledge that hard work has been done and that councils will follow through with their plans. However, areas cross council borders—for example, the area from Clydebank all the way up the Clyde to Glasgow. Community planning in that area impinges on other areas of Dunbartonshire or Glasgow. Would we need to take a stance by legislating to prevent anyone voting against the wishes of another council or group? Do you envisage that things will ever come to that, or do you think that we are grown-up enough to get round a table to speak about the problems?

**Professor Brown:** I think that planning partnerships will have broken down if things get to that stage.

**Tom Divers:** There will be debates about whether changing boundaries to ensure coterminosity will help. However, we deal with what is there just now and we have a responsibility to ensure that those arrangements work. Greater Glasgow probably has the most overlap because Greater Glasgow NHS Board interfaces with no fewer than six local authorities. However, I do not think that that prevents us from making headway with each of the planning partnerships across that part of west Scotland. We have not yet run into a material obstacle when, for example, Greater Glasgow NHS Board and Argyll and Clyde NHS Board both participate in a West Dunbartonshire community planning partnership. We must be mature enough to be able to work through such situations.

**Douglas Sinclair:** At one of our seminars, a chief executive made an interesting comment on that. He said that, because the boundaries do not coincide, people try harder to make community planning work. There is a lot of good will out there to make community planning work, notwithstanding the problems with the boundaries.

**The Convener:** Let me put you on the spot and ask you about the secure unit at Stobhill and the nimbyism that existed in that case. How would you cope with that?

14:30

**Tom Divers:** Yes, you have put me on the spot. Similarly, for much of Saturday morning I was doing a lot of explaining about acute services care in Greater Glasgow NHS Board and why our regional plastic surgery unit is moving from Canniesburn hospital to Glasgow royal infirmary. We must work through such inevitable tensions.

Executive guidance on implementing provision of local forensic units was issued in 1999. It described in detail the kind of service model for how provision could best be arranged. Given that many millions of pounds of investment will be required, the unit needs to be in a location that will provide the best linkages to ensure that clinical services are provided as well as they should be.

If we have one chance to provide a specialist mental health rehabilitation facility for individuals who have committed an offence while they were mentally ill, where do we put it? Do we look for the kind of service linkages that would co-locate it with other specialist mental health services and offer access to the diagnostic support of a general hospital, or do we put it in a field in the middle of nowhere where it is not connected to anything? That contrast might seem a little stark, but that is the position in which we end up. Very few communities would welcome the presence of a secure care centre in their area. That raises the question whether the strength of feeling in a community against the siting of the facility in that area overrides the other arguments.

The difficulty for the health board is that it has a responsibility to implement the policy. The policy is soundly based. There are material human rights and care issues in relation to those who are trapped in the State hospital at Carstairs and those who might have unnecessarily ended up there or in other unsatisfactory facilities because of the absence of secure care facilities.

There are some issues—although perhaps not many—around which it might be impossible to harness an agreement. When the board debated the matter at the end of January, we decided that it was one of those issues and that we simply had to make a tough decision. We had sought to do justice to the balance of the arguments but, if we had moved away from Stobhill as a consequence of the pressures from other communities, we would have had to start another process.

We worked through every hospital site in greater Glasgow that was a possibility and thinned the options down from a long list to a short list against specific criteria. Our conclusion was that it was our responsibility to take what seemed to us to be the most appropriate decision for the delivery of that specialist mental health rehabilitation facility but that, regrettably—and perhaps because of a

failure on our part to explain adequately the nature of the unit, the security implications and how people's safety would be ensured—we would be unable to secure ultimate agreement on the matter. Such circumstances are tough because, inevitably, we will be accused of not listening to anyone.

**Professor Brown:** However, you have demonstrated that there was an open and transparent process, which is what we want to guarantee.

**Tom Divers:** The headline answer is yes to the inclusion of the range of interests that you mentioned. Over the course of the past year or more, our experience has been that there is an increasing need to broaden the net of involvement beyond the base from which some community planning partnerships had originally embarked.

COSLA undertook an important piece of work when it reviewed the first round of community plans. That work has been followed up by the task force as part of the research that Alice Brown mentioned. We have been trying to get a self-assessment evaluation, if you like, from each of the community planning partnerships on how they are doing on some of the key elements of community planning, including community engagement and involvement.

The guidance on which we are working is not intended to be statutory. However, from some of our seminars, including the major seminar that we held three months ago at which we tested out the first year of work from each of four subgroups against an audience of about 150, we sense that we are reaching a stage of maturity. There is real enthusiasm on the part of community planning partnerships to learn from and to build on successes elsewhere. Therefore, I do not think that there is a need for statutory guidance beyond what is already set out in the bill, which seems to us to be pretty powerful. The way in which community engagement is described in the bill is broadly based.

As part of our work, we continue to firm up the guidance. We have taken the step of following through on the questionnaires with some more in-depth work with a number of community planning partnerships, in order to get under the skin of some of the responses. In particular, we want to identify where work is going well and to understand better why that is so, so that we can share that information with others. We also want to see whether we can understand why things might not be going so well, and what we might do to move that work forward in the regional seminars that Alice Brown mentioned.

**Professor Brown:** Members will also note that the bill talks about reports from the community

planning partnerships. I would expect the reports to include information about who has been engaged in the process and about how effective the process has been. The real challenge is to make the process meaningful, so that people feel that taking part in it is worth their while, that it has made a difference and that it has had an impact.

**Dr Jackson:** I am not sure whether it will be possible for you to get back to us on how the guidance is developing. Could you do that within the time scale of the bill's passage through Parliament?

**Professor Brown:** Yes. I would be happy to share that information with the committee.

**Mr Keith Harding (Mid Scotland and Fife) (Con):** In paragraph 8 of your submission, you say that you are pleased that community planning and best value are linked. Are they linked? Both COSLA and the Society of Local Authority Chief Executives and Senior Managers have suggested that a common statutory framework for best value should apply to all community planning partners. Do you agree?

**Professor Brown:** We have not taken a collective view about that detailed question, although we could pick it up with the plenary group tomorrow.

**Douglas Sinclair:** We also say in our submission that the link could be made a good deal more explicit. The ethos of the bill is essentially the delivery of integrated services that represent best value within the community planning framework, but that does not necessarily come across in the bill. I find it somewhat odd that a duty of community planning is placed on a number of bodies, yet no parallel duty to seek best value is placed on the same bodies. To me, that seems to be a missed opportunity.

The other point that we make in our submission is that we would like the duty of community planning to be placed on ministers, because they control so much of Scotland's government. Community planning will not work without the involvement of every part of the Executive. There is a danger that community planning will be seen as a local government issue, but it is a governance issue. If community planning is to be effective, it must link the national agenda to the neighbourhood. We believe that the capacity exists for that to happen.

Analysis of the 32 community plans shows that local government and community planning partnerships recognise not only the First Minister's priorities of health, education, transport, crime and jobs, but the contribution that the partnerships can make to the national agenda. The Executive has failed to capture or to understand fully the potential of community planning to link national priorities

with local priorities. Community planning could be not only a powerful planning tool, but a powerful delivery mechanism.

**Mr Harding:** I want to return to your suggestion about making community planning partnerships legal entities and granting them corporate status. Have you given any consideration to the staffing implications that setting up such corporate bodies would create, and to what the cost would be, bearing in mind the limited availability of resources to all public bodies?

**Douglas Sinclair:** I would not have thought that there would be any significant cost in administering a legally incorporated body. The community planning partnership already has to be serviced—resources go into that. I envisage the resource that services the community planning partnership being transferred to resourcing and supporting the incorporated community planning partnership. The resource implications would not be considerable.

**Mr Harding:** Would that involve secondment of existing staff to the new body?

**Douglas Sinclair:** That is a possibility. We have learned that one of the key issues about community planning is that it will not work unless it is resourced. It is critical that that resourcing should not be left to the local authority. If that were the case, the community plan partnership would not work effectively.

The necessary resources exist and are delivered in a number of ways. Sometimes there are secondments to the community planning partnership and sometimes one of the partner agencies makes direct provision. I would not have thought that an incorporated body would require a huge resource commitment, at least in its early days. More important, if the agencies signed up to becoming incorporated, they would be willing to allocate resources from within their existing resources to make that work effectively.

**Mr Harding:** I have pointed out that those resources are limited. I understand your point of view on the present partnership, but you are talking about setting up a separate corporate body, which has company law consequences and so on. You cannot tell me that that does not have resource implications.

**Douglas Sinclair:** I did not say that it did not have resource implications. I was trying to say that the community planning partnership already has resource implications and that the resource implications of incorporating the body would not be substantially greater than those that are associated with the community planning partnership. Greater resourcing is not the issue.

Any cost must be set against the need to obtain

best value and consideration of the benefits that communities would get from the incorporation of the body. There are two sides to the debate.

**Professor Brown:** Remember that incorporation would have to take place with the agreement of all the partners who are involved. They would be entering into an agreement whereby, collectively, they would be able to produce the community plan more effectively.

**Elaine Thomson (Aberdeen North) (Lab):** In paragraph 1.3, you suggest various examples of joined-up funding for incorporated partnerships. Those examples are all in areas in which partnership funding already exists. Could such an approach be extended to other areas, such as community care, community safety and lifelong learning, where the funding regimes sometimes cut across many different bodies?

**Douglas Sinclair:** Community care is a powerful example of community planning in action. The joint future agenda is community planning in action, but the trouble is that we do not badge it as such. We do many things that are powerful examples of community planning, but we do not label them in that way. Another example is the work that the councils and the local enterprise companies are doing on the local economic forums, which are an extremely powerful example of people coming together to make better use of available resources. It is ironic that although we are all involved in community planning, sometimes we do not call it that.

**Tom Divers:** I will develop that slightly, in a way that touches on Mr Harding's point. We are starting to put together some more formalised arrangements with the local authorities that work with Greater Glasgow NHS Board to progress the implementation of the joint future group's recommendations. Joint community care committees, which bring together elected members and non-executives from the NHS, housing and other partners, have been established with Glasgow City Council and West Dunbartonshire Council. The Glasgow model includes some executive directors.

According to that local design, that committee will operate as a sub-committee of both the NHS board and Glasgow City Council. The same will happen in West Dunbartonshire. At the same time, we have taken out the joint community care planning forum—with a couple of grenades. There has not been duplication; there has been replacement. There has been some change in membership. However, the accountability link is being tied back in to the base organisations.

That is a live example of how some different organisational arrangements in community care are now being drawn up that might help to deliver some clearer accountability.

14:45

**Caroline Gardner:** The neatest way in which we can describe this is to say that the community planning partnership forms the overarching framework that brings together all the different partnerships that are already in place. Instead of having separate community safety partnerships, drug action teams and community care teams, those all now come under the overall framework. That framework sets the priorities for the part of Scotland or community in question and states that those priorities will be delivered through the partnerships, which can make links among themselves. That can help with accountability as well as make clear the priorities.

On something that Douglas Sinclair said, it is about thinking what the three most important things that we want to do for Fife are, rather than carving things up into lots of silos.

**Elaine Thomson:** You mentioned local economic forums. It has been said that LEFs might be the bodies that articulate the economic development opinion within the community planning regime. Do you encounter difficult issues around coterminosity and boundaries? Local economic forums are multi-authority organisations, which does not necessarily apply to community planning.

**Professor Brown:** We have considered that. Among our membership are people from Scottish Enterprise and we are in dialogue with the business community, in the various forms that that community takes. We are concerned that, although we want people to be involved in the process, there is a time constraint issue, not least on the part of the business community. Its representatives have made that point very effectively. The business community wants effective engagement in the process.

Through discussions with their representatives and with others, we have come to the view that the local economic forums are the economic development bit of the local community plan, notwithstanding Elaine Thomson's point about different boundaries not always being helpful. There are ways around that problem; there are practical solutions to it as long as people are committed to the process.

**Douglas Sinclair:** Elaine Thomson's point is interesting. The NHS has been asked to make its contribution to community planning on the basis of council boundaries, whereas the councils have done things the other way round. The councils have made their contributions to the economic forums according to local enterprise company boundaries which, to be frank, was a bit of a mistake on the Executive's part. It would have been more sensible, given the position that

community planning is in, had the boundaries of local economic forums been placed on those of councils.

**Elaine Thomson:** That point was debated quite a lot—it is not one that I agree with.

**Dr Jackson:** You discuss Communities Scotland in paragraph 2.1 of your submission. You say:

“the duty should apply to this agency as well”.

Do you agree that the minister's power to extend the duty of participation would cover that? I suppose that you are saying that there should be provision for community plan partners to activate the extension of that duty to other agencies, including Communities Scotland, by making a request to which the minister must respond, giving his grounds for agreeing or disagreeing.

**Professor Brown:** I will start on that point; others may wish to come in. As you can imagine, there was much debate in the task force about who should be in and who should be out with regard to that duty. We were concerned that the key people should be included in order to make the arrangements fully workable, while allowing others to come in where appropriate. That was the starting point; we did talk about engaging other people in the process.

When we were considering the question of the application of the duty of community planning to the various bodies, what was then Scottish Homes was undergoing its own changes. Housing is so important and, on reflection, we thought that Communities Scotland should be included under the duties. Other people might make similar arguments in relation to other bodies, but it would have to be demonstrated that the inclusion of other bodies would make a material difference. The bill allows for flexibility in the system to account for the change that we wish to see.

**Dr Jackson:** Are the bill's provisions sufficient to bring Communities Scotland into the community planning process? Should a duty be placed on Communities Scotland to be involved?

**Professor Brown:** There is an argument for a duty being placed on Communities Scotland. We will discuss that tomorrow and come back to the committee on that.

**Douglas Sinclair:** Given that Communities Scotland is charged with supporting regeneration—arguably, the key objective of community planning—it seems to be ironic that it is not included in the bill as a listed body.

**The Convener:** We have exhausted all of our questions, so I thank the witnesses for their lucid and enthusiastic account of what the community planning task force is doing. You obviously enjoy

what you are doing. I wish you good luck with your meeting tomorrow. We will come back to you on a couple of things and will no doubt see you again in future.

Comrades, while South Korea and Italy are playing in extra time—neither side has yet scored the golden goal—we will carry on. I introduce our next witnesses, who are from the Scottish Trades Union Congress. Ian McKay is the assistant secretary of the Educational Institute of Scotland, Alex McLuckie is the regional industrial organiser for the GMB and Jimmy Farrelly is the regional organiser for the Transport and General Workers Union Scotland.

Ian McKay may speak for a few minutes, then I will open up the meeting for questions. You sat in the public gallery earlier, so you know the drill. You are all welcome.

**Ian McKay (Scottish Trades Union Congress):** I open by making a small correction to our written submission, which was—for this I apologise—put together a wee bit quickly. In the fourth paragraph, the submission refers to an expectation of further material on compulsory competitive tendering. That is simply an error. Although we imagine that there might be further guidance, we do not expect more on CCT to be included in the bill, because amendments to and deletions from other legislation are covered in part 6 of the bill.

As we said in our submission, best value is probably the area that is of most concern to the STUC's members. In the past few years, we have co-operated enthusiastically with the Scottish Executive to introduce best value, which we view as a useful progression from what the trade union movement has generally regarded as the bad dark days when CCT regimes were imposed on local authorities. In the past few years, we have participated with Executive ministers and civil servants in drawing up advice to local authorities in respect of introducing best-value regimes. We have taken part in the process at national and local levels and we have enthusiastically encouraged it.

That said, the process has not been without its difficulties, and account must be taken of those in considering the Local Government in Scotland Bill. It was difficult for the people responsible for bringing in best value in authorities to find the right line when auditors in particular still worked to value-for-money regimes when examining the books. On the one hand, the Executive and the Government said that they should take quality into account; on the other hand, auditors would pull them up for not going down the cheapest VFM road. It is important clearly to underscore quality in respect of the duty that is to be imposed on local authorities. We were happy to see the inclusion of

quality—that is important—although the duty is still a wee bit convoluted. It is not exactly crystal clear.

We welcome the parts of the bill that deal with the relaxation of the exclusion of non-commercial considerations in contracting—members might expect us to welcome that. We are pleased to see a move away from the restrictive terms of the Local Government Act 1988 so that account can be taken of terms and conditions when local authorities are involved in tendering, for example. That is long overdue and is in line with how other employment legislation has gone. We hope that that can be built on as the bill progresses.

At this stage, it is probably best that I shut up and we move to questions. Most points that we wished to make have been made; otherwise, they are in the written submission.

**The Convener:** Thank you. I will kick off the committee's questions. I welcome your commitment to quality in respect of securing best value and I welcome the fact that you are not looking simply at cost and price. Assuming that quality and equalities are dealt with properly, do you accept that cost and price must come into the equation?

**Ian McKay:** There has never been any question but that cost and price must be in the equation. Our submission says that we represent employees in local authorities, but those employees are also citizens and consumers of services. They expect the best possible deal for those services. They pay their taxes, as everyone else does.

That said, we are looking for better balance in the bill. In the past, quality and equality were often set to one side under a CCT regime that simply insisted on the cheapest possible tender. Often, good quality was almost literally thrown out to make way for that. There has never been any question but that the trade union side continues to see the importance of economies and good quality prices for local authorities. We think that our members deliver that when we have the proper circumstances and resources to do so.

**Jimmy Farrelly (Scottish Trades Union Congress):** I have a supplementary point. When the trade unions are involved in best-value regimes, the early stages are critical. The key is to involve trade unions at the start of the process and to allow them to take ownership. We will take our responsibilities seriously, but problems will arise if we are not involved from the outset and people see attacks on their terms and conditions of employment. It would be helpful to be at the heart of the process. Best employment practices should be at the heart of best value.

**Ms White:** In your opening remarks and your submission you welcome the greater freedoms and flexibility in relation to trading operations, as

do most councils. You go on to say that you share a concern with others about restrictions on the ability of councils to trade and the requirement that trading activities should be properly accounted for, given that the council already has a method for that. My question is a little tongue-in-cheek, but does the STUC believe that councils should be able to trade without restriction? How would that affect local businesses and jobs?

15:00

**Ian McKay:** There are two separate issues. First, there is the whole business of introducing additional accounting and auditing practices, almost as a checkweight for the additional freedom that is being offered to local authorities. In our view, that is unnecessary. Unless someone can show us—and show the committee and Parliament—that the auditing practices in use in local authorities are somehow wrong or poor, we would contend that they are perfectly able to check any trading accounts or new activity that councils might be involved in. That is what we were drawing attention to. We do not see the purpose of spending additional money to put in a second layer of auditing on a perfectly robust auditing regime that all councils must work to.

Secondly, I read with interest the evidence of the Federation of Small Businesses and the Forum of Private Business, much of which followed a similar vein to your question. As far as I am aware, no one—certainly not the STUC—is arguing that there should be carte-blanc for local authorities to sweep away local business. In reality, most local councils will be the largest employer in their area and one of the largest providers of services and contracts to small businesses in their area.

We do not see the removal of the current restrictions as detrimental to small businesses and local businesses—quite the opposite. If there is a degree of imagination and creativity by local authorities, following the enhancement of the power of well-being and what we hope will be enhancements through community planning and so on, that might help to stimulate local economies. It is not in the local authority's interest to strangle the economy in its area. The EIS and the unions of my colleagues at the committee today have members in both public and private sectors. It is not in our interests to rob Peter to pay Paul.

**Ms White:** You can correct me if I am wrong, but are you saying that the Scottish Executive has given local authorities greater freedoms and has removed certain restrictions, but replaced them with a tougher auditing system?

**Ian McKay:** We welcome the greater flexibility, but we also question whether a more restrictive

auditing regime is required. In our view, the current auditing regime is quite rigorous and able to deal with the new arrangements. It all comes down to money. Presumably, someone has to pay the auditors and someone has to pay for the extra services. We see no need to pay extra from the public purse to do something that is already happening.

**Dr Jackson:** Given that the audit will take place within the framework of guidance provided by the Executive, which will be developed by the Executive and COSLA, and that audit clearly has a role in best value, what is the big issue?

**Ian McKay:** How long do you have? There are three points. One is the simple point that I have been addressing in the past five minutes. It is a quantum question: how much auditing is needed? In my view, extra auditing is not needed.

Leaving that to one side, there are two other issues. One of them is the role of auditors in the bill. You will see from our submission that we question part of the basic drift of the bill, which seeks to give a role to auditors that we feel is better placed with policy makers and elected representative bodies. The reason we say that goes back to the role of guidance.

I will digress for a moment. It is our view that, in setting up best value, the best kind of regime has a minimum of legislation—certainly a minimum of primary legislation—and a maximum of consensual guidance. A lot of the first steps towards best value in Scotland were along those lines. In that sense, they were very different from what we saw south of the border, and we welcomed that approach, as did local authorities and others. It seemed to be a better way of going about things if we could proceed as friends without requiring the big stick of legislation.

However, it is necessary to introduce primary legislation for certain things. We welcome the duty that is being imposed, but in so doing, we feel that the way in which the bill is framed means that it is asking auditors to hold councils to account in areas in which councils effectively are policy makers. It is perfectly right and proper that the Scottish Executive and the Scottish Parliament hold councils to account, but it is not right to put auditors in a position where they may have to make what are, in effect, policy or political decisions in auditing somebody's books. That is an overseeing role that should be carried out by a body of the Executive or of the Parliament or by a body appointed specifically for that purpose.

In our submission, we draw an analogy with the best-value task force that was set up. Although it did not have the same kind of teeth, it allowed a consensus to be reached at national level by representatives of different organisations on the

best way to go about a particular thing, rather than placing an auditor in that position. Auditors are fine for adding up the numbers and telling you whether resources have been spent properly, but they should not decide why you are spending resources or the purpose of spending them. I hope that that answers some of your questions.

**Dr Jackson:** Yes. Are you a little apprehensive that the guidance will not be sufficient?

**Ian McKay:** Oddly enough, no. We are happy for there to be guidance. We were working under a regime that was based on guidance. The issue is where the guidance comes from and who does the guiding. We are perfectly happy for the Executive to carry out the wishes of the elected Government by issuing guidance. That is the way of the world and that is how it should be. We want there to be horses for courses. We want the proper people to make the decisions on the guidance. We have no difficulty with the best-value regime relying on guidance from the Scottish Executive. We have a problem when, in the absence of such guidance, auditors effectively are placed in the position of policing the system.

**Dr Jackson:** Would you feel more comfortable if you were reassured that the task force that is developing the guidance has taken those issues into account?

**Ian McKay:** The main reason for us putting those points in our submission and raising them at this meeting is to seek that reassurance. It may be that what we seek is difficult to put into primary legislation, but it would be helpful if that difficulty was recognised in the primary legislation. That could be done through the appointment of the kind of group that I have talked about or by an explicit mention in the primary legislation, or it could be addressed elsewhere. Some of the discussions around an improvement regime, which are happening elsewhere as a follow-up to Kerley, might fit the bill. However, it would seem more logical if we could be reassured about how the best-value regime will be established in this piece of primary legislation rather than having to wait for something else to come up.

**Ms White:** I want to ask a question on the back of Sylvia Jackson's question about auditing. If we did not have the extra auditing system that is proposed in the white paper, would that lead to extra cross-subsidy of competitive activities?

**Ian McKay:** I am sorry, but can you expand on the question?

**Ms White:** You have said that local councils do enough auditing so that an extra regime is not required. Others have said that, without extra checks and balances, councils may cross-subsidise activities in which they compete with others for contracts. Do you agree with that?

**Ian McKay:** My colleagues probably have more experience of the local authorities' tendering process, so they can perhaps add to what I say.

My general line is that the concept of cross-subsidy is not alien to the private sector. In fact, it happens in the private sector almost as a matter of course. Small companies are now less involved in bidding for contracts. Indeed, those that have won large public-private partnership contracts have not only been large companies but conglomerates, the different companies of which deliver different parts of those services. Within the accounting practices of those companies, it is common practice for such cross-subsidy to take place.

I hear what you say about the fears of some smaller businesses, which are worried that the council might cross-subsidise new activities in some way, shape or form. However, the last time that I looked at the overall level of local government revenue, there was not a hell of a lot of money going spare to cross-subsidise anything. Perhaps there are secret pockets in some treasurers' clothes that we are not aware of, but whenever my colleagues make salary claims, they are always told that there is no extra money.

Perhaps my colleagues have something to add.

**Ms White:** They seem to have nothing to add, so I thank Ian McKay for his answer.

**Dr Jackson:** What guidance does the STUC want to see to ensure that best value and community planning take into account equal opportunities? Section 32 places a duty on ministers, councils and community planning partners to discharge their functions in a way that promotes equal opportunities. That duty will also be auditable. What more does the STUC want?

**Ian McKay:** I think that all of us look forward with interest to see how auditors will audit equal opportunities.

We are pleased that the bill makes explicit reference to equality issues. As we said in our submission, our only criticism is that there is not enough reference to equal opportunities. Although equal opportunities is referred to as part of the duty to secure best value, unless my reading of the bill is deficient—as it may be—there is no explicit reference to the promotion of equal opportunities as part of community planning or the power of well-being. Equal opportunities should also be referred to in those parts of the bill.

That said, we are perfectly well aware that equality issues are difficult for the Scottish Parliament. In my view, it was a mistake to make equality issues a reserved matter. However, that is the way that things are, and that is the way in which legislators must operate. We hope that, in this piece of legislation, we can begin to push back

the boundaries a little and to make it explicit that the bill looks to local authorities to promote equality issues much more conscientiously than happens at present. In a sense, it is almost as if there is a power of well-being on equality issues as well as on other matters. I am conscious that the lawyers will tie us in knots when it comes to what we can and cannot do on equality issues. I tend to take the view—I think that the STUC would take the same view—that the same attitude should be brought to equality issues as is brought to the power of well-being. People should go out and do it first, until someone tells them that they are not allowed to.

15:15

We make those references in our submission because we are committed to equal opportunities. I am sure that the equality agencies—I presume that you will talk to them at some point—will make those points much more articulately. They may well have the answers. The only issue to which we make direct reference is one about which we are only tangentially aware. I refer to the work done by the National Assembly for Wales on requiring equality audits. We would see no problems, although other lawyers might, if the Scottish Executive were to promote that sort of work in its own practice.

**Alex McLuckie (Scottish Trades Union Congress):** As we develop best value, we must bear in mind the fact that we are removing CCT. History has shown that CCT had a greater impact on women and part-time workers. The Equal Opportunities Commission produced a report to that effect. As Ian McKay said, we do not want the same impact to be felt as we develop best value. We believe that it is important for us to learn that lesson and to try to ensure that any bill that deals with best value takes equality issues into account. That is a high priority for us. There is a distinct possibility that what are known as soft services will be subjected to the best-value regime first and that they will be treated differently. High numbers of women are employed in those services and we want to ensure that the same mistakes that were made over equality issues in the CCT regime are not made in the best-value regime.

**Dr Jackson:** I advise Ian McKay that I gather that section 32 covers all three elements: community planning, the power of well-being and best value.

**Ian McKay:** I apologise to the drafters.

**Dr Jackson:** I have only just been given that information.

**Mr Harding:** You suggest that enterprise companies should have a duty to participate in community planning, but section 17(1) requires the

participation of the enterprise networks. Does that provision cover your proposal?

**Ian McKay:** That is an interesting question. We included that proposal in our submission to draw attention to what we believe are anomalies in section 17(1).

Members will notice that section 17(1) lists Scottish Enterprise and Highlands and Islands Enterprise, but does not refer to the LECs. We have put our position informally to the civil servants. If the community planning regime is to be not only national but localised in some way, most businesses would probably agree with us that talking to local communities also means talking to local businesses. From that point of view, we do not understand why the LECs should not be specifically involved. I know that the relationship between LECs and Scottish Enterprise has changed recently but, even so, it may do no harm to take a belt-and-braces approach.

We make the same point about including further and higher education in section 17(1). I do not suppose that anyone would disagree that education and training would be an almost vital part of any community planning product. If it is felt that the inclusion of Scottish Enterprise covers LECs as the local component, why not list the Scottish Higher Education Funding Council and the Scottish Further Education Funding Council in section 17(1)? If they are not the appropriate bodies, what are the appropriate bodies that should be involved in that way? If we are going to list organisations in section 17(1) that clearly deal with that area, we should list them all. Alternatively, we should list none of them and just have a generally worded power. I am sure that the organisations in section 17(1) have not been chosen at random, but they have been chosen when others have not.

**Mr Harding:** Are there any other key additions or deletions that you wish to be made to the bill?

**Ian McKay:** In terms of community planning?

**Mr Harding:** In terms of the bill as a whole.

**Ian McKay:** I have referred to a glaring omission in the community planning aspects of the bill, and that is the lack of involvement of further and higher education bodies. A duty should be placed on them.

Had we been considering an earlier version of the bill, we would have had a number of things to say about the measures on the raising of capital by local authorities, but we understand that those measures are following another legislative course, so we will hang back from saying anything, although it is a matter in which we have some interest.



We have tended to react to the terms and parameters of the bill as published. From that point of view, we do not feel that many new areas have been left out. You will see from our submission that we feel that certain restrictions could be omitted and certain freedoms could be added, but apart from that—unless my colleagues have anything to say—we do not feel that there are glaring omissions.

**Elaine Thomson:** I wish to go back to this business of enterprise companies. I am sure that you are aware of the existence of local economic forums, which bring together the bodies that you talked about—LECs, higher education bodies, tourist boards, chambers of commerce and, in some areas, trade union representatives—based on LEC areas. The opinion has been expressed that local economic forums might be the appropriate bodies to express the economic development view of community planning, but it is proposed that community planning will be based on local authority boundaries. What are your views on that? Is there a potential difficulty?

**Ian McKay:** It is fair to say—perhaps I should have given this health warning at the outset—that you raise an issue on which the STUC does not have a developed policy. There may be no developed policy on one or two other things that I have mentioned, but I will proffer a view.

There is much in what you say. The local economic forum should work in that way. Many of us recognise that important role for them, but that is the situation today: this bill is dealing with tomorrow. If you are going so far as to use primary legislation to place a duty on all public bodies in an area to work together for a particular purpose, it is almost impossible to conceive, as I said earlier, that that purpose would not in some way impinge on the local economy, education and training. It should also be remembered that people can only attend so many meetings.

If it is felt that it is important—and we feel that it is—for this Parliament to pass primary legislation to bring in community planning and to constrain or force people to take part in it, it seems to us to be sensible that structures and organisations that predate the legislation and which are working in a similar way should be integrated into the overall process. How that can be done and whose toes will be trod on I am not sure, but if there is to be primary legislation, it should be the starting point, and other structures and organisations should fit into the framework that the primary legislation establishes.

**Ms White:** Elaine Thomson mentioned the local economic forums. In your submission, you say that trade unions should be recognised as community bodies. I ask for some clarification. If trade unions are equivalent to local forum-type bodies,

community councils and so on, could trade unionists not join community councils and have their voice heard in that way? Or do we need trade unions to be recognised as separate entities, like community councils?

**Ian McKay:** Our concern is to ensure that the bill's definition of what constitutes a community body is wide enough to take account not simply of bodies that might be thought to have a residential qualification, but of bodies that are important representatives of other parts of civic society. We would count trade unions among those. We would also count small business organisations and other organisations that represent a strand of civic society in a local community, as well as organisations such as the STUC, which carries out that role in Scottish civic society as a whole.

Our only concern in making that point is that it appeared, on first reading, that the bill was overly restrictive and focused too much on a residential qualification for community bodies. Perhaps the wording has been improved since then. We want to introduce the idea that the local branches or sections of trade unions or other similar organisations in civic society can add something to the community planning process, not only because of their representative function—relating to salaries and conditions—but because the STUC and its affiliates have around 650,000 members. Add to that figure the families of members and it is a fairly sizeable chunk of Scottish society that is represented through that voice. We think that that voice would be helpful in the community planning process.

**Ms White:** So, you want to open it up for the Executive to consider other bodies. You are not being prescriptive and saying that the STUC must be included as a community body.

**Ian McKay:** We hope that the STUC and affiliated trade unions will be included, but we are not saying that we are the only ones who should be included. We are trying to say that there would be a category mistake if the included bodies were restricted to residents groups, tenants associations and so on, which have a physical relationship with the geographical area. For example, if there was an enormous plant in an area, it would be sensible for the trade unions and employers organisations to be able to add their voices to the community planning process.

**Iain Smith:** Let us turn to the power of well-being. In your submission, you say:

"Names are important, but it is our view that the wording of the Bill should be clear in its description of a power of general competence, whatever the nomen—"

**The Convener:** Nomenclature.

**Iain Smith:** I will get it right. I am sure that it will be correct in the *Official Report*. Does the

generality of the wording of the power of well-being not make it clear that, statutory prohibitions excepted, it is a power of general competence? What are your concerns about the present wording?

**Ian McKay:** I hope that your interpretation is the interpretation of the Parliament and the Scottish Executive.

**Iain Smith:** That is what I would like it to be.

**Ian McKay:** I hope that it is clear that it is a power of general competence. We refer to the power of general competence as it is understood within the European model. It has been STUC and COSLA policy for many years that there should be a power of general competence of that type. We were not trying to be flippant or to give people difficulty in saying the word "nomenclature". We are dealing with an important issue. Ministers, civil servants and others have been at pains to say, "it does not matter what we call this power, honest, this is what it is". That is fine, but we are dealing with a bill that will become an act of the Scottish Parliament and what is written in black and white is important. We want to ensure that the powers associated with that model—and a clear definition—appear in the act. We will be interested to hear the views of organisations such as COSLA and local authorities on the current wording. We can take the words at face value. We are interested only in the power, whatever it is eventually called.

**Elaine Thomson:** The bill allows councils to take into account staff pay and conditions when they are awarding contracts. In your opening remarks you said you would like that provision to be built on. Do you want the bill to make that a duty on councils?

**Ian McKay:** My colleagues are better placed to answer that question than I am, so I will pass it over, if you do not mind.

15:30

**Jimmy Farrelly:** If you are suggesting that, over the years the pay of our members should increase swiftly, of course I would welcome that—I am being flippant.

**Elaine Thomson:** Would you mind speaking closer to the microphone?

**Jimmy Farrelly:** We will always be in a position to negotiate terms and conditions. The bargaining arrangements in local government—through COSLA, for example—have stood the test of time. The partnership process in the health service has been welcome in helping us to bargain and negotiate with employers. There is a greater emphasis on partnership working in the bill, which is welcome because, when it comes to bargaining

and negotiating, there is an adversarial atmosphere in local government. Any measure that would introduce a better concept of partnership working would be well received. I think that Alex McLuckie feels the same.

**Alex McLuckie:** We welcome councils taking staff pay and conditions into account. The big losers in terms and conditions of employment from compulsory competitive tendering were women part-time workers. Under the CCT regime, training, equality, pay and terms and conditions could not be taken into account. There was a constant drive to reduce levels of employment and that did away with the level playing field—if there is such a thing—about which everybody talks. It is no bad thing for councils to take into account how they treat the employees who deliver best value.

Other policies cut across the bill, such as private finance initiatives and public-private partnerships. One of the things that we dislike about PFI and PPP is that in many cases, a two-tier work force is created. If councils do not take into account staff pay and conditions, we could end up with a two-tier work force and people delivering the same services under different terms and conditions of employment. That is wrong. We welcome the opportunity that councils have been given to ensure fairness and address equality issues when they are considering best value and how services are to be delivered.

**Ian McKay:** Having passed the buck, let me take it back and address one of Elaine Thomson's points. It would be difficult to put what Alex McLuckie and Jimmy Farrelly have been talking about into primary legislation. It would be difficult to find the right wording—it is difficult enough with the duty of best value as it stands. That is where the guidance will play a critical role, and that is why we raise the question of who draws up the guidance, which should be acceptable on all sides.

In the final analysis, if you pay cheap, you get cheap. That has been our biggest criticism of CCT and the services that it delivers—as much as the effect on our people. It would be our contention that that duty, as it is currently worded, is essentially in place now. Wages and conditions should be considered as part of the duty on local authorities to assure quality—just as the gauge of the metal or the thickness of the padding would be considered when one is buying something. The wages and conditions of the people who are providing a service are an important part of quality.

**The Convener:** We have exhausted all our questions. Thank you very much for coming. I think that your comments about being involved early in the process of best value were particularly well made. If we need to get in touch with you again, we will certainly do so.

Before you go, I can tell you that the final score was Italy 1, South Korea 2—it is indeed an odd world cup. We will take a five-minute break.

15:36

*Meeting suspended.*

15:46

*On resuming—*

**The Convener:** Right, comrades, now that we have had our break, I introduce witnesses from the Society of Local Authority Lawyers and Administrators, or SOLAR, as it is called. I welcome Norman Grieve, the convener of SOLAR's local government modernisation working group—a long title—and Gordon Blair, who is the administration and legal manager of West Lothian Council.

You were here during the previous evidence-taking session, so you know the drill. I invite you to give a presentation for a few minutes, after which I will open the meeting up to questions. Welcome to the committee.

**Norman Grieve (Society of Local Authority Lawyers and Administrators):** I thank you, convener, and the whole committee for giving us the opportunity to give evidence today. I apologise on behalf of John O'Hagan, from North Lanarkshire Council, who was meant to be the third SOLAR witness. His chief executive was called away on urgent business, and John had to step in for him. Gordon Blair and I will do our best to answer your questions.

We would like to focus on paragraph C of our written submission, which starts on page 1. It concerns the power of well-being, or PWB. We discussed that in our previous submission and we wanted to major on that—for our own interest, if for no other reason. Some sweeping assumptions have been made by some people about the so-called power of general competence, so we and many of our monitoring officer colleagues in SOLAR will have to take the flak for it if we advise councils otherwise in the months to come. On that basis, we wanted to put some points across as strongly as possible at this principal stage of consideration of the bill—the policy stage.

We welcome the Local Government in Scotland Bill and its themes, as well as the many positive points that are contained in it. However, as is always the way of such things, we are focusing today on the things that we do not think are quite right yet, and on the things that we would like to be changed or hardened as much as possible. The main provision that we would wish to be given as much strength and robustness as possible is the power of well-being. The power of well-being is covered in only one small part of the bill, but it

represents a potentially giant leap for the constitution. That leap is potentially so big that we would prefer the power to be in big, black, bold, italicised block capitals and, if possible, double-underlined, in the eventual act.

We address the question of vires in sub-paragraph 1 of paragraph C of our submission. A former minister referred to the power of general competence. That became the power of community initiative; it is now the power of well-being. Through all that, there is a general feeling—including among some of our local government colleagues—that it is more or less a power of general competence. We can do virtually what we want once the bill becomes an act; we are okay and we can forget about the lawyers being finicky and telling us that we cannot do things.

We, like the Parliament and local government, want to be given real powers and the chance to deliver the new agenda through partnership working with communities under best-value discipline. We have no problems with the basic concepts—and the Convention of Scottish Local Authorities, the Society of Local Authority Chief Executives and Senior Managers and many other bodies have already given evidence to the committee.

The problem is that the concept of ultra vires is a powerful and persuasive principle. A statutory body has no power to do anything that it is not authorised or required to do by statute. As I am sure the committee has heard many times, councils are creatures of statute. Unlike some local authorities on the continent, for example, we do not have centuries of tradition and common law behind us to provide an active and positive presumption that we can do what we want to do locally unless a statute says, "Oh no, you can't." The opposite situation applies. Until now, we could do nothing unless a piece of legislation said, "Don't worry, it's okay to do this."

In future, it will still be safer for most authorities and most councils' lawyers if authorising legislation exists. Most statutes will remain in place, including the Education (Scotland) Act 1980 and the Roads (Scotland) Act 1984. If a law says, "Yes, you can do this," lawyers will always use that as the basis for a power. If anything else—a big category that includes economic development powers, which the bill is right to make redundant—such as joint working, partnership arrangements and community leadership is to be delivered, we must have a positive power of well-being. SOLAR's concern is that the existing wording in the bill might not achieve that, so it must be strengthened as much as possible.

The difficulty is that, to exercise general powers such as those on economic development, joint working and partnership, we will have to rely on

section 21, if no specific powers are provided. That section must be robust. We want a strong black-and-white message. In a submission to the Executive, we asked for the power of well-being to be a core duty. It would have to be a duty—rather than a power—to make it explicit to the courts what we are all about. The power could at least be made a fundamental function of all local authorities. That would provide for a statutory presumption on the part of courts and councils that anything that councils want to do can be done, unless something says that it cannot be done because a major policy or principle would be breached. Such a breach would entitle the Scottish Executive, the Accounts Commission for Scotland or another body to intervene.

For councils to move in that direction and deliver the new agenda, the power of well-being is the most fundamental power in the bill. Fifteen sections deal with best value, which is important, but only three sections deal with the power of well-being. I feel sometimes that that power has not been discussed enough. As lawyers and administrators who work with legal procedures, we must be sure that the provisions are right, so that we can give our councils confident advice and so that their genuine desire to deliver the agenda can be fulfilled.

As subparagraph 2 of paragraph C of our submission says, we feel that the words “expressly” or “explicitly” should be inserted before “prohibits” and “prevents” in section 23(2)(a). That might seem finicky—some of our colleagues have told us that—but we feel that the power of well-being should be read as widely and as positively as possible.

Like many of our colleagues, Gordon Blair and I have worked in local government for many years and despite our incredibly youthful good looks, we have been round the block once or twice. There are many checks and balances in local government and it is proper that many people, including companies and members of the public, have the right to challenge what happens. It is understandable that the courts often take the side of the lone individual against the big bad local authority. We have no problem with that basic concept, but if we are to move in a new direction, the ultra vires doctrine should be abolished or at least put in its place, so that a genuine chance exists to progress and deliver all the new policies that central and local government want.

To give an example of that, our submission refers to other equally widely worded statutes on which the courts have given narrow interpretations. The standard provision is section 69 of the Local Government (Scotland) Act 1973—the so-called catch-all provision—which says that the

“local authority shall have power to do any thing ... calculated to facilitate ... the discharge of any of their functions.”

On one view, that could mean anything in connection with the functions—forming companies and doing this, that or the other—that might involve many community initiative-type powers and the community planning powers, which have been discussed in the context of the bill. However, in practice, the provision has been restricted to narrow interpretations by the courts in this country and in England and Wales.

I understand that the Transport, Local Government and the Regions Select Committee took evidence recently from SOLACE on how the power of well-being had been used in England and Wales. We understand that no examples of innovative use of the power of well-being could be given to that select committee. I assume that that is because of legislative restrictions that some of our English colleagues have told us about.

As it is presently worded, the Local Government in Scotland Bill goes further and is much more positive than the provisions that our colleagues down south have to work with. However, we think that the bill could go slightly further yet in making it clear that the power of well-being is a positive power to be exercised. The principle of ultra vires should not be in the shadows but should run alongside the new powers in the bill.

I mentioned companies briefly; we mention them in our written submission, too. Many people think that a power already exists to form companies in virtually every field. Even among our colleagues in legal administration circles, there is consensus that economic development companies or leisure companies may be formed. However, in my local authority area, we considered forming a company and were in consultation with the Scottish Executive to deliver with a private sector partner an innovative project on waste management. We asked the opinion of a very respected and learned Queen’s counsel, who advised us that he doubted whether any powers presently exist to form such a company.

Colleagues in other authorities have told us that, although some companies have been formed for valid purposes and to access funds—to do with housing stock transfer, for example—and although that has been done with the full encouragement of central Government, there is great doubt over whether present legislation gives the power to do so. If doubt exists under the present legislation, SOLAR feels that specific powers should be written in—not just in the guidance or in the general understanding of the bill, but in the bill—in order to make it clear that a company may be formed, by incorporation or by forming partnerships or associations of any type, if that will

serve a purpose in the community and deliver best value. Things are changing so quickly and so often that we must have the flexibility to do that.

I know that other bodies have spoken to the committee about duplication. We feel that there should be a statutory presumption that any duplication of another person's function is not unreasonable if it is done with that person's consent. Paragraph 66 of the explanatory notes that go with the bill makes it clear that, when prior consent is given for duplication to take place, that is reasonable. However, because of our experience of courts' putting a narrow interpretation on constitutional matters, we feel that such clarification should be included in the bill.

The bill contains provisions on charging, although they are expressed negatively rather than positively. I think that the wording is something along the lines of "nothing in the wording above shall prevent reasonable charging." SOLAR feels that the stress has been placed on the fact that charging should purely and simply return the cost of a particular service, penny for penny, with none of the money being spent on other areas. The committee has heard evidence from small businesses who are suspicious of hidden cross-subsidies. SOLAR accepts the need for transparency on any cross-subsidies, but if a local authority charges for non-statutory planning advice and if there is no immediate need to recycle that money within the planning function, the authority should be able to use the money elsewhere. Often, there will be a need to recycle the money because, as other witnesses have suggested, local government does not have huge amounts of resources going spare. However, if there is some excess that could be spent in another area—for example, subsidising concessionary public transport—why should that not be allowed, as long as it is done openly and transparently?

There should be room for a reasonable margin. I stress the word "reasonable" because no one in SOLAR would suggest that we should allow local authorities to jump into the private sector area in a way that was anti-competitive or that constituted an abuse of monopoly. To be frank, I do not think that there is the willingness, the commercial expertise or the energy nowadays for local government to jump into entirely new fields; we have plenty to be getting on with as it is, thanks very much. However, if there are areas in which the private sector is not meeting demand, why should there not be a slight margin to allow local government, with its scarce resources and low staffing, to gear up to fill that gap?

Tourists are also included under the general heading of the power of well-being. We are not suggesting anything controversial. Paragraph 60

of the explanatory notes makes it clear that tourists in an area, or commuters into it, can be incorporated in the definition of people within a local government area over whom the power of well-being can be exercised. However, it is open for someone to challenge that and the courts might take a narrow interpretation on the ground that if that had been the intention, it would have been explicitly stated in the bill. Our preference would be to include that information in the bill, for example in section 23 or in a new section 21(1)(c). In order to avoid doubt, it should be made clear that the definition of persons within an area includes persons visiting temporarily or persons passing through the area.

16:00

Although I said that I would major on the power of well-being, I want to mention restrictions, which we deal with in our submission under the heading "Other issues". The relevant bullet point appears halfway down page 3. We feel that restrictions on joint working and delegation to joint bodies should be relaxed by amending sections 56 and 57, and probably section 59, of the Local Government (Scotland) Act 1973. Section 235(1) of that act should also be amended. That would allow committees on which more than one third of the membership are non-councillors to have delegated powers and would allow non-council bodies to become part of a joint board or a joint committee.

At present, that is not possible and there has been some misunderstanding about what the relevant powers are. There is anticipation that we could delegate to the joint future committees within health partnerships, for example, but technically we cannot do that legally. The position is similar with the McCrone recommendations on the education groups to do with teachers' conditions; one cannot delegate decision-making powers to those bodies, although that was the original intention behind McCrone's recommendations. However, we have found longer ways round that. If we were to highlight any of the miscellaneous matters that will probably be raised in more detail at stage 2, we would mention that issue.

Overall, we emphasise that as professionals, we do not feel that the power of well-being is a power of general competence. The power is welcome even as it is worded presently, but we would prefer the wording to be tightened and made more explicit so that the power counters the strong tradition of the principle of ultra vires.

**The Convener:** I will stick with the power of well-being. You articulate concerns that the power of well-being could be interpreted restrictively by the courts because the bill does not expressly abolish the doctrine of ultra vires. Is it possible in a bill to abolish a doctrine and a constitutional

principle? Does not the concept of ultra vires remain important with respect to statutory duties and prohibition?

**Norman Grieve:** That is a good question. It would be difficult to abolish a centuries-old tradition with a stroke of the pen or through a section in a bill. One could mention the ultra vires doctrine expressly—one could say that the power of well-being was to be a clear-cut positive power, the ultra vires doctrine notwithstanding.

I accept that the Executive might be hesitant about abolishing the principle of ultra vires overnight, going straight to the power of well-being and watching what councils can do. Natural caution might well be necessary and could be exercised by allowing a phase-in period.

We are not arguing for a power of general competence in the sense of being able to do what we want and being told afterwards whether it was okay. We accept that there must be restraints. There are already many checks and balances on local government, which will not disappear. That is quite proper. We listed those checks and balances in a submission to the Executive; we thought of about 20 off the top of our head and we could probably add another 30, 40 or 50. That is the context into which the bill has been introduced.

The bill is important, but it will be just another statute. Members and officers of local authorities will still be creatures of statute. On that basis, the courts will be able to interpret narrowly if they feel that it is not absolutely clear that the power of well-being represents a definite move away from ultra vires and a move towards giving local authorities much wider powers. The courts will interpret the power of well-being as an additional power for councils, but it is difficult to say how far they will take that, given past court decisions. It is unlikely that they would push it; they would be very hesitant. We want a clear signal so that we can get up and running and can start heading in the right general direction, even if—because of understandable concerns—we cannot go all the way.

**Gordon Blair (Society of Local Authority Lawyers and Administrators):** The acid test is what the new power of well-being will give councils that section 83 of the Local Government (Scotland) Act 1973—the section that deals with benefit of the area—does not, apart from taking away the financial limit in section 83. If there are any doubts about the answer to that, the well-enshrined doctrine of ultra vires will still exist. We fear that that doctrine will still be very much in the courts' minds. It will not be in our minds, because we will try to make everything work proactively.

However, the major fear for SOLAR and its members is that the power of well-being will

continue to be interpreted narrowly. As Norman Grieve said, that is what the courts have traditionally done in their interpretation of sections such as section 69 of the Local Government (Scotland) Act 1973. In the case that Norman mentioned, an incidental charge, which was entirely reasonable in size and amount, was made to the planning process. However, it was struck down by the courts as being beyond the power of incidental charging. If the courts continue to take that approach, the PWB will not take us much further forward.

**Iain Smith:** When the Scottish Executive gave evidence to the committee at the start of our consideration of the bill, it made it clear that the policy intention behind the bill was for the power of well-being to be a power of first resort. The Executive's intention was to give local authorities the ability to act without their first having to find a specific statutory power to so do.

The Executive also made it clear that the bill would give the minister the power to extend the meaning of well-being, which was included in the bill to ensure that the minister had the power to overturn a court's decision if it introduced a restrictive interpretation of well-being. That power removed the possibility that the courts could establish restrictive precedent. Given that the Executive's policy intentions in that respect are clear, are not the provisions sufficient?

**Gordon Blair:** As Norman Grieve said, councils will rely on specific statutory powers for most purposes in areas such as education, roads and housing. The power of well-being is an attempt to deal with the more innovative areas that local authorities are getting into, including the joint future agenda and joint working. One area is the establishment of companies in which local authorities take a controlling interest, which they do not usually do, especially in Scotland.

No amount of ministerial power to extend the meaning of well-being will help if, at the end of the day, doubt remains about whether a council can establish or get involved with a company to further its powers. The decision to do so will hang on the effect of well-being in the area. The issue is fundamental—it has been a red-hot legal issue for the past five to 10 years. However, our view is that it can simply be bypassed and cut through by adding specific references to it in the bill. I am thinking of key matters such as the formation of companies. It would be possible to do that without prejudicing the generality of the power of well-being.

**Iain Smith:** I will follow on from that point. Given that the aim of the bill is to create a general empowerment and given also the generality of section 21(2)(c), in which the local authority has power to

“enter into arrangements or agreements with any person,”

why do you think specific mention of company or partnership formation is necessary?

**Norman Grieve:** You are quite right—the intention is clear and we are not challenging it. It is useful to have back-up powers under which the Executive could step in to amend legislation or remove restrictive legislation if the power to advance well-being is not being allowed to be exercised openly and properly.

Our comments are the result of bitter experience. We would not expect the courts to make radical interpretations of legislation that is as important as the Local Government in Scotland Bill. However, I am not criticising the courts. Perhaps some individual decisions might challenge the courts. However, it is right and proper that the courts ensure that public bodies act in the context of the Human Rights Act 1998 and of other legislation and conventions. The courts must ensure that they do not overstep the mark. We are comfortable with that and with the fact that there must be controls. The problem is that the power of well-being is supposed to mark a radical step forward. We fully appreciate that that is the intention behind the bill.

However, the courts will not change overnight their way of working and the interpretations that they make unless they are given very clear signals that they should do so. We are asking for the PWB provision to be made even clearer than it is. That should be done in the bill, because we should not rely on guidance or on discussions that take place with the courts.

**Iain Smith:** I have one more question. You suggest that the power of well-being should be made a duty, but is there a danger that, if that were the case, councils would be exposed to all sorts of litigation from people claiming that the council had not fulfilled its duty in relation to well-being by not doing something? That could involve anything—the latest hare-brained idea to promote well-being, which the council does not implement, for example. Could there be litigation as a result of a council's failing to fulfil its duty to promote well-being?

**Norman Grieve:** That is a good point. Perhaps we should think about it before we reply. We wanted to make the point to the Scottish Executive that things should be absolutely up front and that it should be clear in the bill that, without the power of well-being, the whole new best value and community planning agenda cannot be delivered. We are talking about innovation and new ways of working that no one has yet thought about. Those will have to be worked through in practice. Freedom and flexibility are needed. SOLAR would prefer well-being to be expressed as a duty so that

there is absolutely no argument about whether it is a duty, rather than just a power.

Local government is all about the well-being of the community and we are not scared of that. However, Iain Smith is right—we should think about the matter. Perhaps we should be scared because of the potential for challenge. However, well-being should be a fundamental function of local government, whether it is a duty, a power or whatever—that is what we are all about.

We are creatures of statute and always will be, but we want to get off to a flying start with the new agenda. We think that the courts will—initially, at least—continue to take a cautious approach to the matter. Back-up powers will help, but they will be used after the event. Therefore, if the fundamental power of well-being is not expressed in the bill, orders will have to be made or new legislation passed in case of strong objection through court decisions to some of the fundamental principles of well-being.

Perhaps members will think that we are scaremongering because no one else has said that. Our problem is that we are at the sharp edge and must tell authorities whether something can or cannot be done, because monitoring officers are senior legal administration officers. We want dearly to be positive and to say, “Yes, let's do this,” or “Let's do it this way,” but often in the past, as a result of the concept of ultra vires, we have worked in a “cannot-do” environment. Most of us are “can-do” and want to make things work. There is danger because of the history of and the baggage that goes with the concept of ultra vires, which—as the convener said—will not disappear. The concept of ultra vires will still exist and that means that we are creatures of statute who must work within our statutory powers.

We are not challenging that. We are saying merely that, as court decisions and the history of local government have been steeped in the concept of ultra vires, unless there is a specific power that says that a particular action can be taken, one cannot take it. Such action would be illegal, improper and struck down as being ultra vires from the beginning. The provision will probably not work, or it will take a long time and corrective action from the Executive to enforce the message and make it work.

**Mr Harding:** Section D of your submission refers to the Local Authorities (Goods and Services) Act 1970. As the use of the power of well-being is clearly stated to be restricted by statutory prohibitions, is there any contradiction between the amended restrictions on trading and the power to promote well-being?

**Gordon Blair:** Our point is that, under section 21 of the bill, we can

"provide staff, goods, services or accommodation to any person."

Under section 11, as I understand it, with amendments to the Local Authorities (Goods and Services) Act 1970, the supply of goods and services to anyone will be limited to where an activity is considered to be a significant trading activity. In other words, the two do not seem to be compatible. There is a potential contradiction in respect of how section 11 will be interpreted if one is providing goods and services under it—there is a reference to well-being—and section 21. It is not clear how the sections will interrelate. They talk about the same things—the supply of goods and services—but different words are used and different import can be taken. That issue needs to be considered and tidied up.

**Mr Harding:** On trading accounts, COSLA, SOLACE, the Chartered Institute of Public Finance and Accountancy and the directors of finance have told us that they are happy with the best-value accounting code of practice as a framework. What is your difficulty with significant trading operations and the statutory income limit?

**Norman Grieve:** Perhaps part of our problem is that we are lawyers and administrators rather than accountants. Although I can understand the bottom line of spreadsheets and know that if different figures are fed in, there will be different results, I have great difficulty in following what I regard as a convoluted process.

In earlier submissions to the Executive, we expressed reservations about trading accounts. We said that the logic of the argument was that there would be a matrix of trading accounts all over the place, covering every local government function and every function of our partner bodies in community partnerships. That would be an absolute nightmare, given that we want to promote flexible working and innovative approaches.

I understand that such an outcome is not intended. The Chartered Institute of Public Finance and Accountancy and other bodies are quite relaxed about trading accounts. We still have doubts about the arrangement, but those may be based on a lack of understanding of how the system will work. The current wording of the bill is very general. The bill refers to best accounting practice. No one would argue against that, but what is meant by best accounting practice can vary. In theory, the bill is very open to interpretation. We do not want a return to the restrictions of CCT days. I do not think that that is being suggested, but there is always a risk that such a regime may be reintroduced through the back door.

We have a general concern about how the system will operate. It may operate perfectly

properly. I understand from my accounting colleagues that it has operated in many authorities for the past year—in some cases, for two years—and that people are quite relaxed about it. If that is the case, we have no problem with the arrangement. However, if trading accounts were used as an added restriction on how local government can deliver the new agenda, we would have concerns.

16:15

**Mr Harding:** As a former council leader, I know what management issues you have to deal with. What do you envisage councils trying to do under the power of general competence that they cannot already do?

**Norman Grieve:** The committee will not have received many specific answers to that question because local government has not been used to working under the power of general competence. We have not spent much time researching novel ways of doing things. The courts have decided that we cannot do even some of the things that we thought we should be able to do. Unless we are able to find a way round those restrictions—which we have sometimes managed to do—there is no point in putting too much work and too many resources into large-scale thinking.

The council for which I work would like to form a company to deliver public-private partnership working on issues such as the waste management strategy. Currently, it cannot do that. We are involved in combined heat and power projects, and would like to maximise the use of those, as they are a cheap, environmentally friendly way of providing heat and power that is at the cutting edge of technology. We want to explore such possibilities to the maximum.

In the past, we were able to list about 10 examples of things that we could not do because we lacked the power of general competence. Once we get that power, the real answers will come out. We cannot provide practical examples from down south, where similar legislation is in place, because the powers that have been given to English councils are restricted. They must state in advance—in their community plans—how they will use powers under the power of well-being and the best-value regime. They cannot simply use such powers on the hoof. We are pleased that the Executive has made the bill more open than it was. We request more openness in some areas and a more robust power of well-being, as that is central to the bill.

**Mr Harding:** Could not the measures to which you refer be taken under existing legislation?

**Norman Grieve:** They could not. We have been told that legally we cannot form a company to



deliver the waste management strategy. We have to follow a procurement procedure that is based partly on European Community directives. We are trying to take an innovative approach. If we get wider powers, we may be able to develop that much better than has been possible until now.

Local government has powers to provide combined heat and power, and to generate electricity, but there are limits on how those powers may be applied. We would like more flexibility in that area. The issue will be subject to full consultation with the Executive. There are obvious implications for the private sector, which has, quite rightly, made its fears and concerns known to the Local Government Committee. It will be a balancing act.

At the moment, we know that we are restricted in doing things that we could do to a greater extent if we had a meaningful power of well-being and lost some of the restrictions under the Supply of Goods and Services Act 1982.

**Gordon Blair:** The points that Norman Grieve is making illustrate the need to be clear about the establishment of companies. Waste management is one area in which the power of well-being could be used. Another is the establishment of a local housing company to provide housing for the social rented sector. My council was advised that we could do that, but other councils have been told that they cannot do it. The acid test will be whether the power of well-being clears the air and enables people just to get on, do the job and deliver services on the ground. That is what we are about.

**Dr Jackson:** I would like to ask about paragraph 6 of your submission, which deals with tourism. You seem to be saying that, as you understand it, the power of well-being should be exercised not just in favour of local inhabitants or businesses but should stretch further, and be used for the benefit of tourists, commuters and travellers. I can see that community planning might take account of national issues—my constituency will be part of Scotland's first national park—but I had not realised that you think that the power of well-being will be interpreted so broadly. How broadly will it be interpreted? Were you thinking of a middle way—not a third way—that focuses more on the benefits for people who live in the community? That would include economic advantages or, in the case of a national park, even environmental advantages.

**Norman Grieve:** Make no mistake. Councillors will be well aware that it is the people who live in an area who vote for them in elections. That is, quite properly, their first concern. Local businesses in the area generate money, boost the local economy and provide jobs, so that will be the priority. This may sound as if we were beaten up by judges when we were younger—we were not,

not physically, anyway. We have very good judges in Scotland, but the courts work within their own traditions, principles and doctrines. We are talking about taking a giant step away from a very powerful doctrine. On the basis of the comments that have been made, I think that we will probably keep that, but we will put it in its place, so that it does not restrict something that is genuinely being done transparently and openly for the benefit of the community according to best-value principles.

We just want to have width and flexibility. It could be argued that, if we did not have the power of well-being, even some of the things that are accepted at the moment might be restricted. Signs to tourist attractions, for example, benefit people who live in the area but also benefit those crossing into the area. If we do not have the flexibility to allow such signs to be erected, that could restrict benefits to people who live and work in the area. Nowadays, people are flexible about where they live, work, commute, visit and go for leisure, social and sporting activities, and they may cross into another council area. It must be quite clear that, although the focus will be on residents and businesses, there is a general power to do something for the benefit of people visiting or passing through the area.

**Dr Jackson:** Let me give an example. There might be a village on a main route for heavy lorries. The community will not particularly want the heavy lorries to come through, but the freight industry may well not want to take an alternative route. How would that be addressed?

**Norman Grieve:** That is a fair point. What we had in mind was more to do with tourism, given the importance of tourism to most local authorities, and would directly or indirectly benefit many residents and businesses by bringing in tourists, although I suppose that one could argue that benefit to businesses does not always mean benefit to residents. Edinburgh at festival time is a good example of that. I suppose that there is a potential for conflict, but councillors will always look to the interests of their own communities and the people who live and work in the area as being of prime concern. I do not think that that will change. The guidance that is being issued with the bill will explain the intention. The power should not be restricted so narrowly that authorities can never use it to do something that will benefit mainly or partly people who visit the area, rather than those who live there.

**Ms White:** I will ask a couple of questions on charging. As you say, most councils do not have an excess of moneys—many are pretty cash strapped. Both my questions relate to section 23(6)(b). First, in your submission you accept that charging should be reasonable but argue that “defraying the costs” is too restrictive a definition of “reasonable charges”. If we move beyond a

clear and precise benchmark, do we not simply throw it to the courts to decide what Parliament means by “reasonable charges”? How much above the cost of recovery would you define as reasonable?

**Norman Grieve:** You are right. Any time we move away from a clear and simple penny-for-penny recovery there is an element of uncertainty. The word “reasonable” qualifies that, because of the checks and balances that are already in place. In earlier evidence, Leslie Evans said that it would mean recovery cost and perhaps a small income. The question is how we define the section. The draft bill referred to a reasonable charge. Courts would not have a great difficulty with that.

I accept that businesses will say that they do not want councils to use their economic dominance to muscle out competition. Many members have been councillors and the last thing that they would want to do is to destroy local business. If there were a major intrusion in that area, even unintentionally, it would become immediately apparent and would be stopped for the best reasons. If the charge were restricted on a penny-for-penny accountancy basis, we would lose the flexibility. My concern is for more remote areas, where there is no private sector provider because it is not economic. The council might have an office or a depot that could, with a bit more investment, be used to meet a certain need and it should be encouraged to do that. If all the council can do is recover costs penny for penny, it might consider that it has other priorities and that it would be a stretch to do that with existing resources. If the council were the only one who could provide a service and it charged a fantastic amount for it, the courts would hold them back.

**Gordon Blair:** The first challenge would be a complaint to the external auditor, who would ask the council how it justified a charge. That is the first pressure point, before the issue even gets to court. As Norman Grieve has said, there are enough checks and balances in the system to ensure that authorities do not run amok in charging.

**Ms White:** Are you saying that the wording in the draft bill, which said that councils should impose reasonable charges for services, was better than the wording in this version of the bill?

**Norman Grieve:** Yes.

**Ms White:** You talk about margins and what could be defined as reasonable or unreasonable. Section 23(6)(b) does not refer to marginal costs. If a council enters an area to provide a private service, it could charge full cost.

**Norman Grieve:** I am not too sure about that. My impression of the charging power under section 23(6)(b) is that it is marginal in the sense

that it is at the edges of what local government normally does. In many cases, the council provides a non-statutory facility. Planning application and licensing fees are fixed. Those are things that councils are obliged to do. However, councils supply other related services. Gordon Blair gave the example of non-statutory planning advice, which is when planning officers give advice to applicants. There is not a statutory obligation to do that, but there is public demand, because it gives people a better chance of getting a planning application through without delays and problems.

I refer to the McCarthy and Stone case. Despite the fact that the case was heard down south, the decision has been followed in the Scottish courts. Although the fee charged in that case was reasonable—the initial charge was £25—it was challenged because the local authority had no specific power to charge a fee. We are trying to move away from that sort of restriction.

Trading powers and commercial activities would be more closely controlled because, when substantial activities were undertaken, there would be an obligation under the best-value proposals to have a three-year balancing act between the costs and the overall charges. Around the edges, there should be a general power to impose charges, so long as those charges are kept reasonable and are subject to challenge.

Gordon Blair mentioned the external auditor, but there are also the internal auditor and monitoring officers, who investigate if a local authority does something unreasonable, the Accounts Commission and the Executive, which has various powers to step in beyond those proposed in the bill. In fact, other options are open to the Executive that would enable it to step in. For example, it could send in inspectors or managers, call councils to account or impose a fiduciary duty on taxpayers. Many checks and balances exist. The Executive could afford to open up the boundaries a little more and to take a chance, while retaining the right, which it should retain, to step in if an authority clearly steps over the line.

16:30

**The Convener:** We have exhausted our questions. I thank the witnesses for coming along. If there are issues about which we are not quite clear, or if we need to ask further questions, we will be in touch with you again.

I welcome the witnesses from the Scottish Council for Voluntary Organisations. Stephen Maxwell is an associate director and Jim Jackson, is the chief executive of Alzheimer Scotland—Action on Dementia and chair of Community Care Providers Scotland.

I noticed that you have been sitting in the room for some time, so you know the drill. After you have spoken to your paper for a couple of minutes, I will open up the meeting to allow members to ask questions.

**Stephen Maxwell (Scottish Council for Voluntary Organisations):** Thank you for giving us the opportunity to raise some concerns with the committee. I will briefly refer to two or three of the points in our written submission and then I will invite Jim Jackson to make the points that he would like to raise.

The voluntary sector welcomes the bill. In particular, it welcomes the provisions on best value, community planning and the power of well-being. However, it thinks that the bill could encourage councils a little more actively to explore improved ways of delivering the public services for which they are responsible. For example, the bill could contain more active encouragement in section 1(3)(a), which deals with the best-value criteria. Along with quality of performance, cost to the authority and chargeable cost to the user, impact on the community should be introduced as a criterion and as one of the dimensions of best value that councils should be required to take into account.

If that criterion were included, it would put an obligation on councils to explore forms of added value. Such forms of added value may be implicit in the concept of best value, but unless they are made explicit—either in the bill or in the guidance—most councils will probably not consider themselves to be under any obligation to explore them. Including the criterion of impact on the community would be consistent with the other elements of the bill, such as the community planning element, which is meant to begin with the interests of the community, and the power of well-being, which is also tied into community interests. It is common sense that best value should embrace added value, and we think that that should be made explicit in the bill.

We would also like the bill to contain a requirement on councils to treat equitably providers or potential providers of services. Jim Jackson might say a little more about that. I refer to some Accounts Commission reports on council services and the experience of voluntary organisations. Voluntary organisations feel that they are not always treated equitably in bidding for services from councils and that councils sometimes avoid comparing like costs. If the bill imposed a duty on councils to treat providers equitably, and if that was monitored and required to be demonstrated as a matter of course, that would help to encourage councils to explore alternative ways of providing services, which might yield benefits for the community.

The current monitoring and reporting processes—indeed, the ones that are described in the bill—are all retrospective. In the past, voluntary organisations have regretted their inability to challenge councils as they go through the best-value processes or processes of assessing alternative ways of providing services. They feel that they have had no opportunity to arrest the process. We know that section 231 of the Local Government (Scotland) Act 1973 provided a way in which a small group of electors in an area could appeal to the sheriff court to give direction to councils if they felt—or if they could provide reasonable evidence—that a council was failing to implement the provisions of the act. We suggest that that is an interesting precedent and could provide a way of building a power of emergency intervention into the bill. That would certainly rebalance the power relationship between the council and the community by requiring the council to consider alternative providers in a useful way.

We feel that the requirements concerning the publication by local authorities of information about finance and performance should be stricter. Local authorities should be required to report under several headings, including the measures that they have taken to assess the quality of services—specifically, the measures that they have taken to ascertain the views of the users of those services; the processes and criteria that they have used to assess best value consistent with the amended concept of best value that we are recommending; and the steps that they have taken to secure the equitable treatment of providers or potential providers, which I have suggested.

We very much welcome the provision that lifts the 1988 ban on social clauses in council contracts. We believe that that paves the way for local authorities to assume the role of active managers of local mixed economies of service provision in ways that would prevent a local mixed market from simply forcing down the costs of the most vulnerable parts of providers, which are usually the low-paid service providers. That opens up the possibility for voluntary organisations and the public service unions to put pressure on local councils to apply social clauses so as to overcome some of the suspicions that public service unions currently entertain about the role of the voluntary sector in service provision.

Our comments on community planning are directed as much at the guidance as at the bill. We hope that, when the guidance is published, the committee will consider carefully points 1 to 4 in our submission. We know that, whatever else community planning is, it is a highly bureaucratic process. If the voluntary sector and communities are to be given any chance of playing an effective role in community planning, deliberate policy measures and support will be required.

Before I hand over to Jim Jackson, I want to add that I listened with interest to the discussion about the power to advance well-being. We think that, in at least one or two areas, the formulation that is used might restrict unnecessarily local authorities' use of that power. In particular, we pointed out section 23(4), which waves a warning flag over any action that "unreasonably duplicates" anything that is within the statutory power of an agency other than a local authority. Unless the provision in that section is defined closely, we think that it could be used to limit local authorities' willingness to use the power of general competence, which we generally support.

**Jim Jackson (Community Care Providers Scotland):** For the record, I am not the chair of Community Care Providers Scotland, but an executive committee member, and it is nine years since I worked for the Scottish Council for Voluntary Organisations.

I want to make two points. The first is that it is suggested in the Local Government in Scotland Bill that there will need to be guidance. We suggest that there might have to be regulations as well as guidance to ensure that local authorities comply fully with the spirit of the bill. We want there to be criteria for the equitable treatment of all service providers—local authority, voluntary sector and private sector providers. For that to occur, there will need to be clear data about the cost of service provision and transparency.

The Accounts Commission for Scotland's report "Homing in on care: A review of home care services for older people" reviewed home care services. It states:

"Best Value requires councils to demonstrate that decisions on service delivery are made in a transparent manner, and are based on full and reliable information about the options available."

Some councils had problems providing, or were unable to provide, information about key elements of the service. Until local authorities are in a position to provide that information and benchmark their services against other services, not only in terms of cost but in terms of quality, the aspiration to have best value as the driver of better public services in Scotland will be unfulfilled.

**The Convener:** Paragraph 4 of the SCVO submission states:

"We believe that it may be necessary for Scottish Ministers to use mandatory regulations rather than guidance."

What parts of the bill did you have in mind in that respect? Would not that force a one-size-fits-all approach to the diverse circumstances of councils throughout Scotland? All councils are different and have different approaches. I am unclear about that part of the submission.

**Jim Jackson:** Definitions are one of the problems in comparing the cost and quality of services. Unless there is a one-size-fits-all approach, comparisons cannot be made between similar things. We will need clear directions on the overheads or management charges for services in order for comparisons to be made. We will also need clear directions about the criteria for quality. Otherwise, assertions will be made about the quality of one service compared with that of another service. The danger is that the judgment that is arrived at will not seem fair. We feel that there could be a need for regulations rather than guidance, which might be too loose.

**Iain Smith:** I would like more information about your proposal that the impact on the community be added to the best-value criteria. The first straightforward question is, how would you assess the impact on the community? Are you talking about the community, or might communities with overlapping interests come into play? Finally, would the impact on the community include the impact on the business community?

**Stephen Maxwell:** The bill assumes that definitions of community are both achievable and available; it makes many references to "community". The community planning process depends on the possibility that the relevant communities of interest and communities of place can be defined. The power to promote well-being again depends on the possibility of defining communities. No blanket definition of community could cover every possibility, but in practice the definition of the relevant community will be indicated by the interest that is at stake or the policy that is being pursued.

You asked how the impact on the community should be assessed. In some ways, local government and other public purchasers of services already make attempts to assess the impact on the community. For example, they may consider the extent to which a potential provider promises to mobilise volunteer support in the community or the extent to which the provider proposes to create a community facility that would be available beyond the terms of the service definition. Within government, a lot of interest is now being taken in the concept of, and the phenomenon of, social capital. Projects are under way to define what is meant by social capital, which is one value or property of the impact on the community.

Although, in theory, it is quite difficult to summarise how impact on the community would be defined, in practice purchasers of public services are getting more used to looking at the community impact of particular ways of providing services. For example, the Executive's social justice annual report identifies several measures

of community well-being. Experience is accumulating of how impact on the community can be measured and assessed.

16:45

**Mr Harding:** Paragraph 5 of your submission deals with enforcement, which you mentioned in your opening statement. The bill provides for immediate intervention if an authority's actions, proposed actions or inaction create the risk of "substantial harm" to the public interest. It is obvious that you do not believe that to be sufficient. However, might not your proposal lead to the risk of mischievous, spiteful, or politically motivated actions?

**Stephen Maxwell:** I suppose that it could, but I doubt it. I admit that I do not know how often section 231 of the Local Government (Scotland) Act 1973 has been used, but I suspect that it has not been used often. Today, community organisations and voluntary organisations have much greater awareness of their relationship with councils and are much more sensitive than they were in the late 1960s and early 1970s to the way in which councils procure and deliver services.

A provision along the lines that we have suggested would be used by organisations that could foresee a continuing relationship with the council, therefore the provision would not be used glibly. Such organisations would need to make their own judgment about whether the issue on which they wished an intervention to be made was sufficiently serious for them to utilise the provision. I do not believe that such a power would be used maliciously, but I suppose that there is no absolute guarantee of that.

**Mr Harding:** Under your proposal, only seven electors would be needed for an application to the sheriff to be made. Sometimes, conflict can arise between communities if one community gets a community hall and the other does not. In such a situation, one can envisage seven electors going to the sheriff to complain that that was unfair. The end result might be that economic activity would be delayed.

**Stephen Maxwell:** Before the sheriff intervened, those electors would have needed to provide evidence that the council had not applied the provisions of the act properly. If the sheriff were to make such a determination, that would be perfectly proper; if the sheriff decided that the evidence did not support the case that had been brought by the seven electors, the sheriff would reject their appeal. The fact that the electors would need to apply to the sheriff would provide a safety valve against widespread misuse of the power that we have proposed.

**Ms White:** Your submission mentions that

community representatives and voluntary organisations should receive properly resourced and independent support to participate in community planning. Why do you mention the importance of having a base that is independent of local authorities and other public agencies? Will you expand on why it is important that such organisations should have independent advice and support?

**Stephen Maxwell:** We have a lot of experience of the workings of public sector-led partnerships that are under guidance to involve community and voluntary organisations in the working of the partnership. Evidence shows that where the community and voluntary sector involvement is dependent on public sector processes or on expert advice and support from public sector employees, the community and voluntary sector representations are likely to reflect the real views of the community or voluntary sector interests less well than if the community and voluntary sectors operate from an independent base in the community.

If the community and voluntary sectors operate from an independent base, they are able more accurately to reflect the views of the community, rather than have their views influenced by the local authority or the public sector body on which they are dependent. We understand that the community planning task force, and the draft guidance that is being produced, will take a similar line on the importance of the community and voluntary sectors operating from an independent base in partnerships if community and voluntary representations are to be at their most effective.

**Ms White:** If community representatives receive independent advice, should they be called a certain name? Should they be able to access moneys for training?

**Stephen Maxwell:** The training of community and voluntary sector representatives in partnerships is important, because partnerships often employ highly complex and bureaucratic processes. Equally, the public sector representatives in partnerships need training in how partnerships work. The resourcing of community and voluntary sector involvement in community planning should include realistic resourcing for the training of all those who are involved.

**Elaine Thomson:** I wish to ask about equitable treatment, which you mentioned in your opening remarks. In particular, I wish to ask about some of the issues around data and how comparisons are made. Will you expand on what you mean by equitable treatment? Do your requirements go beyond what the bill proposes for local authority contracting?

**Jim Jackson:** When best value was first talked about we were really pleased, because we anticipated that it meant that quality was going to be given as much weight as cost. Like many others, we were happy to see the demise of CCT. Our concern is that in practice, many voluntary sector providers have found that they are benchmarked against one another, and that they are not benchmarked against the public sector. There are good local authority services, there are good voluntary services and there are good private sector services. There are also bad ones. Not all of us are good all the time. Best value is meant to be a tool to tease that out. The feeling among voluntary sector providers is that best value is being used as a reason for saying that local authority services are automatically good. We are not being allowed to compare our services on the same basis as local authorities.

Reference was made to an Accounts Commission report, which points to the difficulties that local authorities have in costing their data. Many local authority representatives would say that their services are of a higher quality. However, the Accounts Commission report contains some telling data about trained home care staff in a series of study councils. At the highest level, only 30 per cent of home care staff were trained to work with people who had dementia. In the worst council, the equivalent figure was less than 5 per cent. By contrast, I know of a voluntary organisation in which that figure is well over 90 per cent all the time.

I appreciate the fact that that is only one measure of quality. Nonetheless, many people in the voluntary sector have pioneered and innovated. We involve service users in judging the quality of our services and undertake cutting-edge work, but we do not always receive the recognition that we deserve from local authorities. We feel that best value could be our friend—it could be the friend of all good services—but we do not see it working in that way at the moment. We therefore propose a strengthening of the bill. You could say that that is implicit in the other elements that local authorities will have to take into account. However, at the moment we do not see the level playing field on which we feel that we should be competing.

**Dr Jackson:** In paragraph 10, on page 3 of your submission, you say that you believe that

“the case for introducing a Fair Wages provision, requiring local authorities to fund wages (below a certain threshold) for staff of external providers at the same level as comparable Council staff should also be considered.”

Can you clarify that? Do you think that, if you were providing the service, there would be the same staffing ratio as there would be if the council provided the service? Where does the voluntary aspect come into it? I acknowledge your statement

that, when staff are paid, they should be paid on a similar level to what the council is paying. However, if there is no voluntary aspect—which is part of what you are saying about added value—and if the salaries are the same, should costs be taken out of the equation altogether? I hope that my question is clear—I know that the issue is complex.

**Jim Jackson:** Let me begin with your first point, about volunteers. Some voluntary organisations add a great deal of value because the volunteers who work with them provide face-to-face care. A lot of organisations that work with older people and provide day care have a heavy involvement of volunteers alongside paid staff, and that is clear added value. However, not all voluntary sector services are like that. The home support services that my organisation provides are paid, waged services. The difference between us and the local authority lies in the structure of the management, support, professional development and training that the home support workers receive. The difference in overall unit costs is in the wage that we pay the care workers and the support costs for their management, professional development and training. There will be differences in unit costs and, in some cases, the voluntary sector may be more expensive. However, voluntary organisations will point to the benefits of their delivering a higher quality service. If they have evidence to support that claim, it should be taken into account.

Some providers pay considerably less than local authorities and the voluntary sector, and we feel strongly that they have an unfair advantage. Our other concern is that some local authorities expect voluntary organisations to pay less than they pay their own employees. That means that we have even greater difficulty in recruiting staff than many local authorities have. I am sure that all members are familiar with the difficulties of recruiting social care staff in many parts of Scotland. A fair wages provision would help to create a level playing field. Other differences would also be taken into account. I would prefer to lose a contract not on cost, but on arguments about quality.

**Dr Jackson:** So fair wages are only part of unit costs?

**Jim Jackson:** Yes.

17:00

**The Convener:** We have exhausted all the questions. You mentioned the training of staff; I assure you that many members are aware of that issue. The Executive has provided councils with more money for that purpose. It is not right that the current discrepancies should exist. I am sure that the problem will be addressed, and we will keep an eye on it.

Thank you for coming to give evidence. I am sorry that you had to start 40 minutes later than originally planned.

Our next witness is Douglas Murray, the chairman of the Association of Scottish Community Councils. Thank you for attending today's meeting. After you have made some introductory remarks, I will open the floor to questions from members.

**Douglas Murray (Association of Scottish Community Councils):** I am the secretary of the Association of Scottish Community Councils.

**The Convener:** We are getting everything wrong today.

**Douglas Murray:** I am called many things.

Thank you for inviting me to give evidence to the committee. I apologise for the lateness of my written submission, which I sent to the convener this morning.

The Association of Scottish Community Councils would like to think that the committee and others will develop clear guidance to enable individuals or community bodies to challenge authorities. I was taken with Stephen Maxwell's comments about the provisions of the Local Government (Scotland) Act 1973, which appear to be very relevant. As public bodies, community councils may be one avenue for the use of the 1973 act.

I will expand briefly on some of the points in my written submission. We would like section 11 of the bill to allow local authorities to provide goods. In the past few days, a community council has received a bill of more than £1,000 for legal expenses that were incurred in performing its statutory duty to hold elections in its area. The community council was refused legal representation by the local authority, but had to defend an action in the Court of Session. The action was not pursued, but the council was still faced with a £1,000 bill for legal expenses. We would be very pleased if the bill were to allow local authorities to provide legal help or services. The council was obliged to take part in a flawed process that resulted in its being taken to court and, through no fault of its own, it faces bankruptcy because its grant is less than £300.

Section 14 is entitled "Proper accounting practices". At the moment there is a perceived loss of democratic control, because of the setting up by local authorities of separate bodies. Services have been hived off; recently some non-statutory services have been transferred to charitable companies. Over the past few months there has been considerable discussion in the press of accounting practices, particularly in America. Will the bill ensure that local authorities reference or cross-reference all their activities? If they set up a

company, will its assets, liabilities and potential liabilities be recorded in its accounting system?

Community planning is the most relevant aspect of the bill for community councils. Many communities are interested only in the local aspect of community planning. The bill is aimed at strategic planning and drawing together most of the strategic partners. To encourage community engagement, the bill must place a duty on local authorities to have local community plans as well as strategic plans. Community engagement and empowerment is lost at local level. Communities will not see the wider picture and are not interested in certain things unless it affects them directly. There must be provision to address that in the bill.

We often hear that community councils are not representative. Many community councillors are active on several different bodies. If one were to take half a dozen community councillors, one would probably find that they sit on half a dozen different committees. If one multiplies that across Scotland, for the 15,000 community councillors, one finds that there are about 60,000 to 100,000 groups that individuals are involved in. There is some representation, but it does not come across from the community councils. That is our fault and their fault and is something that we should address.

The association intends to conduct a survey of community councils, examining participation and the other bodies that they are involved in as part of the community planning process. Community planning may not have got off to a good start in certain local authority areas. One local authority decided to produce its own community plan without involving the community or the voluntary sector, so when it eventually offered the community plan for comment it was told to get lost. There were problems in the initial reaction to community planning.

A large part of our submission features common good funds. The power of general competence that is proposed in the bill would indicate that common good funds, trusts and bequests could be used by authorities for more purposes than was originally intended. I do not know of any national statistics, but early indications show that such funds amount to a few hundred million pounds. The use of such funds has been questioned in several areas. Common good funds have been a bone of contention between community councils and local authorities for the past 25 years. Earlier this afternoon, Sandra White mentioned that councils are cash strapped. Everyone agrees on that. Common good funds have quite a lot of cash in their coffers and would offer an easy option for cash-strapped councils.

The Association of Scottish Community Councils

welcomes the bill generally, but we ask for a number of explicit safeguards on funding and on the ability of communities to challenge aspects of local authority work. As I said, I liked Stephen Maxwell's reference to the 1973 act.

**The Convener:** Are you satisfied with the bill's provisions on the participation of appropriate community bodies in community planning? If you are not satisfied, what improvements or additions would you like?

**Douglas Murray:** On the power of general competence, we would like minor additions to the miscellaneous provisions to enable community councils or community groups to be involved in some kind of statutory consultation on common good funds. That could be done relatively easily.

**Mr Harding:** In your opening comments, did you say that a community council is going bankrupt because it incurred expenditure in holding elections, which are not funded by the local authority?

**Douglas Murray:** Yes. Almost every community council scheme in Scotland is different: there is no standard scheme and no requirement on the Scottish Executive to check any of the schemes. The community council to which I referred is in the Scottish Borders Council area, where the task of holding elections is placed in the hands of individual community councils. The Borders area is not alone. In neighbouring Dumfries and Galloway, the community councils have a similar obligation, but the legal and community education staff there have set-ups to ensure that every process is done by the book. In the Borders, the process is left entirely to individuals in community councils, few of whom have any legal training.

The community council in question put an advertisement in the local press for an election for community councils. The newspaper printed the wrong times for the election and a concerned resident sought an interdict at the Court of Session. Two sheriff officers turned up one Friday afternoon to serve the interdict on the office bearers of the community council. The election had to be cancelled, then re-advertised and held later. The community council still had to go through the process of employing local legal staff and going to the Court of Session to engage a Queen's counsel to defend the action. The individual who brought the action did not turn up to pursue it, but the community council was left to face the bill. At present, there is no insurance cover for the Scottish Borders Council, although the situation is being considered. Initially, the council has no liability. That puts responsibility on to a bunch of individuals and it is the kind of thing that discourages community involvement. There are many aspects of community council schemes that, as an association, we would like to

reconsider.

One other local authority requires the community councils in its area to maintain and update its electoral registers. How on earth can someone in the back bedroom of a council house update an electoral register without infringing the Data Protection Act 1998, the European convention on human rights or the Freedom of Information Act 2000 and still get it right? It is getting beyond a joke.

**Mr Harding:** I am surprised because I assumed that it was a statutory duty for councils to fund community council elections. That is what happens in my constituency.

Do you believe there should be a minimum list of community bodies that should be consulted and if so, who or what should be on the list?

17:15

**Douglas Murray:** I suggested that the community council should be on the list as well as residents and tenants associations. I have seen no mention of school boards on any of the community planning notices. At the community planning meetings I have attended, almost all the people there represented community councils. Few of them were involved in the strategic plan, which is unusual.

I would put a full range of local community bodies on the list. The local council for voluntary services usually co-ordinates the main efforts of strategic community planning. I do not know whether it can always contact community councils, school boards and the like.

**Mr Harding:** I assume that you are suggesting representatives of those organisations. For example, there are about 140 community councils in Fife and you could not expect all of those community councils to be consulted.

**Douglas Murray:** I would like community councils to come together as a body in local authority areas. Many associations are being set up geographically—

**Mr Harding:** On an area basis?

**Douglas Murray:** Yes—associations or forums of individual community councils.

**Dr Jackson:** Are you saying that community councils should be explicitly mentioned as bodies that should be involved in community planning?

**Douglas Murray:** Yes.

**Dr Jackson:** You said that there are problems in trying to be representative of the community. If that is the case, in your role as a staff member of the Association of Community Councils, do you have ideas about how it is possible to be



representative? Can you follow any existing best practice?

**Douglas Murray:** Yes. I return to the idea of using local community plans to involve communities more in physical activities, for example. I have found that if we do that, we can draw in a younger element of people from particular areas to projects. There is no sense in having a grand vision if that is all it is.

People in a community want things to happen. They want services to be improved and the coming together of services under some kind of umbrella or leadership. If that happens, it will gel the process of getting people involved. They have to be hands-on rather than hands-off.

**Dr Jackson:** What do you think is the best method of consulting the community?

**Douglas Murray:** That is always a difficult one. In the Highlands, under the national parks legislation, consultation took place where it was thought people would congregate. I have visited areas where meetings have been held in the local pub one week and in the local church the next week. It depends on where people are going. Face-to-face talking—even if it is just meeting people on the street—generates good feedback. We use paper consultations for groups, but to get more individual opinion, we need a face-to-face, possibly informal, event. That could be a talk at a coffee morning in the local church or hall.

**Iain Smith:** Are you satisfied that the well-being provisions in the bill are a good thing? Do you think there should be consultation of communities before the councils can use the power?

**Douglas Murray:** Consultation on the common good funds?

**Iain Smith:** No, just the general powers of well-being, although I also have a couple of questions about the common good funds.

**Douglas Murray:** There should be more consultation. At a community planning event that I was involved in as a community council representative in my area, I was taken aback when the local authority agreed that the local council for voluntary service should lead the voluntary and community input into the community plan. Apart from that meeting, there had been no feedback from the CVS to the other groups about what was happening, other than the local authority sending out invitations to attend specific events. I find it surprising that it is always community councillors who attend such events. There are very few voluntary sector representatives, and yet it is the voluntary sector that is supposed to be leading community planning on behalf of voluntary and community interests.

**Iain Smith:** I would like to ask about common

good funds. Do you know of any councils that have used common good funds in what you might consider inappropriate ways or without adequate consultation of local communities?

**Douglas Murray:** I understand that a number of community councils have taken their local authorities to court over the use of common good funds. Although they have been only partially successful, I think that that shows that there are extreme concerns and that consultation has been inadequate. I live in Angus, where there are seven burghs, of which six have common good funds. An application from one of the burghs is not decided solely by the local authority councillors for that burgh, but by all 29 local authority councillors. That takes away the feeling from the local area of what is being decided. Only three of those 29 councillors represent my own burgh. If those three have a specific wish but the other 26 do not, the other 26 will carry the decision. There have been a number of cases in which there have been problems with perceptions of what the funds are being used for, so there are some difficulties.

**Iain Smith:** I have some sympathy with the concerns that you raise. In my constituency, the council used a common good fund to support a major project in the town, and the community council's view was that the procedures that are meant to be in place in Fife were not followed in that case. As I said, I have some sympathy, but I am not sure how a statutory duty to consult would work, particularly in areas where there are no community councils. There are some areas where there are common good funds but only a single councillor, and that situation could be open to abuse if a single councillor had a veto on decisions.

**Douglas Murray:** The statutory duty to consult could have other safeguards built into it. For example, there could be a committee involving local authority councillors and an equal number of community representatives, who need not be members of the community council. The local minister could be involved, for example. Some of the old trusts and bequests make provision for that, although they appear to have fallen by the wayside over the years. Some kind of statutory consultation or grouping of local authority and community representatives should be involved. With a casting vote for local authority officials, that kind of set-up could work and it would allow more of the local democratic process to come through.

**Ms White:** Community organisations are obviously important and will play an active role under the new legislation. Will they require additional support and resources? If so—I presume that you think so—what type of support and resources should there be? Would that involve training, more moneys and so on?

**Douglas Murray:** At our annual general meeting on Saturday in Aberdeen, a proposal was made from the floor that we go back to the Scottish Executive and seek standard guidelines on financial and administrative support. Those would be basic guidelines, covering all 32 local authorities.

At the moment, community council grants vary widely. In response to our most recent survey, in 1999, one community council said that it got £90 as an admin grant; the average grant is £550. Up in the Shetlands, it is about £17,000; under the grant system, community councils in the Shetlands have paid admin support and employ part-time clerks.

**Ms White:** I put the same question to the Scottish Council for Voluntary Organisations, whose representatives agreed that community councils must be properly funded. I assume that, if you could secure the appropriate amendments, you would like community councils to be properly funded so that they could take part in implementing community planning legislation.

**Douglas Murray:** Yes, definitely.

**Elaine Thomson:** I want to ask about best value, which is one of the major things in the bill. Do you think that community organisations have a role to play in councils' best-value regimes? If so, what might that be?

**Douglas Murray:** Yes, I think that community organisations have a role to play. The statutory remit of a community council is very wide, and I have always suggested that that could be used to enable a community council to run local services.

My community council has been pushing for an integrated local service in a rural area for a number of years, since well before the community planning process took off. The name for it may be new, but the concept has been around for years. Local bodies in some areas would like to be more involved in the delivery of local services; others would not be interested. It comes back to the question of resources. How involved bodies want to be depends on how active the individuals in the different bodies are and on what else they do.

**Dr Jackson:** I think that I missed what you were saying at the very beginning. In the Stirling constituency, there is an association of community councils in addition to the individual councils. Are you representing both those groups? How do they interrelate? How representative is the Association of Scottish Community Councils in the Stirling area?

**Douglas Murray:** I cannot recall offhand what the figures for Stirling are, but there are, I think, 1,167 community councils in Scotland.

**Dr Jackson:** How representative is the association?

**Douglas Murray:** Our membership comprises about 650 or 670 out of those 1,167 community councils. I cannot recall the figures for the Stirling area. As a membership association, our membership is limited to individual community councils. We are looking to encompass the various other associations or forums of community councils, such as the one that exists in Stirling. I think that the Stirling association is now slightly better funded than most, as it has additional resources in connection with the Loch Lomond and the Trossachs national park.

**The Convener:** I think that we have exhausted our questions. You have thrown up some interesting points about the fact that there is no standard scheme for community councils. It would be interesting to have a look at the results of your survey and to find out about the participation and involvement of community councillors in other bodies.

Thank you very much for coming. I am aware that you had to wait for some time before we managed to speak to you. If we need to get in touch with you again, we will certainly contact you.

We now move into private session, so I have to ask the public and the official report to leave.

17:30

*Meeting continued in private until 17:42.*

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