

SOCIAL JUSTICE COMMITTEE

Wednesday 14 November 2001
(*Morning*)

Session 1

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SOCIAL JUSTICE COMMITTEE

26th Meeting 2001, Session 1

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Mr Kenneth Gibson (Glasgow) (SNP)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Linda Fabiani (Central Scotland) (SNP)

*Mrs Lyndsay McIntosh (Central Scotland) (Con)

*Karen Whitefield (Airdrie and Shotts) (Lab)

*attended

WITNESSES

Colin Affleck (Scottish Executive Development Department)

Kate Arnot (Scottish Women's Aid)

Philippa Bonella (Scottish Council for Voluntary Organisations)

Ian Bruce (Abbeyfield Society for Scotland Ltd)

Neil Campbell (University of Glasgow)

Rev Dr John W S Clark (Abbeyfield Society for Scotland Ltd)

Richard Grant (Scottish Executive Development Department)

Brian Kelly (Glasgow City Council)

Isobel Lawson (Scottish Council for Voluntary Organisations)

Lucy McTernan (Scottish Council for Voluntary Organisations)

Lydia Okroj (Scottish Women's Aid)

Martin Sime (Scottish Council for Voluntary Organisations)

Dr Paul Stollard (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Lee Bridges

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Craig Harper

LOCATION

The Hub

Scottish Parliament

Social Justice Committee

Wednesday 14 November 2001

(Morning)

[THE CONVENER opened the meeting at 09:33]

Item in Private

The Convener (Johann Lamont): Welcome to this meeting of the Social Justice Committee. Does the committee agree to take item 3 on our agenda in private?

Members indicated agreement.

The Convener: We now move into private session.

09:33

Meeting continued in private.

09:43

Meeting continued in public.

Voluntary Sector Inquiry

The Convener: I welcome our guests to this meeting of the Social Justice Committee. The next item on our agenda is to continue to take evidence for our inquiry into the voluntary sector. I welcome representatives of the Scottish Council for Voluntary Organisations: Lucy McTernan is assistant director, Isobel Lawson is a member of the management board and Philippa Bonella is policy officer. Martin Sime has been delayed and will join us as soon as he arrives.

After the witnesses have made some brief opening remarks, they will take questions from committee members.

Isobel Lawson (Scottish Council for Voluntary Organisations): The SCVO welcomes the committee's interest in hearing evidence from us. We believe that the voluntary sector has benefited from devolution and that it has made a big difference to the voluntary sector in Scotland. Three important issues that required attention were capacity building, the law and funding, and they have received that from the Parliament. We can report significant progress on all three issues, although further deliberation on some matters is still required.

We are now in dialogue with the Parliament about the voluntary sector's contribution to jobs, services and social capital. We are moving into a second phase of work, dealing with the social economy. We have high hopes of the social economy review and are looking forward to hearing the outcome of that towards the end of this year.

09:45

In its discussions with the Parliament, the SCVO wants to talk about the voluntary sector's contribution to a healthy Scotland, as manifested in community action, civic participation and, ultimately, better policy and governance. Underpinning that are our relationships with local government, with the social inclusion partnerships, with the Executive voluntary issues unit, with the new body Communities Scotland and with the Parliament.

Our relationship with the Parliament is underpinned by the implementation of the compact that has been agreed between the Parliament and the voluntary sector. We welcome this opportunity to give evidence to the committee and look forward to responding to members' questions.

The Convener: I will start with some general questions. You referred to the positive contribution that devolution has made. Can you say in more detail how the work of the SCVO has changed over the past few years?

Lucy McTernan (Scottish Council for Voluntary Organisations): Our work has changed phenomenally. Before devolution I was a policy officer with the SCVO and spent most of my time travelling to London to persuade politicians down there that issues of interest to the Scottish voluntary sector were worthy of a small amount of parliamentary time. We spent eight years trying to get charity law on to the agenda of the Westminster Parliament, but it was on the agenda of the Scottish Parliament from the word go. That is one example of how our work has changed.

We now spend a lot of time talking to different parts of the Scottish Executive and to committees, including the Social Justice Committee. We feel that the voluntary sector is much more involved in the making and implementation of public policy. That is not to say that there is not still an enormous amount to do and that there are not problems in particular areas, but this is a completely different ball game from the one that we were in before.

The Convener: Can you say something about the perception of the SCVO's ability to represent the interests of rural and urban organisations equally? Might that be a problem for the SCVO?

Lucy McTernan: The SCVO has 1,300 member organisations, which include the largest and the national organisations. Through our systematic working relationship with local councils of voluntary service, we also represent organisations at a local level.

We believe that we have the interests of the full spread of the voluntary sector at heart. We have taken action to organise our staffing and work programmes to reflect the very different experiences of voluntary organisations in urban and rural settings. From our research we know that in rural areas of Scotland there are far more voluntary organisations per head of population than there are in urban areas. That is common sense, because such organisations are based in local communities, but it means that they are very different in size and operate very differently from organisations in urban settings. We have had to think carefully about that and to develop tailored programmes that allow us to respond to their different needs and to represent their interests to the Executive and the Parliament.

The Convener: How do you see your role in relation to other umbrella groups in the sector? Do you think that there might be areas that seem to the outside world to contain duplication or where

the differences do not make much sense?

Isobel Lawson: There is always a dilemma when a number of interests are operating in one field. It is important to establish similarities and differences, to avoid duplication and to ensure proper investment of any funding.

In the voluntary sector, the SCVO's role is quite clear. Perhaps we need to do more work on promoting that outwith the voluntary sector. The SCVO covers the voluntary sector. Volunteer Development Scotland—VDS—is perceived to be similar to the SCVO and covers volunteering. There is a clear distinction in the voluntary sector: volunteering requires specific engagement and investment to support people's capacity to volunteer. The SCVO is about organisations that engage in other specific-interest fields—the social economy, for example—and support voluntary organisations. The councils for voluntary service network operates at a local level and a lot of funding has recently been invested in capacity building in it.

Those bodies exist to support the growth and development of local voluntary groups, community groups and voluntary organisations. They do not conflict with local volunteering agencies that exist to develop volunteering. There is a difference between developing the capacity of the voluntary sector—in the delivery of services, the creation of jobs or campaigning—and developing opportunities for people to engage in volunteering activities throughout a range of services.

There is therefore a difference within the voluntary sector. However, the important thing is that we are all working to promote volunteering and voluntary sector development in Scotland. All the agencies work hard at working together. There must be a distinction but there should be no conflict of interests. It is a challenge to ensure that all those who are involved in the volunteering side and all those in the voluntary sector development side work together for the benefit of the communities and people in Scotland that we support.

Lucy McTernan: Sometimes I feel like apologising to people who are not actively involved in the voluntary sector, because it is quite complex. We use a lot of jargon and acronyms and it is often not easy to find your way around. That is for a very good reason: the voluntary sector is complex, which reflects a range of different people's activities in different communities. It would not make sense to take too corporate an approach to it. It works at the grass roots—from the community up rather than from the top down.

Having said that, and having visited the voluntary sector in other parts of the United

Kingdom and elsewhere in the world, I feel that we have one of the best networked voluntary sectors in the world. We work together with other network and intermediary bodies. We have a key relationship with VDS and the local volunteering development agencies that Isobel Lawson mentioned. We have a key relationship with councils for voluntary services. However, we also work with network bodies representing communities of interest, such as YouthLink Scotland for the youth work groups and Scottish Environment LINK for the environment groups.

We are working to increase and improve that networking by investing in information technology and by communication through our newspaper and other means. It is therefore fair to say that we have a good working relationship with other networks in the voluntary sector. We will try harder to explain that better to people in the outside world.

The Convener: Thank you for those answers. Before I ask my final question, I welcome Martin Sime who is the chief executive of the SCVO and who is now able to be with us. He has arrived just in time for my final question before we move to questions from other members of the committee.

What are the witnesses' views of the Scottish Executive's relationship with the voluntary sector? You have already said that there is a distinction between what exists now and what went on before devolution. In what ways do you want to see that relationship develop and perhaps change?

Martin Sime (Scottish Council for Voluntary Organisations): I start by offering my apologies to the committee—there was some confusion about the time. I had not picked up that we were required to be here earlier so it is entirely my fault.

It is fair to say that the SCVO sees relations with the Executive now and what happened before as like night and day. We now have much greater engagement with the Executive on a wide range of subjects. However, relationships between the Executive and different groups of interests in the voluntary sector could be deeper and stronger. That was one of the issues that we explored a bit at our recent 24-hour meeting with officials from the Executive. We would like those relationships not necessarily to conform to a single pattern but to be much more thoroughgoing in areas such as rural affairs and the environment, with some dialogue between community care organisations and the health department. There is a lot of scope for much more systematic dialogue with Executive ministers and officials. There is enthusiasm for that, at least in some parts of the Executive.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): In section 1 of your submission, entitled "Growing our role", you point out that the Scottish

Executive's review into the social economy is about to begin. I know from the information that you have provided that a member of staff will be seconded to the Executive for a period, but can you advise us what input the organisation will have into the review and what you hope to get from it?

Martin Sime: The review of the social economy is being seen as an Executive initiative to try to establish a better understanding throughout the Executive of all the ways in which voluntary organisations currently contribute to public life and public services in Scotland. It is also seen as a means of exploring ways in which voluntary organisations can increase their contribution, in policy and service delivery terms, in many different areas. The SCVO was asked whether Stephen Maxwell could assist the Executive with that task. We are happy to do so. It is not seen as an externally driven initiative and Stephen has not sought wide contributions from the voluntary sector because, from our perspective, much of the agenda is well understood. He has mostly focused his attention on meeting officials throughout the Executive to explore the state of current relationships and the possibilities of extending them.

Cathie Craigie: Obviously you would see that as something positive.

Martin Sime: Absolutely. The SCVO has been keen to get progress in that area for about 18 months. It was at our annual general meeting last year that Jackie Baillie announced that there would be a review of the social economy, so we are pleased that it is happening now and that we are able to assist.

Cathie Craigie: Judging by the first section of your submission you are obviously looking forward to a number of reviews. The performance and innovation unit's review into the legal and regulatory framework is on-going. What recommendations would you like to come out of that? What key areas need to be addressed?

Philippa Bonella (Scottish Council for Voluntary Organisations): The performance and innovation unit's review of voluntary sector regulation started off as more of a UK-wide review of not just charity law but beyond that to the wider sector. The unit came up a few weeks ago to consult organisations in Scotland. I think it became clear to all of us that it had become aware that much of the agenda had already been dealt with in Scotland through the McFadden commission. Since it is not considering tax issues for charities, few of the legal issues that charities are concerned with will be covered in a UK context.

In many ways, what we are looking forward to is the fact that the unit may have a faster track in Westminster because it is reporting directly to

Tony Blair. It will give its recommendations to him in the next few months. We look forward to discovering what those recommendations are. We hope that they will fit fairly closely with what McFadden recommended, because we welcomed that very much, and that they will help to push forward the timetable for a change in Scotland, so that UK-wide change will happen over the next year or so.

10:00

Cathie Craigie: In your submission, you also mention social investment Scotland, which was launched in September. I have experience of involvement with voluntary sector organisations that had been looking for private money for a number of years before the launch of that scheme. That is the positive side, but how have other voluntary organisations, which feel that going into the private money market is taking on a bit too much, received the initiative? What is the initial feedback from them?

Lucy McTernan: The initial reaction to social investment Scotland has been interest, if not immediate enthusiasm, because loan funding is a new concept in the voluntary sector—except in housing associations and a few other types of organisation that have significant assets and have been able to justify to mainstream private banking the possibility that they would be a good investment.

In supporting the development of the social investment Scotland initiative, we were interested in opening up the market—as new demand for loans in the voluntary sector and, in the longer term, in the private banking industry. In that way, loan funding could serve as an additional weapon in the armoury of voluntary organisations. It might well serve to fill the gap between the grant and the donation income in particular initiatives, which could make the difference in getting a project off the ground. For example, a new building project for a community organisation might not happen if the organisation cannot take the risk up front.

That is not to say that loan funding is a replacement for other forms of funding. It is just a different type and a different source of funding that is becoming available to add to the general mix. Overall, the income to the voluntary sector is rising slightly, but the expenditure of the sector is rising a lot. The fact that the gap between income and expenditure is narrowing means that, increasingly, voluntary organisations must dip into assets. That is not a good, sustainable, long-term picture for the voluntary sector.

We must find ways of increasing all forms of income, from whatever source, and of reducing cost. That is why we continue to have a focus on

the compliance and transaction costs that voluntary organisations must deal with—not least the removal of relief from water charges, which we have campaigned about lately.

Martin Sime: I have one small addition to that. One of the inevitable consequences of pursuing a strategy of increasing access to loans is that voluntary organisations will have to negotiate more secure revenue funding to meet the guarantees that banking institutions might require. As well as fulfilling an important strategic role between the banks and voluntary organisations, social investment Scotland feeds in the experience of potential applicants and the difficulties that voluntary organisations face when seeking access to mainstream banking services. It is difficult to get a long-term loan to purchase a property for providing care for people coming out of long-stay institutions, for example, with only a three-year contract. Some downstream consideration of how to obtain more stable funding for voluntary organisations will arise from the initiative.

Karen Whitefield (Airdrie and Shotts) (Lab): Thanks for coming along. Isobel Lawson said in her opening presentation that the Parliament has addressed some of the funding issues. As the inquiry goes on, however, it seems that funding remains a key issue for the voluntary sector.

In your written submission, you are critical of the voluntary issues unit consultation on Government funding for the sector. Will you say why you think the unit did not do things properly, how it could have done things better and whether you are in favour of its proposals for a pilot scheme or whether the Executive could address the sector's concerns on funding and sustainability in another way?

Lucy McTernan: As Isobel Lawson said, we were pleased that the Executive started by looking at the three fundamentals for stabilising and consolidating the voluntary sector in Scotland—law, infrastructure and capacity, and funding. Initially, we had high hopes that the Executive would take a strategic view of the funding of the voluntary sector, its income and expenditure. We hoped that it would consider some of the broad-brush statistics that I mentioned earlier.

Our criticism of the Executive's review is that it changed from the strategic funding review that we had hoped for to an internalised review of systems for the funding that the Executive gives to the voluntary sector. That amounts to £39 million this year, but it is part of a total income to the sector of £2 billion. Executive funding is crucial and it can be important leverage for other sources of funding. The Executive can be a leader in demonstrating to funders ways in which they could do the job better, but the review and the consultation that followed did not address any of the strategic questions.

Having said that, we welcome the Executive pilot scheme for improving the way in which it funds. We hope that it will reflect good practice across the broader spread of funding for the voluntary sector. We want a return to strategic issues. We would be happy to offer the committee detailed information, from our research, on the size and shape of the sector. New statistics for 2000-01 update the information on income and expenditure and on the sources and types of funding that are available. I hope that that information will be of interest to you and, in turn, to the Executive when it considers further its strategic funding role.

Karen Whitefield: Your welcome offer of information leads nicely to my next question. Is the SCVO undertaking any research on the future of the voluntary sector? Such information would be of interest.

Lucy McTernan: The SCVO has had a research unit for six years now. Work to date has been on the basic statistics of the voluntary sector—how many groups there are, where they are, what they are doing, what resources they have, and what the benefits are. With a number of partners, we are in the process of agreeing a much broader research programme that will build on what we have done in the past but go much further to consider in detail the trends in the different subsectors. It will consider the health and social care fields and what influences them.

In particular, we will consider what organisations need to allow them to grow. We want qualitative information on the barriers to growth and how they can be removed. We will consider the support that can be given to organisations to help them make significant steps in their development. We will consider the work force needs, hoping to link that information into the development of the SCVO, with the Scottish Council of National Training Organisations, as a skills council for the voluntary sector. That will help us to identify long-term strategies to support people in paid employment and to support volunteers.

One of the most interesting pieces of research that we are about to embark on—in which we hope to have a number of partners in academia, government and elsewhere—is in developing ways of measuring social capital. That is the clearest way of measuring the added value that voluntary organisations bring to public life and services. The dynamism of bringing people together to deliver their own services can add to the value of those services and of the organisation. That is hard to define. It cannot be measured in pounds, shillings and pence, but we have to develop methodologies for measuring it simply and easily. That can lead on to best-value regimes in the letting of contracts.

Martin Sime: If the Executive is about to embark on a strategy for making the social economy grow, we need to know our starting point so that we will know whether the strategy is being successful. One of the big problems in this area has been getting annual statistics on the size and shape of the sector, the number of volunteers, where they are volunteering and the amount of money that is donated by the public. That information would allow us to get a handle on the very basic statistics. I was in Canada recently and that is very much part of the architecture of what government there is trying to do. If we had those basic core-line statistics, we would be able to know, when we next launch our “Make a Difference” campaign, whether it does make a difference. At the moment, we do not know.

Karen Whitefield: Representatives from CVS Scotland attended our last committee meeting and they told us that CVS Scotland is contemplating becoming a stand-alone organisation. Based on what Lucy McTernan said about ways in which to keep in touch with the grass roots, the committee would be interested to know your view of that proposal. Is it a good idea or do you have concerns about it?

Martin Sime: Our starting point in such considerations, which surface from time to time, is that they are principally matters for CVS Scotland and for CVSs to determine. They need to weigh up carefully the benefits of being separated from the benefits of the current arrangements. They need to come to a view and it is not for the SCVO to determine whether the proposal is adopted.

The SCVO's perspective on the matter is that it is unlikely that we would welcome further separation of interests in the voluntary sector. Over the past couple of years, the SCVO has worked more closely with intermediary organisations. We have found common ground and have seen that there is a capacity to work together on a number of issues. That is the way to go. We need more collaboration and co-operation and less separation in the voluntary sector.

We are recovering from a long spell when we were put into a market and made to compete with each other. Changing that culture has taken some time. I would not like to see it disturbed again by the setting up of a number of parallel entities, which must inevitably argue their own discrete corners. It is possible to look at the voluntary sector infrastructure and its intermediary bodies and say that we all have complementary interests. On that basis, we should seek in future to work more closely together.

Karen Whitefield: That fits in with most of the arguments for devolution and against independence. Thank you for that.

Mrs Lyndsay McIntosh (Central Scotland)

(Con): My apologies for my late arrival. I had difficulties on the M8. My question follows on nicely from what Karen Whitefield said.

In a recent debate, and when we were out on a field trip to Paisley last week, the question was raised whether, because there is so much statutory funding, the voluntary sector has any real independence, or must you look at your relationship with local government and follow its, rather than your own, agenda?

Martin Sime: I very much hope that I am giving the committee the perspective of the voluntary sector and not one that is altered because I receive funding from anyone else, although I cannot prove that absolutely. However, voluntary organisations can choose whether to accept statutory funding. The statutory funding of the sector is only about 30 per cent of its total income, so many voluntary organisations exist without any government resources. Where voluntary organisations choose to work in partnership with government, that is fine. Where they choose to be independent, that is also fine.

The SCVO used to receive 56 per cent of its funding from the Scottish Executive as a core grant. That funding is now 3 per cent and I argue that our independence has increased as a result. When one enters a partnership, one does not deal in absolutes. One must listen to what one's partners are saying and reach accommodations with them. However, if voluntary organisations were not independent of government, we would not be doing our job. If we were ciphers of government in one form or another, it would not be possible for us to add value as we do.

One of the McFadden commission's key recommendations is that a line should be drawn between genuine voluntary activity on the one hand and Government and quangos on the other. The Scottish Council for Voluntary Organisations is keen on the recommendation that no governing body of a recognised charity in Scotland should draw more than a third of its nominees from the public sector.

10:15

Mr Kenneth Gibson (Glasgow) (SNP): I am interested in your answer. In Inverness, Karen Whitefield and I met a number of organisations that were concerned about that issue. Argyll CVS, for example, said that it produced a model of service delivery that it knew would work, but the local council came up with a different model, which the CVS believed would not work. In effect, the local CVS was told that it would not get funding unless it was willing to deliver service according to the local authority model. That issue concerns us. Statutory funding might be 30 per cent overall in

the sector, but the percentage can be substantially higher for some organisations. Those who know how to deliver services might have real concerns about delivery, because the local authority, which might have a view, will not deliver the services on the ground.

Isobel Lawson: Many voluntary organisations face that dilemma. Martin Sime said that voluntary organisations can choose whether to accept statutory funding. The voluntary sector's relationship with local government is substantially behind its relationship with the Scottish Parliament. A lot of work must be done to establish the voluntary sector as a partner in the delivery of services, and to deliver services locally to tackle poverty and social exclusion. There must be a route for bringing together a range of resources such as experience, knowledge and local people's capacity to determine what services will meet the needs of their communities. By resources, I do not simply mean hard cash. There is a long way to go to get the voluntary sector to work with local government to identify the best way to deliver services.

Parliament can give a lead to that partnership. The changing children's services fund, for example, is an opportunity for the voluntary sector to play a significant role in the design and delivery of services at local government level, but the sector must be part of the strategic planning process and not seen merely as a recipient of local government grant. The relationship and status of voluntary organisations needs to be addressed at local government level.

There might be a long way to go, but there are opportunities for us to address such issues. I am not too despondent. The voluntary sector can deliver quality services that meet best value, but there must be more discussion and open dialogue between the sector and local government. That is a problem for some organisations, but there can be development in that matter.

Mr Gibson: You and Martin Sime claim that accepting statutory funding is a matter of choice. However, if some organisations do not accept statutory funding, they will soon be extinct. We are concerned about that.

Martin Sime: That is a critical issue and I share that perspective. Many voluntary organisations have been entirely dependent on a statutory funder and, in some circumstances, the relationship can best be described as voluntary sector servants to government masters. We work hard to try to change that; ultimately, voluntary organisations serve Scotland best by being independent.

Linda Fabiani (Central Scotland) (SNP): On the same theme, one thing in your submission that

jumped out and crystallised what many folk said in the inquiry relates to the partnership between local authorities and the voluntary sector. Is there real partnership between them? Isobel Lawson said that there is an urgent need to review that relationship. All the partners must be equal if we are to have a vibrant social economy and we must work together on that. We keep hearing about what the voluntary sector can do. Isobel Lawson said what she thought the voluntary sector could do, but what can be done to make local authorities wake up to the fact that they must be equal partners with the voluntary sector? Local authorities are not all the same and we have heard different stories from throughout the country, but it is terribly easy to generalise. Local authorities must do something—perhaps there should be a cultural shift or a complete change of mind. How can the SCVO inform that process on behalf of its membership? How can the Scottish Executive inform the process?

Martin Sime: Huge questions lurk in the points that Linda Fabiani makes. There are things that the SCVO, voluntary organisations and local government can do. There are also much bigger questions about the role of local government. The position that local government officials are put in—in which they provide services and are asked to treat voluntary organisations' services in the same way—is difficult and often invidious. There is a long and honourable tradition of local government trying hard to do that and to listen to the policy perspectives and advocacy of many different voluntary organisations.

Part of the problem is the need for cultural shift. It would help to embrace a pluralistic concept of what is possible and right in communities. That would allow voluntary organisations that are independent and that have developed their own services to play a role in the relationships with communities, so that those relationships are not all about money. That cultural change will not happen overnight in some parts of Scotland; it will take some time.

One of the most compelling facts that has been brought to our attention and focused our minds on the matter is that, outside Glasgow, in some of the most deprived parts of Scotland, the number of voluntary organisations per head of population is at its lowest. In parts of Scotland that do not have the same deprivation indicators, there are many more voluntary organisations. That has caused us to ask many questions about why that is the case. Why is the voluntary sector less vibrant and engaged in those areas? At heart, it is because there are some difficult relationships with local government that have not been properly addressed and sorted out. Isobel Lawson is absolutely right to say that that is critical. It has been expressed as a major concern by the SCVO

and inside the Executive. It is not easy in the current circumstances to find the right way in which to address the problem.

Mr Gibson: What role will the SCVO play in the national advisory forum that the Scottish Executive has set up to consider the implementation of the review of charity law?

Philippa Bonella: We will be one of many partners in that forum. As I understand it, the Executive has decided to bring together in the forum to consider implementation all the organisations that are involved in the charity law review. The forum will include us, local authorities, the Scottish charities office and all the other players.

Mr Gibson: Do you believe that you have any specific role to play in that forum? Lucy McTernan seems to be desperate to say something.

Lucy McTernan: It is absolutely clear that the SCVO's role as the umbrella body for the voluntary sector means that we have a crucial role to play in the development of the debate on charity law. We were delighted with the McFadden commission's recommendations. As Philippa Bonella said, we are enthusiastically hopeful that the attention that the matters are being given south of the border will move us a bit faster towards implementation in Scotland.

We understand that the forum, which was announced two or three weeks ago, will examine in some detail the recommendations of the McFadden commission, with a view to their implementation. We do not yet know fully what form that forum will take or what remit it will have. We anticipate that the SCVO, as the representative body for the voluntary sector, will have a critical role to play because we bring to the table the interests of the existing 27,000 charities and the other 44,000 that are part of the voluntary sector at large.

Mr Gibson: You say in your submission, and you have reaffirmed today, that you are delighted with the McFadden commission's recommendations. Are there any recommendations with which you are not happy? Are there any omissions?

Philippa Bonella: You are right that we broadly support McFadden's recommendations, although a few of them caused concern. Probably our most important concern is about the idea that—like the Charity Commission for England and Wales—charityScotland, which will be the regulator and registrar of charities, should be the policeman and friend and adviser of charities. Evidence from England and Wales has shown that that is not working terribly well. Charities are not happy to seek advice from the same agency that monitors them. The Cabinet Office's performance and

innovation unit seems to be considering splitting the two roles of the Charity Commission. Therefore the functions of the Charity Commission might change.

McFadden also recommended that charityScotland should have the role of gatekeeper of charities. That would mean that charityScotland would not register any new charities in an area in which it felt there were too many charities operating. That would not be a helpful role for a statutory regulator. It should be for organisations within the sector to choose how they want to operate. They should be able to choose to come together to sort things out so that they do not duplicate work.

Mr Gibson: Would such a role discourage new organisations from blossoming?

Martin Sime: The SCVO holds to the principle that people have the right of free association. If people want to get together and do things their own way, who is to tell them that they should not?

To come back to your original question, one of the roles that the SCVO will play will be in keeping the process on track and ensuring that it happens. There are many vested interests out there that would be happy to blow away some parts of the agenda or kick them into the long grass. My colleague Lucy McTernan and I have been working on this agenda for eight years. It is not quite personal, but we want the matter to be nailed and to get some decent law on the statute book in Scotland. Charities as a whole would benefit from that, as would the public. Our role is to ensure that that happens.

Mr Gibson: Are you referring to specific vested interests?

Martin Sime: There has been a lot of public comment about whether the charitable status of several kinds of organisations—such as churches, private schools and other bodies—would remain. It is not for us to comment on that, but to establish a benchmark of public benefit, as set out by McFadden. That is the task of the working group. Individual organisations must make their cases for whether they can meet that benchmark after the law has been passed.

The Convener: My understanding is that one of the recommendations from the report is that co-operatives, for example, would be excluded from being defined as charities. That might be an area of contention. Do you have a view on that recommendation, given the nature of the voluntary sector?

Martin Sime: It would be unfortunate if that was a blanket proposition, which I think is unlikely. Clearly, a line must be drawn between what is of mutual, collective, community and public benefit

and what is of individual benefit. That is difficult to do and it is part of the task of the working group to sort that out. We would be pleased if large swathes of co-operative organisations were able to join the mainstream voluntary sector and enjoy the benefits of public benefit status.

The Convener: Do you have formal links with co-operative organisations or umbrella organisations, such as the Scottish Co-operative and Mutual Forum?

Lucy McTernan: We link with co-operatives of different types. For instance, we have good relationships with the Scottish League of Credit Unions and ABCUL Scotland—the Association of British Credit Unions Ltd in Scotland. We work with them in making links between the credit union movement's co-operative structure and other forms of voluntary organisation, with a view to their mutual benefit through growing the credit union movement and the other forms of activity. We have not formalised relationships with the co-operative movement's forum, but we would be willing to do so because that is an area of great interest to both organisations.

The Convener: Thank you very much. That was useful. We will be happy to receive correspondence on any points that you wish to develop, or further evidence that you want to present to us in written form. Thank you for attending.

Houses in Multiple Occupation (Licensing)

10:30

The Convener: Item 5 on the agenda deals with the licensing of houses in multiple occupation. The committee will be aware that over time a number of concerns have been brought to our attention on the issue, in particular late last year, when people commented on the impact of the licensing regulations. We agreed that we would take evidence to build up a picture of the current situation and gain an understanding of the anxieties of organisations before reporting to the Parliament.

The first witnesses are from the Scottish Executive. I welcome Richard Grant, who is the head of the housing division and a friend of the committee from some time past, Colin Affleck, who is the housing policy adviser, and Paul Stollard, who is from the building standards branch.

Richard Grant (Scottish Executive Development Department): Colin Affleck works in my division and has been involved closely in development and implementation of the HMO scheme. Dr Stollard has, with Her Majesty's fire service inspectorate, advised us on the technical standards that are included in the guidance.

Ministers envisaged the licensing scheme as something that would improve conditions in the HMO sector where, for a long time, concerns had been expressed about conditions in certain properties. Our objective is to ensure that there are minimum standards throughout the sector, not to reduce the size of the sector. HMOs have an important role to play in the provision of housing because they meet specific housing needs.

There was extensive consultation on the scheme before it was introduced. It is sometimes suggested that it was introduced in a rush in response to a particularly unfortunate fire in Glasgow but, in fact, we started consulting on the scheme in 1998 and set up a working group with a wide range of interested parties to produce the guidance that was subsequently issued.

The scheme is based on legislation in the Civic Government (Scotland) Act 1982. Ministers were faced with a choice whether to introduce licensing in that way or through primary legislation. England opted for primary legislation because the opportunity does not exist there to use more general powers. Using the Civic Government (Scotland) Act 1982 allowed us to make relatively rapid progress as we did not have to wait for an opportunity to introduce primary legislation.

However, that influences the scope for changes in the framework of the existing provisions. The Civic Government (Scotland) Act 1982 gives a lot of discretion to local authorities on the standards that are set and on fees. If we considered the scheme again in the light of the committee's comments, we could deal with some issues by changing the order, but we have relatively little direct control over other issues—we can seek only to influence local authorities through guidance.

When ministers came to the then Social Inclusion, Housing and Voluntary Sector Committee to explain the scheme, they said that it would be kept under review and that we would seek to examine it after the first year or so. As a matter of course, we collect statistics on the implementation of the scheme from local authorities. Colin Affleck is involved closely in keeping in touch with local authorities as they implement the scheme and we recently commissioned research from the University of Glasgow and Heriot-Watt University on the situation after the first year. That is part of a larger piece of research on the privately rented sector, but it will consider HMOs.

The extent to which we can evaluate the scheme after only one year is limited. The scheme was designed deliberately to be implemented gradually over a number of years, so the occupancy threshold has gone down only once so far. Inevitably, we are speculating to some extent.

The Convener: You commented on the limited nature of the research. Do you think that you ought to be doing something else to establish whether you have a proper view of the impact of the first year? Your written submission states that you have a proper view of the impact of the first year, but that

“the evidence may be rather limited and inconclusive after only one year of licensing, which has applied only to larger HMOs.”

What action can you take to address that?

Richard Grant: There is nothing obvious that we can do. The research will seek to get feedback from landlords, tenants, local authorities and other interested parties, which is where we must look for views. Information about the impact on supply will inevitably take some time to gather, because a limited number of HMOs have been brought within the system. Also, it is hard to assess the situation because, for example, people are making decisions about whether to continue in business. However, it is easier to get information on the administrative aspects of the scheme.

The Convener: You mentioned the rationale behind using secondary rather than primary legislation. Will the Scottish Executive—in considering the impact of, and identifying flaws in,

the scheme—consider primary legislation? Do you accept that introducing such legislation would not be as difficult as it would have been pre-devolution? As there is more space for legislation, will the Executive consider that option?

Richard Grant: I am sure you understand that decisions about priorities for primary legislation are for ministers to consider. The housing improvement task force is considering a range of measures on conditions in the private sector and a sub-group of the task force is examining the private rented sector, which in due course might lead to recommendations for legislation. It is conceivable that, if wider regulation of the private rented sector were recommended, the licensing scheme could be integrated into that. However, that is speculative because the task force is considering only the problems and has not moved to discussing recommendations.

The Convener: When or if any further amendments to the HMO licensing system are proposed, will the committee and the general public be given an opportunity to comment?

Richard Grant: That is normal practice. Our submission mentions technical changes to the order that must be introduced. The Regulation of Care (Scotland) Act 2001 means that certain exemptions will become obsolete and changes will have to be made. We do not envisage any extensive consultation for those technical changes but, if policy changes were proposed, it would be in line with normal Executive practice to consult before they were put before Parliament.

Linda Fabiani: You talked about the fact that this is not primary legislation, but an order under the Civic Government (Scotland) Act 1982, so all we can do is issue codes of guidance. Can anything at all be done, under either the 1982 act or another act, should a local authority decide to ignore the code of guidance completely?

Richard Grant: The licensing scheme is set out in an order under the Civic Government (Scotland) Act 1982. From a legislative point of view, what we can do is change the order. For example, if we wanted to change the range of exempt properties, we could do that by changing the order. If we wanted to change the size thresholds or the phasing of the implementation of those thresholds, we could do that by order. What we cannot do is require local authorities to set certain standards. In that respect, we can only issue guidance. However, there is a legal duty on local authorities to establish a licensing scheme.

Cathie Craigie: Paragraph 23 of the Scottish Executive briefing paper states:

“Some local authorities require planning consent as a licensing condition”.

Submissions that we have received from other organisations suggest that we should encourage local authorities to develop strategies for identifying HMOs. Why would it be a problem for planning consent to be a licensing condition in Glasgow? Would that not be a way of assisting local authorities to track and identify HMOs?

Richard Grant: Perhaps that paragraph is slightly strongly worded. We need to ensure that the policy framework for licensing is integrated with planning provisions, although the procedures are probably separate. As far as we know, there is a clear planning policy in Glasgow in relation to HMOs and flats, which is quite strict. You would need to ask Glasgow City Council for the details of that, and I hesitate to go into too much detail now in case I get it wrong. I think that there is a presumption against HMOs if they are over a certain size and are not main-door flats. Those are the main criteria, but other specific criteria are set out in the local plan.

If the licensing scheme requires people to apply for a licence, which then makes the planning authority realise that planning permission is required, and if there is a presumption against planning permission being granted, the effect of licensing may be not to improve standards but simply to close down the HMO. It is for the local authority to decide whether that is appropriate, but our initial policy objective was to improve standards, not to eliminate HMOs. There may well be specific areas where there are more than enough HMOs and they are creating problems for amenity in the environment.

Cathie Craigie: Do you know whether the majority of local authorities use that policy as part of the licensing requirements?

Richard Grant: I shall ask Colin Affleck to answer that question in more detail. It is unusual for local authorities to have specific policies in relation to flats. In relation to houses, generally people require planning permission only if there are more than five people living in the house, otherwise it is not required. It is necessary for local authorities to specify their own policies on flats. Our understanding is that Glasgow is the local authority that has particular policies. There may be others.

10:45

Colin Affleck (Scottish Executive Development Department): One or two other councils have similar planning rules for flats, because under the planning use laws there is no particular use classification for flats—there is a classification for separate houses. I do not know whether the majority of local authorities require planning consent, but some local authorities require it as a condition of licensing. Other local

authorities have taken legal advice and think that they are not allowed to use planning consent as a condition of licensing, so there is some disagreement on that point. Under the Civic Government (Scotland) Act 1982, local authorities have to set reasonable conditions for licensing. There is a legal opinion that planning consent is not a reasonable condition, because there is an entirely separate legislative structure.

The main problem in Glasgow is that a lot of HMOs already exist without planning consent. If they can prove that they have been in existence for 10 years they can get a certificate of use, which allows them to continue as HMOs, but the problem is that because tenement flat HMOs—in particular—have a high turnover rate, it is extremely difficult to prove that they have been HMOs for the past 10 years. The HMO situation in Glasgow has brought into focus the fact that there are HMOs without planning permission which, because they are coming forward, are being noticed and asked to obtain planning consent, which in many cases they will not get.

Cathie Craigie: That is an interesting point. I hope that the committee will examine the issue in more detail. In a similar vein, some of the organisations that have contacted us have said that local authorities need more support and more mechanisms to be able to identify HMOs that are not coming forward for licensing. Paragraph 20 of the Executive's briefing says that the Executive is encouraging local authorities to form interdepartmental HMO units to aid co-operation between councils' departments on related matters. Would that allow local authorities to use information on housing benefit that is held by other council departments?

Richard Grant: Do you mean information on housing benefit and HMOs?

Cathie Craigie: Yes. Would they be able to say, "There are six applications for housing benefit from 1, The Mound, Edinburgh"? I understand that giving out information on individuals' applications would be a problem, but would it be possible to inform the department dealing with HMOs where there were multiple applications for housing benefit?

Richard Grant: I do not know the answer to that question or whether there are any rules in relation to the housing benefit regulations that would prevent a local authority from sharing information with other departments. More generally, we anticipate that different departments will share information, with a view to building up knowledge of where HMOs are. That information has to be developed gradually. Some authorities have a fairly good idea of where HMOs are because they have, for example, set up registration schemes for HMOs under the provisions of the Housing

(Scotland) Act 1987, which allows them to draw up a list of HMOs. That provides a starting point. Other local authorities will need to go out and collect information as best they can. A starting point for picking up the more difficult HMOs would be complaints from local residents and tenants. There is no magic answer for identifying all HMOs, but sharing information is a good idea.

I cannot answer your specific question about housing benefit. We could try to clarify that.

Cathie Craigie: That would be good.

Mr Gibson: Glasgow has been mentioned. One of my concerns is the differential impact of licensing on local authorities. I do not know whether you have seen the submission from Glasgow City Council, which is represented today by Mr Kelly. Its concern is that it has 90 per cent of the houses in multiple occupation in west central Scotland. Glasgow is concerned that that puts a specific burden on it compared with other local authorities. Glasgow has raised dozens of concerns about licensing. Those include lack of direct consultation with the city, a rushed introduction and an unrealistic overall timetable. Is there any way in which additional funding could be made available to cities such as Glasgow and Edinburgh to ensure that licensing is implemented effectively? Otherwise, those councils will have to take resources from other hard-pressed budgets. Concern has also been raised about landlords being able to afford the works that may be necessary to ensure compliance with licensing.

Richard Grant: The question about resources for local authorities is primarily one for ministers. It is envisaged that all licensing activity under the Civic Government (Scotland) Act 1982 should be self-financing, through charges. I do not know whether ministers have the powers to provide funding. We have never been asked that question, so we would need to talk to the lawyers about that.

There are more HMOs, so more fees will be collected from licence applicants. It is certainly the case that HMOs are more numerous in the cities, especially in the cities with large student populations—I do not doubt that that is the case. Edinburgh probably has at least as many HMOs as Glasgow; the figure will be in roughly the same area.

Wendy Alexander was asked the same question when the order was introduced. Her view was that the Executive did not wish to provide additional funding and that local authorities should fund the scheme from fee income.

Cathie Craigie: The Scottish Executive requires local authorities to send in annual returns, monitoring HMOs. I take it that those have started to come in. Have you had any early indications from the returns that you have received?

Richard Grant: One return was published in the March housing statistics, which covered the first six months. The figures indicated that, in that period, approximately 700 applications had been received and 20-odd had been processed. That is not surprising, considering that it was fairly early on. I was pleased by that, because the discretionary schemes, which a number of local authorities, including Glasgow, had established in the early 1990s, under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 1991, had led to only 290 HMOs being licensed. Mandatory licensing, even though it only cuts in at a high threshold, has led to a substantial number of applications.

The applicants cut across the range of HMOs. About 500 of the 700 were from the private sector, which is what one would imagine; the rest were social landlords.

Colin Affleck: There is a periodic meeting of representatives of local authorities to discuss HMO matters. At the most recent meeting, a couple of months ago, the 11 local authorities that were represented had between them issued more than 220 licences. A rapidly increasing number of HMOs are being processed through the system and are obtaining licences.

Cathie Craigie: Do those figures reflect the true number of HMOs in Scotland?

Richard Grant: When we received the return, the threshold was more than five. It is probably not the full proportion of HMOs in that category, but it should be a significant number of them. When the size threshold is reduced, there will be many more HMOs. HMOs are a difficult group of properties to identify. As a result, we do not have any central authoritative record of how many there are and have only made various estimates over time according to particular definitions and the size threshold in use.

Cathie Craigie: Was the initial threshold of six too high? Should it have been lower?

Richard Grant: No. Most people seemed more concerned about the implementation being too rushed. One committee member mentioned that that was a concern in Glasgow. We tried to stagger implementation to allow local authorities to gear up gradually and to ensure that the process happened in an ordered, reasoned and effective way, instead of just rushing at things, with the danger that they would not happen. We were trying to build on the experience of discretionary licensing schemes, on which we had commissioned research and which most people felt had not been particularly successful.

Karen Whitefield: You indicated in an earlier answer to Cathie Craigie that a particularly low number of licences had been granted by March

this year. Indeed, the number granted was less than 4 per cent of the number applied for. Colin Affleck then mentioned that more applications had been processed at the previous benchmark meeting. Have local authorities been able to grant licences within the six month to 12-month timetable stipulated in the guidance, or are they encountering difficulties?

Colin Affleck: We have had no indication so far that there have been problems. Under the Civic Government (Scotland) Act 1982, there is usually a six-month period for final consideration of applications. During the consultation process, local authorities said that that was not long enough and the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 extended the period for consideration of HMO applications to 12 months. As far as I am aware, no local authority has complained that that is too short a time to deal with an application.

Karen Whitefield: Has any local authority brought a prosecution against a landlord operating an HMO without a licence since the introduction of the mandatory scheme?

Colin Affleck: Not as far as we know. We know that, in Glasgow, prosecutions were prepared against quite a few HMO landlords. However, under the threat of prosecution, the landlords applied for licences and the cases did not come to court.

Karen Whitefield: Do local authorities face any difficulties in identifying landlords who might be operating HMOs illegally? Is there anything that we can do to make that job easier?

Colin Affleck: As Richard Grant already mentioned, the worst HMOs are likely to be drawn to the attention of local authorities because of complaints by tenants, voluntary organisations or neighbours. In certain areas, neighbours are particularly concerned about the effects of HMOs. Furthermore, the wide publicity that HMO licensing has received in the press over the past year will encourage people to come forward and report illegal HMOs.

Most local authorities are aware of who the bad landlords are. Local authority officials have told me that they are looking forward to the reduction in the threshold and have already targeted the people who will need to get licences.

Richard Grant: I should also point out that, in designing the order, we specifically gave local authorities the power to gain access to HMOs for inspection purposes. Such a power was not included in the Civic Government (Scotland) Act 1982 or the discretionary schemes, and the people who carried out the research drew its lack to our attention as a potential weakness. As a result, we tried to strengthen that provision. Although we do

not know whether the power has been used or has been helpful, it was an attempt to give local authorities a bit more clout.

Karen Whitefield: You will be aware that a number of organisations have expressed concerns about the operation of the system. It is useful that you meet local authorities regularly to find out what difficulties they experience. I would be interested to know whether the HMO benchmarking group has asked the Scottish Executive to amend the regulations or the guidance. If it has, what has the group asked for, and how has the Executive responded?

Richard Grant: I am not aware of any formal requests. I will ask Colin Affleck to say whether any proposals have been made.

Colin Affleck: The benchmarking group has made no proposals or suggestions to the Executive.

11:00

Richard Grant: One concern of groups is the exemptions. The committee will see witnesses today from two groups that are concerned about aspects of the exemptions, such as whether registered social landlords or voluntary organisations should be included in their scope.

In 1998, we consulted widely on the scope of exemptions and listed many possible exemptions. The consensus then was that we had to make the scheme as comprehensive as possible. In response to that consultation, ministers decided that we should exempt only categories for which a regulatory regime was producing the same result. Apart from one exception, the exemptions in the order link to an alternative regulatory regime, such as those for registration of social work premises or of nursing homes.

We discussed regulation of social landlords with Scottish Homes and the Scottish Federation of Housing Associations. There is some overlap with registered social landlord regulation, particularly on tenancy conditions, but RSL regulation does not go into the detail of physical conditions.

The question is: what is the principal basis for exempting other categories that might be considered low risk, such as public sector bodies or bodies that are funded in other ways? That will be an important issue in further consideration of changes to the order. Ministers asked us to start with the presumption that we would exempt only those bodies for which a clear system of regulation that met our requirements existed.

Cathie Craigie: I agree with the Executive's position on exemptions, because we want a proper standard across the board. Has any consideration been given to exempting non-profit-

making organisations from paying the fee? That would be a way of getting round the situation.

You said that probably 90 per cent of applications have been from private landlords. I presume that most people run HMOs as a business. Instead of not having to comply with the requirements for the private sector, bodies could be exempted from paying the fee.

Richard Grant: We could not decide that. It would be for local authorities to decide that.

Cathie Craigie: You could put that in guidance.

Richard Grant: We could suggest that in guidance, but the decision would still be for local authorities. They would have to put up fees for private sector landlords to subsidise the voluntary sector.

Linda Fabiani: Most of the questions that I had intended to ask have been well covered, so I will return to the Civic Government (Scotland) Act 1982. Correct me if I am wrong, but I think that under that act councils have been able for many years to place a closure order on a building that is deemed dangerous.

As you said, many people are of the view that the tragic deaths of two students in Glasgow forced the HMO issue. Has anything been put in place under the 1982 act to prevent that situation happening again? For example, if someone from Glasgow City Council wandered along a street and said, "That's an HMO with bars on one of its windows," could the council take action immediately to empty and close that house and take appropriate measures against the landlord?

Richard Grant: Under the licensing scheme, if a council identifies an HMO it can require the landlord to apply for a licence. When it is considering that licence it can consider the fire safety requirements of that particular property. If they are not up to scratch, and the landlord will not bring them up to scratch, the council can refuse to give a licence.

Linda Fabiani: How long would that take? If the council reckons that four students are living in the flat and there are bars on the window, does it have to take 12 months under the guidance—

Richard Grant: Twelve months is the maximum. That is to allow for the possibility that works will need to be carried out by the landlord. Paul, do you want to comment on the fire safety measures that might be required?

Dr Paul Stollard (Scottish Executive Development Department): If the council became aware that there was an immediate hazard to health and it would take too long to go through the licensing process, there are powers vested in the fire authorities that would enable

them to take immediate action. There are powers under the Fire Precautions Act 1971 to issue section 10 notices, which can immediately curtail the business.

Linda Fabiani: So we have done nothing to ensure that, if the problem happens again, we can deal with it immediately under the secondary legislation.

Dr Stollard: Not immediately under the Civic Government (Scotland) Act 1982, no.

Robert Brown (Glasgow) (LD): I have one or two general points about the exemptions. What public purpose is served by requiring, say, the University of Glasgow or the Abbeyfield Society for Scotland to register under the provision? Do you have any examples of things that have gone wrong in the past in such accommodation? Given the implications of the limited resources, which Kenny Gibson touched on, where is the public benefit of regulating organisations such as those under these arrangements?

Richard Grant: The public benefit is in ensuring that all HMOs reach a particular minimum standard. Local authorities consider properties and suggest works that should be carried out, although I am not familiar with the details of that. While at first sight properties may look relatively low risk, in practice there may be works that need to be undertaken.

Robert Brown: Do organisations such as Abbeyfield or the University of Glasgow have a history of incidents or problems of any kind that is known to the department?

Richard Grant: I am not aware of any shock-horror stories in relation to those organisations, but there is still the question of whether they need to meet the common standard.

Robert Brown: What I am trying to get at is the question of targeting. Accepting that there is a major job to be done to bring this lot in—given the staggered way in which it is being done you have obviously accepted that—would it have been sensible at the very least to put organisations such as Abbeyfield and the University of Glasgow at the back of the queue and provide a temporary exemption or something similar until you saw how the thing worked in the private sector, which is where the main issue lies?

Richard Grant: The choice for ministers was whether to put such organisations into the scheme or to create an exemption and leave them out. We consulted widely on that and, rightly or wrongly, there was considerable support for putting them in the scheme at that time. Ministers went with that. The line that we have tried to take on the implementation of the scheme is that, in the day-to-day administration of the scheme, local

authorities may need to adopt a rather different approach to high-risk properties than they do to low-risk ones. That is to say, they may need to inspect the high-risk ones more frequently and rigorously than the low-risk ones. The charging structure is really a matter for the local authority as well. That would be our general approach to dealing with risk within the framework of the scheme, where it is not possible to say, "We have an initial assessment of risk and we license only those in the high-risk categories." We have to license all those that are covered by the scheme.

Robert Brown: To move to the private sector, is there a case for saying that the arrangements at the moment really target the good landlords—the ones that obey the law, follow things through effectively and so on—rather than the ones you are really trying to get at as being the main source of the problem? Bearing in mind the information that you indicated local authorities had about the people they wanted to get at, might a more targeted approach have been better?

Richard Grant: I think that local authorities can do that. I do not see any difficulty in local authorities' trying to ensure that applications are received from landlords that they are particularly concerned about. That kind of targeting can take place. Councils do not need just to sit back and wait for applications to come in, which might lead to the result that you are worried about—that only the relatively good landlords apply. If councils are concerned about specific landlords, they can be more proactive.

Robert Brown: I have a final point on this general area. You have probably seen the Abbeyfield Society's representation to the committee that the cost to the Abbeyfield Society will be between £105 and £583 per resident. On balance, do you think that those figures are anything like correct? Is that a reasonable use of voluntary sector resource, set against the low level of potential problem existing in that sort of situation?

Richard Grant: I cannot comment on that. I do not know in detail what the money is to be spent on. You would need to ask the Abbeyfield Society for more details and come to your own view. However, it seems that in the particular case that was mentioned, the local authority is finding works that the Abbeyfield Society needs to carry out, so the two things are rather going against each other.

Dr Stollard: In the guidance on the technical standards, we were keen to stress that a risk assessment was necessary—especially in regard to fire safety, which is normally an expensive aspect—and that, in considering risk on premises, such things as the management should be considered. A good, well-managed premises obviously poses a lower risk to the residents than

one that is not. I would be concerned if the benchmark standards—they are only benchmarks—were being applied without that level of risk assessment.

For example, the Abbeyfield Society's submission mentions door closers. The risk assessment must consider whether the benefits of the door closer outweigh the risk to the residents of installing it. I would be concerned if we found that local authorities were not carrying out that necessary part of assessing the risk and varying the benchmark standards accordingly.

Robert Brown: That brings us back to the kind of variation that we have seen. The Abbeyfield Society's representation revealed a chaotic system throughout Scotland in terms of what is required of it, when it is required and how it is required—if it is required at all. Is there not cause for considering in more detail what local authorities are doing on the ground and trying to bring more coherence and consistency to the whole process?

Richard Grant: We sought to do that by issuing the guidance that was drawn up centrally, but there must be some variation within the general framework to take into account the local circumstances of each property. Our experience is that there is perhaps more uniformity in the general physical standards of properties than might be indicated by the Abbeyfield Society. The main area in which there is variation appears to be that of fire safety, in which the advice of fire authorities to the local authorities is followed.

Linda Fabiani: I return to what I was going on about before. It strikes me as peculiar that an established, good landlord such as the Abbeyfield Society is getting hammered while a landlord in Glasgow might have bars in their windows and we cannot do anything about it. Was thought given at the time to the inability of the method that has been adopted to deal quickly and efficiently with a potentially dangerous situation? Paul Stollard mentioned the fire authorities. Did you consider issuing guidance at least to co-ordinate the different services, to ensure that immediate action can be taken against very bad landlords? Good landlords throughout the country are being pursued for money for things that are ridiculous in comparison to bars in the windows of a multiple-occupation flat.

11:15

Richard Grant: The licensing scheme cuts across all landlords who meet the criteria and is meant to lead to a general improvement in standards. It builds on existing powers and does not detract from them. In relation to HMOs, there is a range of powers that are rarely used. For instance, there are powers to require safety works

to be carried out and to impose a control order on a particular HMO and take over the running of it. There are such draconian powers, but local authorities—quite reasonably—are not keen to use them often. They are the sorts of powers that one would want to fall back on in exceptional circumstances. The licensing scheme aims to tackle poor standards in general, through gradual improvements that are implemented so as not to lead to the withdrawal of large numbers of properties from the housing stock.

Linda Fabiani: But was the scheme taken on board? You said that work was already being undertaken when the tragic accident occurred in Glasgow. Was it acknowledged that everything possible must be done to avoid such an accident happening again?

Richard Grant: The licensing scheme provides a framework that should help to prevent that kind of accident, although one can never be certain. The licensing framework builds on other legislation that will allow local authorities to take emergency action in cases that justify it.

Linda Fabiani: But does the guidance say, "Okay, we are not doing anything to allow you to do it just like that, but what you can do is this"?

Richard Grant: The guidance concerns primarily the HMO licensing scheme. The other powers have been in place for some time and were summarised in earlier guidance that was issued when the discretionary schemes were implemented, in the early 1990s. That information is available to local authorities.

The Convener: We will leave it at that. I am aware that some of the questions that we are beginning to pursue may be more appropriately raised with the minister. In reflecting on what we have heard, we may wish to pursue those points with the minister.

I thank you for attending and for answering our questions. I am hesitant to apologise for the sun—which was shining through the window into your eyes—but I recognise that it made this a slightly more uncomfortable experience than it should have been. I adjourn the meeting for 10 minutes.

11:17

Meeting adjourned.

11:28

On resuming—

The Convener: I call the meeting back to order and welcome our next set of witnesses. This will be a panel session. We hope to obtain the views of operators of houses in multiple occupation and get a sense of how the legislation has impacted on

them. We want each organisation to make a brief opening statement. The committee will then ask everybody the same questions.

There might be an issue about how we manage this session. You might feel that some questions are appropriate to your organisations and that others are not, in which case it will be entirely legitimate for you to say that it is not appropriate for your organisation to address that matter. However, you will be afforded the opportunity to address each question. We want to get a sense of your experience of the regulations. I hope that we can be flexible enough to allow your views to emerge and that each member or grouping on the panel will feel that they have had sufficient say from their perspective.

I welcome representatives from the Abbeyfield Society for Scotland Ltd, Scottish Women's Aid and the University of Glasgow. From the Abbeyfield Society we have the Rev Dr John Clark, the chair, and Ian Bruce, the administrator; from Scottish Women's Aid we have Kate Arnot, national worker for refuge development, and Lydia Okroj, national worker for permanent housing; and from the University of Glasgow accommodation service we have Neil Campbell, the director of residential accommodation, and Lesley MacInnes, the accommodation officer.

I ask each group to make a brief statement, but it is not compulsory to do so. Thereafter, we shall have questions. It is probably useful to emphasise to the panel, given how we are managing this session, that if you feel that there are points that you have not been able to develop properly or you were not given a full opportunity to respond to questions, we will be more than happy to hear from you after the meeting.

We will begin with the Abbeyfield Society.

11:30

Rev Dr John W S Clark (Abbeyfield Society for Scotland Ltd): First, we are glad to have this opportunity to speak to our concerns and share the concerns of the other organisations on the panel.

Quite narrowly, we want to make the case for Abbeyfield Scotland to be exempt from the current scheme. I will propose three reasons. First, I do not think that the scheme was intended to encompass the kind of accommodation provided in Abbeyfield very sheltered houses. Secondly, Abbeyfield very sheltered houses in England and Wales are exempt from similar legislation. Thirdly, Abbeyfield very sheltered houses are inspected and assessed by a number of regulatory bodies: Scottish Homes, as it was, and Communities Scotland, as it now is; and by environmental health and the fire authorities. In the future that will

be supplemented by inspection and regulation by the Scottish commission for the regulation of care and by our Abbeyfield standard.

More generally, and for the sake of the panel session that will follow, I want to make a plea for changes in the scheme and the way that the law is presently applied. First, there should be greater consistency in the inspection regime. I think that our written submission shows conclusively that there is inconsistency. Secondly, there should be greater uniformity in the costs charged to landlords in preparing for and securing the licence. Some of our societies are being asked, even before the licence is given, for prior documentation—for plans of the building, for example—at some cost to themselves. Last, more grant finance should be available to enable landlords to meet the demands made on them by those registering them for houses of multiple occupancy.

I thank you for this opportunity. For most of the panel session, Ian Bruce, our administrator, will give Abbeyfield's points of view.

The Convener: Thank you. I ask Kate Arnot to make a statement for Scottish Women's Aid.

Kate Arnot (Scottish Women's Aid): Thank you for inviting us. We have always taken the line that we should be exempt from the regulations, although we are not a religious or spiritual organisation.

Our philosophy is deeply rooted in empowerment of women and children. Refuges are conducted along self-help models in which women gain vast amounts of support from sharing their experiences of domestic abuse with each other as well as with workers. We hope that the same happens for children who are staying in our refuges.

We are a not-for-profit organisation. From what Richard Grant said today, it seems that the order could be relatively easily amended to exempt not-for-profit organisations if that were to be recommended.

A key difficulty for us is determining who is regarded as a person. At what age does a person become a person for the purposes of the order? Different local authorities have ranged from regarding a baby as a person, through a 10-year-old, to a 16-year-old. It would be tremendously helpful for us if that could be clarified.

One group has reported that its local authority is interpreting persons as being from the age of 10. Part of the problem for us is that, because refuges are temporary accommodation, we do not designate beds for over-10s and under-10s. Local authorities have been looking at the number of beds in the refuges and saying that that is the number of persons staying in the refuges and that

we therefore have to have the equivalent number of cookers. Children do not cook—they might do, but they do not cook very much. We need enough cookers only for the number of women who are staying in the refuges. The system is just a guddle. It is not a good system at all.

There are a lot of inconsistencies in the charging. A three-year licence in Shetland costs £93. That is for all sizes of HMO. In Glasgow, a licence costs £1,700 for up to 10 persons, which remains undefined for us. Only one refuge is owned by the women's aid group that runs it. That is the refuge in Shetland.

As I stated in our submission, we are surrounded by a multiplicity of regulatory bodies. We do not have a problem with that, but those bodies all have conflicting frameworks with which we must comply. It is said that a croft is a piece of land surrounded by regulation. It is beginning to feel that a refuge is a house encircled by regulation. Our primary aim is not to comply with regulations; it is to support the women and children who are living in our refuges. We want the time to do that.

Neil Campbell (University of Glasgow): I represent the University of Glasgow. I do not speak on behalf of the University of Strathclyde or Glasgow Caledonian University, but I am aware that they agree with the vast majority of what I am going to say.

The University of Glasgow has always been supportive of HMO legislation and supported moves towards a mandatory licensing scheme as far back as the original west end local plan in Glasgow. Like the other universities, we consider ourselves to be a particularly compliant institution with rather different, comprehensive infrastructures in place to protect and serve the interests of the residents in our accommodation. Emergency evacuations, for example, are well rehearsed, well organised and repeatedly tested. We have other protocols in place regarding health and safety, food hygiene, security and pastoral care. That tends to make us believe that we should be considered to be an unusual and specific case for some sort of relaxed treatment under the HMO licensing scheme.

We do not feel that we should be exempt from having a licence, nor do we feel that we should not pay anything for a licence, but we believe that, because of the large, repetitive nature of our premises and because of the infrastructure that we have in place, inspection is far easier for our premises than for the other HMOs scattered throughout the city.

Cathie Craigie: I ask all the witnesses to comment on this question. How much has each organisation spent on applying for HMO licences?

Kate Arnot: That varies from group to group. It also depends on what work is required to comply with the licensing conditions.

Cathie Craigie: I would like to concentrate on applying for the registration. We will cover the point that you make in a later question.

Kate Arnot: We are not sure of all the groups. Some are still in the process of registering. I will find out and let you know.

Ian Bruce (Abbeyfield Society for Scotland Ltd): The costs associated with registration are detailed in the appendices to our report in as much detail as we have been able to gather over the past year. On average, the costs have been about £1,000 to £2,000.

I realise that we are not talking about the costs that are associated with the work. One of the things that we found disturbing, especially when we looked back at what the Scottish Executive had estimated registration might cost us, was the amount of additional paperwork involved. I am not referring to works; I am referring to architect's plans, for example. If we do not have access to people who will provide such services voluntarily, we are faced with at least £700 in addition to the licence fees before we even start on works. That adds up to £1,000 to £2,000 per house before we even start on the works.

Neil Campbell: We expect the University of Glasgow to spend between £150,000 and £200,000 to cover the first three years of the licence. The licence in Glasgow runs for three years.

Cathie Craigie: This question is also to the entire panel. Do tenants or residents of your organisations qualify for housing benefit?

Neil Campbell: No.

Ian Bruce: Yes. Approximately one third of our residents qualify—that is, as far as our figures demonstrate. Independence is important to our residents. Some of them do not want to discuss monetary matters. That is obviously none of our business. However, we support tenants who apply for benefit. Because of the supporting people regime that we are under at the moment and the housing benefit returns that we are making to local authorities, we have some figures. They are that approximately 30 per cent qualify.

There is no profit margin for us to squeeze. Two thirds, let us say, of the costs will come from self-funding residents and one third will come from those who are on benefit.

Lydia Okroj (Scottish Women's Aid): The majority of the women who stay in our accommodation are in receipt of full housing benefit or a proportion of housing benefit. One of

the problems for us is that the housing benefit levels for the next year will have been set without taking into account the cost of the licence.

Cathie Craigie: We move on to the question that Kate Arnot wanted to answer earlier. Ian Bruce indicated the cost of bringing properties up to the standards necessary to achieve registration. What sort of costs have your organisations had to pick up in order to comply, or what do you expect the costs to be?

Ian Bruce: Are you asking about the cost of works?

Cathie Craigie: Yes.

Ian Bruce: Again I refer the committee to the appendices of our report, particularly appendix 2, which is based on a report from the Abbeyfield Edinburgh Society. It is particularly relevant because the City of Edinburgh Council was one of the few local authorities that applied the scheme when it was still discretionary. The costs are, we understand, exceptionally high for the concomitant prevention of risk to residents.

The worst case of a local authority that did not operate a discretionary scheme is probably Perth and Kinross Council. Abbeyfield Perth Society has estimated a cost of £1,750 per resident this year alone. That is probably a worst-case scenario. Because of the differences between local authority expectations, the costs range from a relatively low amount up to £14,000 for the licence and associated works, which is the cost for the Perth society.

Cathie Craigie: What kind of works does the society have to undertake?

11:45

Ian Bruce: One of the witnesses from the Scottish Executive spoke about fire safety. The majority of the works that have been undertaken are related to fire safety.

For the benefit of the committee, it is worth saying that every Abbeyfield society voluntarily invites the local fire officer to make a fire risk assessment on an annual basis. As the Executive witness pointed out, in a risk assessment the task of the fire officer is to assess the risks to residents, given the prevailing circumstances in the house concerned and the fact of multiple occupation. Abbeyfield residents, who are mainly elderly and frail, have smoke detectors in their rooms. There is a community alarm system and 24-hour staffing.

Many of the houses were bought in the 1960s, with Scottish development department grant moneys. We find it rather confusing that Scottish Homes now wants to wash its hands of the matter, because the regulations for housing were not

stipulated. We cannot understand how public money could be spent on social housing without putting in place even basic requirements.

All the recommendations that were made following the fire risk assessments that were carried out a year ago were followed. HMO benchmarking does not require that risk assessments be undertaken, but the guidelines stipulate that houses should be fitted with a smoke detector in every cupboard, intumescent seals on all the doors and automatic door closers, even when those features are not appropriate for residents. The associated costs are related not to proper risk assessments, but to benchmarking standards set out in the guidelines.

Kate Arnot: Many groups do not come into the category that we are discussing, because a large number of refuges house three adults with accompanying children. The group that has had to make changes has been faced with architects' fees and the cost of associated works, involving the redesign of kitchens. It raised funds and obtained a grant to cover those costs. Like most voluntary organisations, the group was poorly funded and did not have reserves. If voluntary organisations have reserves, either those are clawed back or it becomes very difficult to raise funds. We are in a no-win position.

All groups affiliated to Scottish Women's Aid—we can speak only for them—are expected to conduct annual fire inspections. We hope that we already have very good practice in our refuges, not least because many Scottish Women's Aid workers will at some point have lived in a refuge. We believe that any of us could be abused and could end up living in a refuge. For that reason, we must supply very high-quality accommodation.

Neil Campbell: Besides precautions that were taken in order that buildings might be approved in the first place, many hundreds of thousands of pounds might need to be spent, primarily but not exclusively on fire alarm systems and upgrading of internal doors. When in buildings evacuation times are very short, the integrity of doors, beyond basic, is not a great issue. Having said that, we are confident that the implementation of the works that have to be carried out will be characterised by the usual discussion and co-operation with Glasgow City Council. It will not be a case simply of their having to be done by tomorrow. There will be a phased implementation, just as there has been a significant review of charges, for which we are grateful. However, we feel that further progress could be made on that issue.

Mr Gibson: My first question is directed specifically at Mr Bruce. I commend you on a first-class written submission, from which I would like to quote. On page 3, you write:

"The legislation is demonstrably poor as it takes no account of the very differing circumstances and regulatory regimes faced by the many types of House in Multiple Occupation that it is meant to cover. Guidelines issued to shore up this problem have not been successful in creating the consistency of approach that those affected expected and deserve."

The Scottish Executive has indicated that it might consider amending the current HMO regulations following a study into their effects. Rev Dr Clark mentioned some of the changes that he would like to be made. How, specifically, have the regulations adversely affected delivery of services by Abbeyfield? I also ask the other witnesses how the regulations have impacted on service delivery.

Ian Bruce: The regulations are a major worry for us. I know that some committee members are familiar with Abbeyfield provision. We are talking about local community figures who recognise the value of older people within that community. The reason why Abbeyfield accommodation is relatively cheap in comparison with that of similar providers is that local volunteers undertake almost all the management.

Abbeyfield in general and Abbeyfielders throughout the country have welcomed the introduction of the Scottish Parliament and what it has meant for the country. We are not against regulation per se.

One of the constant niggles has been the fact that, perhaps, Scottish Executive thinking has not been as joined up as we would have liked it to be. That effectively means that departments with different responsibilities and agendas are looking to regulate us in different ways. That is fine for organisations that have a profit margin to squeeze, because they can just hire additional people to pick up the slack and there might be an increase in rents. Many societies are now hiring administrators to cope with the additional work load that regulation implies. The only way that we can fund additional staffing is by increasing rents. The alternative is for volunteer management committees to quit.

We got a call yesterday from the Johnstone and district society, which illustrated one of the most depressing things to come out of regulation. The secretary called us to say that the house had just had its first inspection; the experience is absolutely typical of the way we see the HMO regulations being implemented. The house has recently had a conservatory added and a fire officer had okayed everything. The society reckons that it will now have to pay £2,000 to £2,500. The paperwork was so complex that it has had to pass everything that it has been asked for to an architect.

The experience is typical because, although the committee members are, in the main, retired

professional people, they could not interpret what was being required of them. They are all on the verge of quitting; they just want to close.

We are talking about a house that was opened in 1960 and which has been continuously improved. It was set up with social housing grant money. If the society there goes, that is the end of an Abbeyfield house. It is not just the house that will go; all the older people in that community could have access to Abbeyfield provision and to the open days that are held. The community spirit will be lost. That house will be the first direct casualty of HMO regulations. That is the worst-case scenario.

It is obvious that costs are involved. We have seen them in black and white; that is what the appendices are for and that is why we gathered our information. Our major concern is the loss of Abbeyfield housing and all that that means to local communities throughout the country.

Kate Arnot: The problem for us is that the time that is spent complying with the regulatory framework is time that is not given to individual women and children or to group work with women and children. We have a multiplicity of offices. It would be fine if there was one officer, but there are lots of different people. We are very precious and paranoid about where refuges are. The more people who know where refuges are, the more concerns we have. To comply with the regulations, many officers have to know where the refuges are.

The other big issue for us is space. One of the groups has been told that under the current agreement with the local authority, a refuge that has places for four women and up to 10 children—it is very rare that the maximum number of women and children are ever in a refuge—will somehow have to reduce its places to two. We do not understand it. The group is still negotiating with the local authority. Most refuges are just ordinary houses; they are not built specially. As the committee will know, the Scottish Executive has given almost £12 million over four years to acquire and improve refuges, and we are very grateful for that. However, I do not understand how a house that could take up to 14 people can now accommodate only two. We are worried that the number of spaces will be reduced unnecessarily.

We are not against improving refuges; they have changed enormously since they were first set up in 1973. We must consider whether it is a good use of worker time, whether it is good for women and children currently and whether it is a good use of public moneys.

Neil Campbell: As I said in my submission, the universities make enormous efforts to ensure that the accommodation provided to students is as competitive as possible and provides best value

for money. That is aimed partly at widening accessibility to all groups of students, not just those who can afford it. The cost of accommodation will go up to reflect the universities having to absorb the cost—we have to pass on both the cost of the licence and any necessary compliance works directly to the students. That gives us particular problems where the licence is granted for three years.

The other issue concerns the private sector. Although I would be the first to emphasise the need to shut down non-compliant, bad and dangerous landlords, there may well be—it is yet to be proven—a reduction in available private accommodation as people throw in the towel because they feel that the licensing costs in addition to compliance works will not be cost-effective. Not every landlord is in the business to make maximum profit. There is a balance. The private sector is important in any city, especially a university city.

Mr Gibson: From what I have heard so far, it appears that the regulations are something of a sledgehammer to crack a nut. Do you believe that there have been tangible improvements for residents in terms of safety and security?

Ian Bruce: That has not been the understanding of our member societies. We come from a background of social housing with a wealth of experience over many years, the majority of the housing stock having been paid for by the people of Scotland. That is the bottom line. To suggest that in some sense it was inferior or substandard accommodation in the first place does not make any sense. It goes back to risk assessment. I had a wee look at the Scottish Executive website, as I regularly do, which suggests that the majority of local authorities are following the benchmark standards that are required. However, the risk assessment process that we would have expected does not appear to be taking place. Effectively, the Scottish Executive is applying the same standards, regardless of the type of house, without assessing the risks to the residents. That is our objection.

Kate Arnot: I cannot think of any improvements. If I did, I would let you know. As I said earlier, this is worrying because of the number of people who know where a refuge is; it has almost had a negative effect on safety and security.

Neil Campbell: I would say that, in the end, there might be tangible benefits for students and other users in the private sector, because the fact that someone has a licence confirms for the layperson that that landlord has met certain standards. However, in the immediate short term, I am not aware of any tangible benefits. It might standardise the sector in time, but at what cost on the way?

Mr Gibson: Have any of the organisations here had difficulties in obtaining HMO licences from local authorities? If so, what have those difficulties been?

Ian Bruce: Again, I refer you to the appendices to our submissions. All the information is in there. Some of the experiences of the local societies have been, frankly, ridiculous.

12:00

Mr Gibson: Is it a box-ticking exercise?

Ian Bruce: It is a little more than that. In general, Abbeyfield tries to get ahead of regulation, as we find it far easier to be ready and prepared for anything that comes up. We wrote to all the societies before the legislation was introduced. I am probably wrong, but I think that the guidelines that were issued by the Scottish Executive were in response to the fact that we had raised concerns at all. They mention that there should be some concession for tenancies. I recall seeing no mention of that until I raised the concern that the order would impact on Abbeyfield provision. Committee members will know that the guidelines were introduced only a few days before the SSI was due for implementation. I leave it to the committee to come to its own conclusions on that.

We were in touch with the situation before local authorities were expecting anything; the problems have varied. In the most ridiculous cases, we have applied to a local authority that has said, "Abbeyfield is registered to provide housing with care; you do not need to register," when we know for a fact that we do. Other authorities say, "We do not know what you are talking about." They say, "We will get back to you in six months. We have a working party looking at that sort of thing at the moment." Those have been the problems.

We have had no problems in getting a licence where the local authority is ready—where its team and inspectors are in place. We just comply with the regulations: that is the bottom line. That is what regulations are there for. However, in this case, we do not agree with them.

Kate Arnot: Our groups have received a huge variety of responses, including, as Ian Bruce says, "It won't affect you." Part of the problem is the need to clarify at what age someone becomes a person for the purposes of the order. Some groups are thoroughly exasperated by what is being requested of them and the time that it is taking; however, they have to comply to get the licence.

The group that I mentioned earlier, with the four women and up to 10 children, which is having to come down to two women, just seems to have a totally unreasonable officer to deal with. I am

hopeful that that situation will be resolved, not least because Scottish Women's Aid is a tenacious voluntary organisation. However, that sort of thing does not create good relationships with the local authority, which is often the funding body. That group will be able to get a licence, but it will have to comply with the order whether it is reasonable or not.

Neil Campbell: Traditionally, the relationship with the council has been practical and realistic, and that works both ways. We do not anticipate any great difficulty in obtaining licences for our properties. However, we are poised to enter into formal discussions on the treatment of the individual sites—whether as individual sites or as campus sites—and I might have more to say on that when those discussions are complete. All the universities would say the same thing: we do not expect too much difficulty in getting the licences.

Robert Brown: I have a couple of questions for the university. Am I right in saying that the university is considering having its accommodation managed in a different way by registered social landlords and people of that sort?

Neil Campbell: That is partially correct. The University of Glasgow is considering a different model for funding its residences in the long term and, in particular, long-term life-cycle maintenance costs. It is also considering freeing up capital to develop other projects and repay existing loan debt associated with building new residences. In the more modern sites that will form part of the transfer portfolio—the transfer has to be agreed, but it is 99 per cent certain—a registered social landlord will manage the day-to-day operational issues in the residences. The pastoral care, supervision, allocation and general ethos that surrounds the operation of the residences will remain strictly under the university's control.

Robert Brown: I raise the issue because of the implication that, if there were exemption, we might have to consider to whom the exemption applied.

On a more general point, I do not think that students are eligible for housing benefit.

Neil Campbell: That is correct.

Robert Brown: You might have mentioned that, but I did not pick it up. What is the estimate—if you have one—of the likely increase in rents attributable to the requirements under the proposed legislation?

Neil Campbell: In addition to the normal annual increases, there might be a percentage point increase on average, depending on how long we take to recover the amount. Recovery could be phased over the three years of the licence, or there could be recovery up front. Our estimate is an increase of 0.75 per cent to 1.5 per cent.

Robert Brown: What does that mean in real, per week terms?

Neil Campbell: From 50p to £1.50 per student, per week.

Robert Brown: From the university's general experience in the outside sector—leaving aside its own accommodation—how well targeted is the legislation? From the evidence, it seems a bureaucratic nightmare in some respects and does not hit the target that we want it to hit. Do you have any views from talking to students and others in the private sector?

Neil Campbell: The good and some of the more infamous bad practitioners in the private sector are well known and can be easily explored. Appropriate action can therefore be taken if necessary. However, I am concerned that the university and the council do not know about a significant number of practitioners, although the council would have to respond to that itself. My concern in respect of possible increases in rents in the private sector is that students might be driven towards non-compliant, almost underground operators—that concerns me greatly, especially in the light of the accident of a few years ago that is often referred to.

Robert Brown: Can the university assist from its registry of students' addresses, for example, and give information that would help a survey? Is that a practical proposition?

Neil Campbell: We operate in conjunction with the other colleges and universities in the city. There is a private accommodation database, known as PAD. It is a database of landlords who have applied to have their accommodations advertised to students at the constituent institutions. We do not inspect the accommodations, but in registering, the landlords agree that their details can be given to any relevant statutory body. The information is available to the council and has been taken by it. That helps.

Karen Whitefield: The Scottish Executive has indicated that it might change the current regulations, following a study of their implications. Are changes necessary? What should they be? Are your organisations arguing that exemption is a better option?

Ian Bruce: Exemption is the better option. In what was said today, and at least in parts of its report on whether the order would become part of the law in Scotland, the Executive has made it quite clear what it was trying to do. But to return to what Robert Brown said, we feel that the Executive has completely missed the mark. Minimum standards should apply across the range, but we would expect a body such as the one dealing with regulation of care to pick up

sheltered housing, for example. It does not make sense to have lots of different regulators for different aspects of social housing.

The risks that are implied by HMO occupation include possible complaints from residents because of overcrowding, noise and unsanitary conditions—but look at Abbeyfield housing. We are already licensed as food premises. We have regular inspections by environmental health departments anyway, but now the inspectors will have to come along again with a different hat on and inspect the properties as HMOs. It does not make sense to us.

Communities Scotland says that it does not consider physical standards—that is fair enough. However, it is not strictly true because it would not make improvement grants otherwise. It also considers tenancy agreements. We are saying that many of the risks implied by the reasons for bringing about HMO licensing in the first place do not apply to Abbeyfield's provision. That is part of the problem with blanket legislation if it is applied to all HMOs because, in the majority of cases, the risk has already been eradicated by inspection from elsewhere, or else the legislation does not apply. That is what we believe.

Kate Arnot: What we really want is to be exempt because ours is a not-for-profit organisation. Failing that, we would like more uniformity of implementation. We certainly want it to be clarified how old a child has to be before he is considered to be a person and for that age to be applied throughout Scotland. We would also like much more uniformity of cost. However, our strong preference is for exemption on a not-for-profit basis.

Neil Campbell: Earlier, I noted that there has been some significant—on paper anyway—movement in the licensing fees for educational institutions in Glasgow. However, much depends on how the sites are interpreted, and that is still to be fleshed out in the coming weeks. We are obviously keen to secure any downward movement in fees. The question is, has it gone far enough? That is debatable and remains to be seen.

We would not necessarily seek an exemption. However, we would seek some real recognition in financial terms—and in the subsequent financial burden on students—that we, like all universities, already have compliant buildings. The protocols underpinning that compliance are extensive and, in many cases, cover areas well beyond statutory requirements.

The Convener: I seek clarification from Scottish Women's Aid on a point that has been raised with me. The issue of HMOs has the potential to compromise the aim of refuges: to provide a safe

place for women to go to. Because information on HMOs has to be in the public domain and neighbours have to know, the work that refuges are trying to do could be undermined. Having to apply for a licence might distract you from your work. Can the existence of an HMO, where refuges are not exempt, mean that it is not possible to provide the necessary safety for women?

Kate Arnot: The Scottish Executive recognised our particular circumstances in that the guidance exempts us from having to post notices for publication. However, we still need to inform neighbours. Obviously, neighbours get to know when a house is a refuge, but there is something about having to inform the neighbours that worries us. We are strict on confidentiality and we do not want to have to inform people about the refuge. That ties into what I said to Kenny Gibson: it could have a negative impact on safety and security.

Ian Bruce was talking about neighbour complaints. The Scottish Parliament has allocated moneys for new refuges. However, it might not surprise members to hear that many of those new refuges, which are to be purpose built, have had neighbour complaints. Those complaints have gone to local authority planning departments and committees. There was a two-page article in a newspaper about East Renfrewshire Council, the only local authority in Scotland that does not currently have a refuge. I am sorry—that is inaccurate. Orkney Islands Council also does not have a refuge. I meant to say that East Renfrewshire has the only affiliated Scottish Women's Aid group that does not have a refuge in the local authority area.

We can have neighbour complaints, but they are based on a profound lack of knowledge and experience. I do not think, therefore, that neighbour complaints should necessarily relate to an HMO. What matters is whether the complaint is valid.

12:15

Linda Fabiani: Let me ask Ian Bruce a question. We have been talking about grant funding and regulation. It struck me that, regardless of whether you are altering an existing building or building a new one, you must deal with building regulations, planning guidelines and building warrants. Has there been any attempt by funding bodies and statutory bodies to create a standard that would apply across the board to enable your project to meet all the various regulatory functions in one shot? For example, if you are adapting a building, does the building warrant that you have to obtain from the local authority incorporate the works required to bring the property up to the standard that would be

required for the HMO licence? If there is no tie-in, a lot of money could be wasted.

You mentioned the kind of works that have to be carried out. Abbeyfield homes are for elderly people who receive varying degrees of care in them. However, do you think that we may be in danger of institutionalising the Abbeyfield properties?

Ian Bruce: On your first point, our current projects are to do with integrated care. A major project has just started in Ballachulish and, although it received Scottish Homes funding, we have had no indication that there has been any liaison with the local authority about HMO requirements. We recently completed a building project in Johnstone. A fire officer inspected the project a year later under the HMO regulation and now things have to be changed.

I agree with what you say about institutionalisation. We think that the problem arises from the way in which the guidelines are being implemented locally. Obviously, it is not for us to decide how that should happen, but it seems that, where local authorities have been given a steer in what we might consider the right direction, they have refused to take it. We are not aware of any local authority granting concessions because of existing tenancy agreements or of any local authority carrying out proper risk assessments. It simply seems that they tell us what we have to have and we have no choice in the matter. We are not aware of anyone having consulted our residents about what they would like in the house, either.

Linda Fabiani: Most of the properties that Scottish Women's Aid uses are local authority properties. I assume that local authorities ensure that the properties meet certain standards before they give them over. I would like to ask the Scottish Women's Aid representatives whether that ties in with what is expected of an HMO—perhaps it is too soon to say.

The other thing that worries me is neighbour nuisance, which I was made aware of as a result of an Executive briefing. You mentioned complaints, but some local authorities are reluctant to offer lease agreements to Scottish Women's Aid. Could local authorities use the HMO licensing regulations to say that a development would cause a neighbour nuisance and that it was therefore inappropriate for that development to be located in a particular neighbourhood? Do you envisage difficulties from particular local authorities?

Kate Arnot: Over the past decade, the whole domain of the issue of domestic abuse has changed. A significant change has been the setting up of the Scottish Parliament, which has

made domestic abuse a high priority. All publicly elected bodies—local councils, the Scottish Parliament and those at a European level—are committed to ending domestic abuse.

Difficulties arise at ward level in local authority areas. All six political parties in the Scottish Parliament are committed to ending domestic abuse. However, it is not unusual for a great deal of representation to be made to a councillor in whose area a women's aid refuge is going to be built. That is the case in a range of community provision. It is not local authorities that find it difficult to allocate refuges, but particular wards. Some local authority officers and councillors are not particularly supportive.

I was recently at a meeting at East Renfrewshire Women's Aid, which is working hard on plans for its first refuge. That will be built with funding allocated by the Scottish Parliament, through Scottish Homes, to Barrhead Housing Association. The project architect and quantity surveyor attended the meeting, along with representatives of the council and the housing association. The refuge is to have space for seven women. I asked what the impact of the HMO regulations would be, but no one knew the answer. There is no joined-up thinking around the issue.

A refuge is the temporary home for the women and children who are staying there. The average length of stay is two months, but the majority of women in refuges do not choose to be rehoused—only 43 per cent of them choose that option. Refuges are not the only or principal residence for the majority of women. Although that is a technical and legal argument, we are happier with the justice argument.

The Convener: I thank the witnesses for coming today and for providing information. I was a bit anxious about the way in which we had set up the session, but I am grateful to you for using the time effectively. You have given us a clear picture, from your perspective, of the issues that arise from the regulations.

With the agreement of the committee, the intention is to pull together a paper for our next meeting, giving the committee's view on the evidence. We will also examine the recommendations that have been made. Before the end of the year, we want to draft a report, which we will pursue with the Executive. I am keen that the thoughtful comments that have been made today are presented to the Executive.

I thank our witnesses again. If you feel that you have omitted to say anything, I invite you to present the committee with further written comment.

We will now hear evidence from Glasgow City Council. I welcome Brian Kelly, who is the director of environmental protection services. Brian, you seem a slightly more isolated figure than the colleagues who were here before you. I hope that you find this session productive and useful. You have been here throughout the meeting so you will know what other organisations have said. If you wish, you may make a brief statement before questions from the committee. This part of the meeting is scheduled to last half an hour. If, at the end of that time, you feel that you have not had the opportunity to respond fully, we would be happy to hear from you again.

Brian Kelly (Glasgow City Council): I have heard all that has been said this morning, so I will not go over the same ground. I am sure that interesting issues will come up in questions.

I start with an apology—I hope the only one that I will have to give you. My submission arrived somewhat late, but I hope that members will have had the chance to look at it. It contains a large number of points. I do not propose to go through them one by one, but I am sure that they will prompt many questions.

I agree with much of what was said by the witnesses who have just spoken. The question whether various groups should obtain exemptions has to be considered seriously. I am not the other side, as it were. I hope that that will become evident in my answers.

Glasgow City Council, having considered the guidance, has approached the licensing of HMOs as a self-financing issue. In the circumstances, it was right to do that. We should not be accused of trying to make a profit. Clearly, we are not trying to do that—I can give the committee details to back that up. The council has so much activity to undertake in this field that it costs us around £800,000 a year, as members can see at a glance. In a three-year cycle, we will have £2.4 million to recover. I can predict that we will not secure that amount of money, so, despite the targets, we will not achieve the income stream that we would want. The system will therefore be a burden on council tax payers.

The Convener: What has Glasgow City Council done to identify all the HMOs that may require a licence? Has that exercise been successful or is there still a problem in getting to unidentified HMOs?

Brian Kelly: I have worked for the council for a long time. In the past 25 or 30 years, we have regularly undertaken such work—without, of course, the benefit of a licensing scheme. We can reasonably say that we know where most HMOs are. However, HMOs come and go: some open up, and some come under pressure and close

down or move somewhere else. There is a moving target.

However, it is reasonable to say that we know of around 3,500 in the city and that that figure will fluctuate by 300 or 400 a year. We undertake searches, we scan shop and newspaper adverts and we do all sorts of things to try to learn where they are. Of course, we get information through complaints, but we also get beneficial information from sources that want to co-operate.

In the past month, while targeting a particular ward in the city, we picked up 38 premises that we did not know existed. The situation is fluid. HMOs come and go and the market changes week by week. We could never say that we had netted them all. That is a fact of life.

The Convener: What have been the resource implications for the council, in terms of cash and staff, of the introduction of the mandatory licensing of HMOs?

12:30

Brian Kelly: I have given you an early indication. We took the opportunity, when the HMO order was introduced, to consider what we had been doing. Some 10 or 12 years ago, I formed a team, largely made up of environmental health officers, specifically to deal with HMOs. Their working life was devoted to that activity, so the issue is not entirely new. Because of the restructuring of departments, about which I will not go into detail, I have been able to put building control officers and planners with that group of environmental health officers. Recently, I also had responsibility for the legal section in the council. All that was knitted together in a strong, structured group. Subsequent changes have splintered that group, but the core still exists of a good, organised unit that is targeted on this function.

The Convener: The detailed answer to this question may be in your submission. Can you clarify how many HMO licence application forms you have issued? How many did you receive back? Have you taken action when landlords have failed to return a form? Are any cases being prepared for prosecution?

Brian Kelly: We have issued far more application forms than I would like to admit, because the return rate is not good. We have issued more than 600 applications, and we have received about 240 back. We are struggling to get the targeted number in.

Our actions go through the whole gamut of letters, encouragement, persuasion, pleas and threats. You name it and, to get the applications in, we will try it. The fiscal is the last resort. Recently, five cases were at the doorstep of the

fiscal's office when, at that last stage, the owners caved in and applied. It took an extraordinary amount of time and effort to get them to that stage. When we got the application at the 11th hour, the fiscal would not entertain a prosecution. We have to go through that sort of process to get someone to make an application. You can see where the time and effort goes. We do all sorts of things, including tracing and visits. We take statements from occupiers, but the occupiers change. The fiscal will not take cases unless we have statements from every occupier in the premises. Life is made difficult for us.

The Convener: Are you saying that the prosecution service makes life difficult for the council?

Brian Kelly: Put it this way, the issue is certainly not at the top of the fiscal's tree, given all the activities that he has to deal with in Glasgow. The fiscal has given assurances that he will prosecute cases in order to demonstrate that we can take the issue to court. In practice, cases will not get to court very often.

The Convener: Do the resource implications include what sounds like the incredibly heavy job at the end of the process of trying to get people to comply?

Brian Kelly: Yes. We have to take account of all that. Doing the paperwork to present the case probably costs about £1,000 in officer time. If the case fails at that stage, we ultimately get the fee, so there is a balance. That demonstrates that we are not making a profit out of the system. A lot of hard work goes into it.

Mr Gibson: Thank you for a focused submission, although I am sure you will accept that it is not so much a submission as a demolition of the regulatory framework. Glasgow City Council is obviously concerned about HMO regulations, but does it believe that the entire regulatory framework should be rethought?

Brian Kelly: Yes. I would just about go that far. The system is flawed, to say the least. The civil servants have now gone. Before the order was implemented, we advised that it should be more targeted. The accusation has been made—and it is correct to an extent—that, in the early days of the system, the good people, who wish to comply with the standards that have been set, are picking up the burden of the payments. The bad guys are still ducking and diving, but we will ultimately catch up with them. However, in the short term the good are paying and the bad are escaping.

We have to consider other tactics, such as applying regulations retrospectively, so that people still have to pay the fee; if they have been dodging for a year, we give them a shorter licence period in order to penalise them. You and I do not get away

with avoiding road tax, for example. If we are caught, we are made to pay our dues. That is right and proper. I have no hesitation in saying that, if someone has avoided payment and is caught, they should pay their dues to society.

Mr Gibson: In your submission, you raise concerns about confidentiality for women's refuges. In fact, the issue was touched on in the panel session. You also mention your concern about the definition of a women's refuge. You say:

"Abuse of women/girls can be in the family situation, but not by a spouse or partner."

Will you expand on your views on that?

Brian Kelly: The officer who made that comment was conscious of the fact that the guidance simply specifies a partner, whereas I think it is known in society that abuse can happen within families, for example by a father, brother or uncle. The criticism was of the exclusiveness of the definition. The point was that, if we are too prescriptive, some issues might not be addressed.

Mr Gibson: You said that the cost of implementation was £2.4 million over about three years. Obviously, there will be some fee income to Glasgow, but what net deficit will there be? How will that impact on the workings of your department, if at all? If there is a gap, should that gap be met by the Scottish Parliament through additional funding for Glasgow City Council?

Brian Kelly: The three-year cycle will not be met—it will probably extend to four or even five years. We will therefore run at a deficit. That is difficult to predict at the moment. We had a meeting yesterday with the accountants, who asked us to attempt to specify what the income might be next year. In my budget submission I asked for allowance to be made for a £200,000 shortfall. If we get that adjustment, it will be short-lived. The accountants hope that, in the fullness of time, we will net all the fees that we are due. That is without taking account of the goalposts moving and groups falling out of the system, which would mean that the income stream had to be adjusted. We are using a complicated formula, but there will be a significant gap. I would welcome financial assistance if it were made available. However, I do not think that it will be. I think that council tax payers in the city will bear the burden.

Mr Gibson: If there is a financial shortfall, how will that impact on your department?

Brian Kelly: As I think I said in the submission, we would hope to expand the work force to meet any increase in demand. Equally, if we fail to deliver, and if the predictions that the market will shrink are true, the work force will shrink accordingly. We can afford to staff only according to the income stream. I do not want to talk in terms

of redundancies, but you asked the question and, in a practical sense, that is how it would be resolved. If the market shrank or large chunks were taken out because of the enforcement regime, I would need to revisit that question. I might say, for example, "I do not need 20 staff doing this; I only need 15." That would be the consequence.

Karen Whitefield: I am sure that, like everyone else, you are aware that the purpose of the regulations is to weed out rogue landlords. What criteria does Glasgow City Council use to decide whether an applicant meets the statutory requirement of being fit and proper to hold an HMO licence?

Brian Kelly: That is a broad question. Like the police, we take account of whether an applicant for a licence is fit and proper. However, we pride ourselves on the work that we have done. We know where most of the bad people are and we are targeting them. I know that the phrasing was meant well, but we would have been happier to have been left to our own devices in that respect. We could have devoted our resources more specifically at the bad people, or rogues as you have called them.

We find that some of the bad houses are those containing a small number of people. We cannot ignore such houses. The deaths that were mentioned occurred in a house that was let to only three people. To target the wrong group is a waste of time, effort and resources. We cannot just say that we will get to houses with three, four or five residents later. We know about those houses; we know that they have bars on windows and lack smoke detectors.

We still use powers under the Housing (Scotland) Act 1987 and routinely serve means of escape from fire notices under section 162 of that act. Hundreds of those notices are served every year, even to groups that are not targeted at the moment.

There are two streams of activity. There is pressure on us to deal with problems through licensing. However, we cannot turn our back on the situation that we know exists. For that reason, we must continue to pay attention to what is happening in houses with a smaller number of residents and to take enforcement actions as required, particularly with safety in mind. That includes serving means of escape from fire notices.

Karen Whitefield: You told us that you have sent out about 600 application forms and that about 240 of those have been returned. How quickly are you able to process those returned forms? You said that some applicants took you right to the wire, that you had to force them to

comply and that they did so only when legal action was threatened. Are you having difficulty processing applications? How long is that taking?

Brian Kelly: The honest answer is that processing applications is difficult, takes a long time and is very taxing. In the committee setting, we have had difficulty when one report comes in from building control and a different report comes in from the fire authority. Those reports have to be reconciled. The licensing committee has tended to regard the firemaster's report as pre-eminent. That represents a reversal of the approach that was taken during the previous 10 years, when the building control report was used as the basis for serving section 162 notices.

Before a case reaches the licensing committee, numerous visits must take place, plans must be drawn up—members have heard all about those—and examinations must be carried out. Work may be done or not completed. There is constant checking to establish the status of properties before a final report is presented to committee members. All that activity requires effort and takes time. It can take up to nine months to process an application and issue a licence. That is the most honest answer that I can give.

Sometimes it is necessary to force people to comply with notices. I accept that that involves people undertaking work that costs them money, time and effort. Often they do not go to the right place to get that work done. Instead of going to legitimate companies, they go to the black economy. When the work is checked, it is found not to meet the required standards. That work then has to be undone so that it can be redone properly.

This is a complex issue, and I am giving the committee a complex answer. We are not talking about a simple process in which an application is submitted, a visit is made and a licence is issued, but about the opposite of that. The process is fraught with difficulty from start to finish. Even when people are willing to comply, it is not easy. Very few of the houses that we are discussing, apart from those in the university sector, conform to a standard. They are all unique in their construction and in the ways in which they are occupied and used. Alterations may have been done without warrant. That means that officers are faced with a new model every time they visit a new property. We can standardise our thinking, make certain decisions and stick to those. We can improve co-ordination between different parts of the system, such as the local authority and the fire authority, but each building is unique and must be treated as a unique case. Therefore, this is not a rubber-stamping exercise, but a difficult process.

Karen Whitefield: The Executive has indicated that it might consider changing some of the

regulations because of the implementation difficulties that you and others have referred to. What would Glasgow City Council like to see changed?

12:45

Brian Kelly: I do not have sufficient time to do that, given what I have said in my submission. However, one possible change was mentioned earlier. The firemaster, for example, has powers that we do not have, which seems anomalous because the local authority is the licensing body. In cases where an extreme fire risk is assessed, we have no difficulty in resorting to the firemaster and we get splendid co-operation. However, it strikes me that the local authority is wise enough to use its prohibition powers appropriately and say, "We don't need to seek the assistance of the firemaster. We see a situation here that needs addressing today and we are not leaving here until we have this resolved." It could be as urgent as that.

We should have something similar to the legislation we have for health and safety at work or for food safety, so that we can issue a prohibition and say, "Get the people out now. We're dealing with this and we will resort to a sheriff if we have to." I know that there is a legal argument that one does not want to duplicate powers and so on, but we cannot always ask the firemaster to be at our beck and call. I think we all agree that fire is the most significant issue. It would be appropriate for the local authority to give local authority officers—with built-in precautions against their abusing their power—the ability to take instant action. That suggestion is worth considering.

Cathie Craigie: I imagine that there is expertise within the local authority to do what you have described. Do enforcement officers from the environmental health department in Glasgow, for example, go out looking at the HMOs? If not, is that done by officers involved in housing? I am trying to get a picture of the situation. I know that officers from environmental health departments are used to dealing with prohibition orders and telling people to make changes right away or their business operation will be stopped. That expertise is built up over time. Do you have people within your local authority who have such expertise?

Brian Kelly: Absolutely. The officers in the team that we have created are from backgrounds that include environmental health and building control. They now share the same office and work together as a team. We do not have a them-and-us situation. Officers do not have to go looking for assistance from another group as they are sitting opposite each other in the same room. They go out together. They share information and look

together at the drawings that come in. They consult legal colleagues, who are on the floor below. The process is tightly knitted together now and it works well in terms of officer co-ordination and co-operation. There is no question but that the local authority has the expertise.

Cathie Craigie: Kenny Gibson said that a sledgehammer is being used to crack a nut. We perhaps need a bulldozer in some cases. However, what you need is the hammer in the hands of the officers, so that they do not have to go for someone else.

Brian Kelly: That is one example only. However, we cannot speed up the licensing process because it is driven by the committee cycle. We need the applicants to come in and we need time to assess the drawings. We need to give recommendations and meet builders and owners. We also need to come to a conclusion whereby we agree the work that must be done and bring the matter back to the committee, which must say yes or no. Other reports, from the police and the fire authorities and so on, must also be taken into account.

The planning issue, which you heard about earlier, is another complicating factor. Recently, we have tried to resolve that issue. The licensing committee's emerging view is that it should deal with licensing matters, not planning issues. When processing the HMO licence, the licensing committee is saying that if someone requires planning consent they should make an application, but it is not the licensing committee's function to get people to make a planning application. So tensions are emerging in councils between different committees. However, that is right and proper and I do not say that there is anything wrong with it. The problem is the way in which the law is structured. As it was set down, the guidance implies that someone will not get a license unless they have proper planning consent.

That interpretation is not emerging, because the legal minds are saying that the two processes are distinct and stand alone from each other: the licensing committees should consider the licensing application and, if there is a planning issue to be addressed, there is another place to address that. That is making life difficult, even where we mean to make progress.

Linda Fabiani: I return to the bars-on-the-windows scenario. I have been dismayed by what I have heard this morning. You said that, if you have to serve a section 162 notice, it can take up to two years for the case to go to court. What would your department at Glasgow City Council do if you came across a property that you believe is an HMO and which is in a basement and has bars on the windows?

Brian Kelly: We would arrange a visit instantly with the fire authority. We would go there and ask the firemaster or fire prevention officer to use his powers under section 10 of the Fire Precautions Act 1971, and that would happen.

Linda Fabiani: Would his powers be effective immediately?

Brian Kelly: Yes, we would order the people out and clear the building. We have done that.

Linda Fabiani: Would the fire department come out straight away? Does that generally happen?

Brian Kelly: Let me explain. Perhaps I should have said that the fire authority is also expected to provide reports, and it does that. However, to meet our needs, it has had to employ four additional staff who are dedicated to that task. It is costing the fire authority at least £100,000 a year to give us the support that we need in that area.

Linda Fabiani: So you think that it would be much more sensible if you had that power.

Brian Kelly: Absolutely, yes. We would take nothing away from the firemaster. It is not a question of seeking to take power away from another authority. It is just that he will be involved in an activity at one place while we are involved at another. We should not be prevented from acting if we see enough wrong at a property that we cannot walk away but have to act immediately. In my opinion, we should have that power.

Linda Fabiani: Did you expect to have that power when the regulations came out? Were you disappointed?

Brian Kelly: I do not think that the regulation ever got down to that kind of detail, but there was certainly a long lead-in period, when we made those points to the officials who came to visit Glasgow to take soundings. As I have said in the report—I shall say it again if you will permit me—it was a bad decision not to have Glasgow and Edinburgh represented on the committee or on the groups that were considering those proposals. That was a basic mistake, because the wealth of experience that was available to be tapped into was missed.

Officials came and took soundings, but I dare say they saw a can of worms emerging and tried to bring in something to deal with that. There was pressure to do that, so the measures were rushed in—despite what was said this morning, they were at least hurried. You can choose your words, but they were brought in very quickly indeed. We cannot turn the clock back, but we should recognise that the system is still flawed and is causing more confusion and raising more questions than answers. That has to be revisited.

Linda Fabiani: I have a Glasgow-specific question. A letter about this issue from a concerned Glasgow resident was distributed to us this morning.

The Convener: He is not from Glasgow. He is from Eastwood. He is a constituent of Ken Macintosh's.

Linda Fabiani: Would you prefer me not to cover this?

The Convener: It is okay. I just wanted to point out that it was not a Glasgow resident who sent the letter.

Linda Fabiani: I see. This fellow is not a Glasgow resident, but he talks about Glasgow City Council. He has written to express concern about the council's approach, whereby planning consent is not granted for multiple occupancy unless the properties are in a designated area of the west end and are main-door residences. He is referring to new applications, rather than to properties where there has been multiple occupancy for the past 10 years. Is what he says the case? I am interested in the rationale behind that and in the long-term effects that it might have on property supply and rents.

Brian Kelly: I shall try as best I can to answer that, but I am not from a planning background. In a perfect world, the planning enforcement would have taken place over the past 10 or 15 years to address the growth in multiple occupation, particularly in the west end of Glasgow. In an ideal world, the director of planning would have had at his disposal sufficient officers to consider whether to give consent to the multiple occupation properties that were developing. If they decided not to, they would have to take enforcement action to drive them out of the market or to make them comply.

The situation got out of hand. It is fair to say that we lost the plot a long time ago. I will not explain that other than to say that all local authorities are under pressure, as I am sure the committee is aware. However, some time back, there was uncontrolled growth and there are a great number of HMOs out there that lack planning consent. To resolve that issue, a decision was taken that if an HMO could demonstrate that it had been there for a sufficiently long time—I think that it was 10 years—it would be given a certificate of lawful use. Therefore, an HMO might never get that consent, but from having been there, it would be regarded as having a deemed consent. I am straying into territory that is not mine.

The issue is further complicated by the west end local plan, which was designed to control the number of HMOs per area. If we define an area by street, we could say that in a particular street, it would be a breach of the local area plan if there

were more than X per cent—a low percentage—HMOs. That implied that because a street had 25 HMOs already, no more would be given consent. The question whether those were good or bad did not arise.

Linda Fabiani: What if the application was for a Women's Aid refuge?

Brian Kelly: We were not thinking about refuges in those days—they are a fairly new phenomenon. That would not have been a consideration—there was a simple control on numbers. The plan said that to get a new grant an HMO would have to be a main-door house that could be approached only from a lit street. There was an extra qualification. Those planning rules were applied to try to control the number of houses in multiple occupation. If we are to control something, we should use the regulations at our disposal. However, sadly, we have failed to do that over many years.

Linda Fabiani: Are those restrictions still in place?

Brian Kelly: Yes, they still apply.

Linda Fabiani: I am concerned that that disadvantages certain groups of people. For example, a new Women's Aid refuge in the south side of Glasgow would not be allowed under the new licensing agreement.

Brian Kelly: Yes. It sounds defensive, but I would say that there is scope to have such a refuge in another part of the city. It would not need to be in the west end. I do not mean to be unhelpful, but there are competing pressures.

Linda Fabiani: I was interested to hear that information because I was not aware of it previously.

Brian Kelly: There are controls that the planners attempt to use to control the new growth of HMOs. However, I suspect that they do not work.

The Convener: That is a concern, particularly in the west end of Glasgow. It would arise from local concern—not targeted at groups such as Women's Aid—about the environment in which the current HMOs operate. That is an issue that Women's Aid would bear in mind when considering appropriate places for refuges.

Mrs McIntosh: In response to Karen Whitefield, you were talking about the amount of money that people are expected to spend to comply with the new regime. Do you have any evidence, either factual or anecdotal, that some people cannot afford to pay for the changes legally, are not prepared to go to the black economy and have decided to get out of the business?

Brian Kelly: I can safely say that I posed that question to my officers in the past few days,

knowing that I was coming to give evidence to the committee. As far as my officers are aware, there is no evidence that anyone is leaving the market.

Mrs McIntosh: That is very interesting.

Mr Gibson: I understand that there are concerns over the level of fees. The letter from Mr Mann says that the fees are exorbitant:

"the minimum fee for the smallest properties (three tenants) being £1700 for a license with a maximum of three years duration. The payment has to be made up front, non-returnable with each license application."

I was concerned that we could be killing the goose that lays the golden eggs.

Your submission refers to the hidden costs, but I understand that Glasgow's fees are substantially higher than those of other local authorities. Even if that does not drive people out of the market, does it not cause a wee bit of ducking and diving?

Brian Kelly: Yes, I am sure it does. However, the people who duck and dive would have done the same even if the fee were £500 less. It is not the figure of £1,700 that is the issue.

We looked at it as scientifically as possible. We had a group of officers, including legal and finance people, considering the matter. We can account for every penny. We make allowance for a 50 per cent non-collection factor. Over the years, we have learned that we will always fail to net all the people. We are running on the basis that we can operate on only a 50 per cent hit rate. That sounds extraordinary, but that is the accountancy that we have had to live with.

If we started to make a profit, we are well aware of the rules that would mean that fees would have to come down, perhaps at the renewal stage. That would be addressed at the next cycle. However, we are failing miserably even to achieve the target. We are running the venture at a loss. It is a burden on council tax payers and it should not be, because most of what is happening is clearly commercial activity.

Mr Gibson: Do you not think that reducing the fee would actually lead to an increase in income?

Brian Kelly: It would not make any difference.

The Convener: However, the fee level is an active incentive for those operating legally to encourage everyone else in the field to pay up. That is another way of looking at the issue.

Brian Kelly: Absolutely.

The Convener: Thank you. That was a very productive session.

I should say that Pauline McNeill, who is the MSP for Glasgow Kelvin, intended to attend today's meeting, but was unable to do so as the committee of which she is convener was meeting

at the same time. She has expressed her interest in the on-going work of the Social Justice Committee on the matter. Ken Macintosh, the MSP for Eastwood, circulated correspondence from one of his constituents highlighting their concerns. It is an issue of great interest to many people.

Meeting closed at 13:01.

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