

EDUCATION COMMITTEE

Wednesday 27 October 2004

Session 2

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EDUCATION COMMITTEE

21st Meeting 2004, Session 2

CONVENER

*Robert Brown (Glasgow) (LD)

DEPUTY CONVENER

*Lord James Douglas-Hamilton (Lothians) (Con)

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

Rhona Brankin (Midlothian) (Lab)

*Ms Rosemary Byrne (South of Scotland) (SSP)

*Fiona Hyslop (Lothians) (SNP)

*Mr Adam Ingram (South of Scotland) (SNP)

*Mr Kenneth Macintosh (Eastwood) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)

Richard Baker (North East Scotland) (Lab)

Rosie Kane (Glasgow) (SSP)

Michael Matheson (Central Scotland) (SNP)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Cliff Anderson (Scottish Criminal Record Office)

Brian Gorman (Disclosure Scotland)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 6

Scottish Parliament

Education Committee

Wednesday 27 October 2004

[THE CONVENER *opened the meeting at 09:49*]

Youth Organisations

The Convener (Robert Brown): Welcome to this meeting of the Education Committee. I welcome back Fiona Hyslop after her maternity leave. I apologise for the slightly late start. I had a bit of a wander around the building because, although I was in this room last night, I could not find it again this morning—there was a slight geographical problem. I ask everyone to ensure that their mobile telephones and pagers are turned off.

Dr Elaine Murray (Dumfries) (Lab): I just want to offer the apologies of Wendy Alexander, who is stuck on a train, and Ken Macintosh, who I think might be having a baby today.

Fiona Hyslop (Lothians) (SNP): He might be having a baby today?

Dr Murray: It is due today.

The Convener: The Education Committee membership has novel and innovative procedures.

Item 1 is on youth organisations, which we are considering slightly belatedly. Members will recall that we took evidence last year and wrote to the Minister for Education and Young People in November. However, there was some sort of hiccup and I got a response only in August; that reply is now before the committee. We have to cast our minds back to the evidence that we took, but my recollection is that we dealt with a number of themes relating to support for volunteers, adequate resourcing of training and things of that kind. I confess that when I first read the minister's letter I did not make the connection between it and the letter that we sent him. Although the response takes on board some of the points that were raised in the evidence, I am not sure that it deals with the central point about the need for more training and support.

The evidence that we had from Girlguiding Scotland indicated that, although the guides are the biggest youth organisation in Scotland, if not the world, they have difficulty in dealing fully with the number of people who want to become members of the guide movement, because of problems with training and the resources that go into it. We heard similar evidence from the Scout

Association and others. I seek comments on the minister's response.

Mr Adam Ingram (South of Scotland) (SNP): I was similarly disappointed with the response, which seems to focus on volunteering in general rather than on volunteering in relation to youth organisations.

The minister mentions the volunteering strategy, which was announced in May and which, in essence, he hopes will provide

"quality volunteering opportunities, and higher standards of volunteer management."

However, nowhere in the response does the Executive address the question of making it easier for people to offer their services as volunteers. Later this morning, we will get an indication of how it is becoming harder to do so. That issue needs to be addressed.

The minister made a comment about each Executive department dealing with the voluntary sector in its area. There does not appear to be a joined-up approach in the Executive; there appears to be a silo mentality. I cannot tell from the minister's response, but there might be a plethora of approaches, depending on the department in question, when there really should be a unified approach throughout the Executive, as the convener's letter suggested.

On a related point, the minister mentions the young people and families unified fund, in response to the evidence from the Scout Association that its funding had been cut arbitrarily, but he does not say that the scouts are eligible for that funding. There are more questions than answers in the minister's response.

The Convener: Members might want to comment further first, but I am minded to suggest that the committee authorises me to meet with YouthLink Scotland so that I can report on its view of the issues. One difficulty that arose previously—assuming that I have not got the situation entirely wrong—is that, although the Scottish Council for Voluntary Organisations has an umbrella role for the voluntary sector generally, youth organisations do not appear to be 100 per cent plugged into that.

I am not entirely sure how YouthLink, which itself is an umbrella organisation for youth organisations, relates to the SCVO, the volunteer bureaux and so on. We tend to focus a wee bit more on other sorts of voluntary groups, so it might be worth getting a bit more of a feel of how YouthLink operates and seeing whether there are other issues that we can take back to the minister.

Dr Murray: Another issue, which we might pick up on later in the agenda, is the minister's slightly irrelevant and illogical response to our point about Disclosure Scotland. Obviously, a criminal records

check shows a person's criminal record at the date that the check is done, which means that it cannot simply be transferred to another local authority later on. However, that is equally the case if a person stays in their post in the same authority. What the minister says is not an argument for not looking at ways of getting round the problem of multiple applications. There must be a way of dating an initial check or a subsequent one that would ensure that there was no need to go back to the beginning. The minister's response did not address the issue that we raised.

The Convener: We might be able to get a more satisfactory angle on that issue after we have considered the later item on the agenda.

Fiona Hyslop: I was interested to note that the minister's response seems to make no mention of the Scottish Executive voluntary issues unit. The point is how we join up the thinking of all the Executive departments. I understand that volunteering should be mainstreamed within all the different portfolios, but there must also be co-ordination between them.

Secondly, the minister's letter is dated 26 August 2004 and I would have expected that, by that time, he would have been able to give us a bit more information on the youth strategy consultation than he did.

My third point is one that I have raised previously about public-private partnership contracts. The minister's response suggests that the Executive is washing its hands of PPP contracts that limit the community use of educational buildings. We know from evidence from the scouts and others that certain PPP contracts prohibit youth organisations from using school buildings. The Executive says that that situation is within the control of education authorities. However, the Executive has produced a model PPP contract and it is heavily involved, as we know from the East Lothian example, in the development of PPP contracts. We should pursue that issue to see whether the Executive can be a bit more forthcoming about it, rather than washing its hands of it.

The Convener: We could pursue information on that point.

Lord James Douglas-Hamilton (Lothians) (Con): It seems to me that volunteering is an area of growing significance and I support Adam Ingram's desire for a co-ordinated, unified approach. I wonder whether you might feel able, convener, to write to the minister again just to make that simple but important point.

The Convener: Is there anything else on that? I am looking for a way forward here. The emphasis is not on the voluntary sector generally but on youth organisations in particular, because there

are specific issues there. Is the committee happy for the deputy convener and me to meet YouthLink Scotland to explore the issues? We could get more detail on the impact of funding and so on and raise issues that members have raised. We could then report to the committee with a view to asking for a further response from the minister. Would that be a reasonable way of pursuing the matter?

Fiona Hyslop: There was obviously a delay in the minister's reply to our initial letter, so I suggest that, to keep up the pace and the pressure, we stress to the minister the importance that we attach to the issues and encourage him to respond rapidly. The delay in dealing with the issues does not give a particularly good signal to all the people who gave evidence to us.

The Convener: That is right. However, we still want to be reasonably clear about and focused on the issues that we want to progress. I am not at all that happy with the minister's response, which is not four-square with what we asked him. However, with regard to your suggestion, rather than just getting an update from the minister, I want to hear about movement on the issues. An announcement on the youth strategy is expected later this year or early next year, so I would hope that the consultation is reasonably well on. We need to develop a clearer focus of what is currently bothering the youth organisations; we need to have a clearer view of the issue before we return to it. I hope that we can meet representatives of those organisations within the next couple of weeks and then take it from there. Would that be agreeable?

Members indicated agreement.

Children's Hearings

10:00

The Convener: We come now to an update on the progress of the Executive's review of children's hearings. A number of issues were highlighted in the first phase of the consultation, and they are laid out in the paper that members have before them. The second phase of the review is to start around the beginning of next year and will concentrate on the required procedural changes to the children's hearings system. We have agreed that, after the Easter recess next year, we will return to the recommendations in "It's everyone's job to make sure I'm alright".

The question is whether we wish to do anything further on the matter now. Do members have any comments to make on the summary report on the responses to the phase 1 consultation, which is entitled "getting it right for every child", and on the initial information coming out of the review? Quite a lot of interesting points have been made. Do members have any observations?

One of the central things that will need to be tied down is how children's hearings relate to family issues. The interesting suggestion of family group hearings is touched on at the bottom of the section headed "Issues for Phase 2 of the Review". That might be one approach. There is also the issue of the extent to which children's hearings' focus on the child should be changed, if at all.

Mr Ingram: The message that I would take from the phase 1 responses is that most respondents indicated that they did not want a change to the child-centred approach.

The Convener: I think that that is right.

Mr Ingram: The needs of the individual child are viewed as paramount. However, there are differing views with regard to whether hearings should have more influence over parents. It is difficult to make a judgment at this stage of the review, given that the second phase is still to run.

A number of key issues were flagged up in the first phase of the review. There is the lack of resources for children's hearings and, perhaps more important, there is the implementation of the plans that will stem from the outcomes of the review. The biggest issue is about dealing with children and ensuring that their needs are met. That came through from the responses loud and clear.

The Convener: There is also a strong issue around how to deliver and measure effective outcomes. We need to consider what works and what does not work and how children's hearings can become more involved in monitoring progress.

Ms Rosemary Byrne (South of Scotland) (SSP): I refer to the section headed "Relationship with Parents and Families". I would like to find out more about how "more resources" can be

"allocated to family support projects and initiatives."

It is important that we push for that. I agree with what Adam Ingram said and I do not think that the current level of support to parents and families is adequate. That is one of the weaknesses of the system. Panel members have become frustrated because they are not able to access the type of support for families that they would wish to access. I would like to find out a bit more about that area, which we should emphasise.

The Convener: That is coming in phase 2, I think. I have difficulty in getting a handle on what exactly is provided in different areas. Provision seems patchy. I wonder if any kind of scoping study has been done to identify what exists in different local authority areas and different parts of the voluntary sector. The Scottish Parliament information centre might be able to help us with that. We might want to take the matter up with the Executive. It would be useful if we could gain more of an understanding of what there is at the moment and if we could get a better feel of some of the issues.

Fiona Hyslop: May I make a suggestion? There is concern about the effectiveness of disposals used by children's hearings, given the problems with social work departments. I understand that the Executive is employing more social workers, but there remains a problem. We are identifying a need for yet another form of disposal, but we are also questioning whether there would be sufficient resources to support such a measure. The committee agreed previously that when we consider the budget we might home in on some themes from our current inquiries. In that context it might be useful if the committee could ensure that the budget contains elements that could fund increased parental support, should phase 2 identify a need for such support.

The Convener: There might also be issues about how resources are focused. We heard evidence that a large number of young people did not have contact with services, even when there was a supervision order. Moreover, even when there was contact, it was sometimes just one meeting in 12 months. There might be an argument for abolishing that one meeting and involving a more limited number of people, whose input would be more effective. Given the inevitable background of strained resources—whatever improvements are made—it might be relevant to consider how resources are focused.

If members have no further observations on the matter, we will move on. We will return to the issue

and, as Fiona Hyslop suggested, we will bear it in mind in the context of our consideration of the budget.

Disclosure Scotland

10:06

The Convener: Item 3 is evidence from Disclosure Scotland. We are taking evidence as part of the follow-up to our child protection inquiry, against the background of members' concerns and the developing picture. I welcome Cliff Anderson, deputy director of the Scottish Criminal Record Office, and Brian Gorman, manager of Disclosure Scotland. Members have a submission from Disclosure Scotland and other observation notes. Do the witnesses want to make opening comments?

Cliff Anderson (Scottish Criminal Record Office): Not particularly.

The Convener: We will move on to questions, then. I am not fully aware of the legal framework within which Disclosure Scotland operates. I think that I misled myself to the extent that I understood that there was a legal obligation on voluntary organisations to obtain a disclosure, but from your submission that appears not to be the case. Will you clarify the legal obligations on voluntary organisations, local authorities and others? How does the legal framework relate to what happens in practice? The scenario seems to be different from the one that I—rightly or wrongly—anticipated.

Brian Gorman (Disclosure Scotland): Part V of the Police Act 1997 simply gives people the ability to obtain a disclosure on certain categories of individuals who work with children or vulnerable adults. The 1997 act places no legal obligation on voluntary organisations, local authorities or care organisations to carry out such checks. However, other legislation, such as the Protection of Children (Scotland) Act 2003, when it comes into force, will make such checks a legal requirement.

The Convener: When will the Protection of Children (Scotland) Act 2003 come into force? Is it coming into effect bit by bit?

Brian Gorman: I understand from the Scottish Executive Education Department that it is hoped that some provisions of the 2003 act will be implemented towards the end of the year, perhaps in November or December, but I do not think that the entire act will be implemented then.

The Convener: I have picked up concerns about the burden on voluntary organisations, youth organisations and others of implementing the requirement to obtain disclosures on staff who are already in place.

Brian Gorman: The 2003 act requires anyone who works with children to be checked at an enhanced level. The Scottish Executive estimates

that about 500,000 people fall into that category in Scotland—the figure includes people in paid employment as well as volunteers. The Executive is considering how that requirement can be implemented without causing a considerable burden on organisations or Disclosure Scotland. I do not yet know how it intends to do so.

The Convener: I want to pursue that point a little. Has phased implementation been discussed? I am thinking, for example, about when people come up for reviews.

Brian Gorman: A phased approach is certainly being considered, although I have not been involved in the details. A total of 500,000 checks is obviously more than Disclosure Scotland could handle if the implementation was to be immediate. Moreover, the organisations themselves have to be able to get the forms to us to carry out those checks.

Lord James Douglas-Hamilton: I start by saying that we appreciate the great importance and sensitivity of your work, so any questions that we ask are not meant to be critical. Our questions arise out of genuine concerns.

The Convener: It will be a critique rather than a criticism.

Lord James Douglas-Hamilton: Well, we have genuine concerns.

I want to ask about transfers. I understand from the minister's correspondence with the Education Committee that it will not be possible for an employee to transfer a disclosure certificate from one local authority to another. We understand the logic of that for posts in which the employee would work with age groups, or in roles, that were different from their previous employment. However, might it not be sensible to adopt a more flexible approach for individuals who move between authorities but work with age groups, and in roles, that are the same as in their previous employment? For example, might it be possible to issue a more general certificate of suitability to work with children? Such a certificate could be valid across local authorities. Would that be worth considering?

Brian Gorman: That question raises a number of issues that I would like to cover. You asked about having a more general, transferable certificate. Sir Michael Bichard's committee sat in May or June of this year. Recommendation 19 of his report is that a central unit should be set up to act as a reference point for people who have already been checked. People would receive a card like a passport and the card would be kept up to date by the central unit. An employer who wanted to employ someone who had a card would simply check with the unit as to whether the person was still employable with children or

vulnerable adults. Bichard has asked for that recommendation to be considered by the Home Office and, in turn, the Scottish Executive. The aim is to reduce the number of instances of people having to apply for a separate disclosure. There would be a central unit and the card would be issued to every individual working with children or vulnerable adults. The individual would pass the card to the potential employer so that it could be checked.

As for the current situation of disclosures being passed between organisations, there has always been debate about portability and about the validity of a disclosure after it has been issued. When we take information from the police national computer and the Scottish Criminal Record Office's criminal history system, that information is obviously for the date on which we print the disclosure. Three months later, the individual may seek further employment and may use the same disclosure but, in the meantime, something may have come on to that individual's record. Employers and voluntary organisations are reluctant to accept a disclosure that, technically, is valid only up to the day on which it was issued.

The issue of enhanced disclosures also arises. The chief constable of a force has the right to decide whether any information that he may hold on an individual is relevant to the post that the individual is seeking. He makes a decision based on the job role. The job that the individual is going for may be very similar to their previous job but, although the chief constable may not have disclosed information on the previous disclosure because he felt that it was not relevant, that information may well be relevant for the new job. The decision would have to be re-examined.

That is the way that the Police Act 1997 is set up—neither the Scottish Executive nor the police forces were involved in setting it up that way. The act clearly states that that is how enhanced disclosure and non-conviction information should get on to the disclosure.

I am trying to remember the question, which was quite convoluted. Were there other questions that need to be answered?

10:15

Lord James Douglas-Hamilton: You have given reassurance with your answer.

I have three more brief questions. Could steps be taken to improve effective communication between the Scottish Criminal Record Office and Disclosure Scotland?

Brian Gorman: We are part of the SCRO. We work in the same building and we use the same system. Mr Anderson is my boss and he is the

deputy director of the SCRO. We have a very close working relationship. We are part of the SCRO.

Lord James Douglas-Hamilton: What can be done to rationalise the application procedure for individuals who work for a variety of agencies and employers? I understand that in some cases those individuals have had to undergo six separate security checks.

Brian Gorman: Checking an individual five or six times is not a Disclosure Scotland policy, neither is it required under the Police Act 1997. It is a policy of employers and voluntary groups. They do not want to be caught out. They want fresh information every time a person moves into their employ, even though they had a disclosure months before or one was applied for in tandem with another organisation. They have taken the attitude—which is not stipulated by Disclosure Scotland or by the Police Act 1997—that they have to do that. It is purely a decision by the employing body or voluntary group to get the checks done.

Lord James Douglas-Hamilton: What assurances can be given that the extra staff who were recruited and trained by Disclosure Scotland to provide appropriate processing coverage around the clock to help to clear the backlog of cases were recruited on a permanent basis and not just as a temporary measure?

Brian Gorman: The staff whom we employed were, in the main, employed temporarily. We have examined the processes involved and have introduced a new performance measurement regime. We are now aware of the time that it takes to process a disclosure and we know how many a staff member can do in a working day. From that, we are looking at our establishment and have made representations to the Scottish Executive for an appropriate budget for full-time staff, to ensure that we cover the volume and have the ability to react quickly, should we see an increase in that volume.

Lord James Douglas-Hamilton: Finally, do you have sufficient resources to carry out all the necessary duties that come your way?

Brian Gorman: We now have enough resources to do what we want to do and we have the flexibility in our plans to allow us to react much more quickly and effectively to any increase in the number of applications.

Dr Murray: I want to clarify what is required, and what is done at the discretion of local authorities and voluntary groups. When a person changes employer or voluntary sector organisation, is it at the discretion of the new employer or organisation whether they accept a current disclosure?

Brian Gorman: The Data Protection Act 1998 and the Police Act 1997 restrict the passing of that information to a body that is not the registered body; in other words, the body that is entitled to ask the exempted question. In the case of enhanced and standard disclosures, the individual who applies gets a copy of the disclosure, as does the employer. The individual can make that disclosure available to a new employer, because that is his right; it is his information and he is committing no offence. However, for organisations to pass on criminal information about an individual without their consent is an offence under the Data Protection Act 1998 and the Police Act 1997.

Dr Murray: So if an individual changed their job or the organisation that they worked for, for example, and passed on their disclosure information to their new employer, that organisation could, at its discretion, accept the disclosure or insist on another one.

Brian Gorman: That is right. However, I would put a caveat on that by returning to what I said about relevant information. Under the legislation, the chief constable also has the ability to release solely to the registered body information that he thinks is so sensitive that he does not want the individual to know about it. That means that a new registered body would not get to know from the disclosure that had been passed to it by the individual that perhaps the other employer, who had received information from the chief constable, did not employ the person as a result. That information would not be passed on. Employers are aware that, although an enhanced disclosure from the individual can be seen, information might have been disclosed only to the previous employer that the new employer would not see. The new employer must make a judgment on whether to go for a new disclosure to ensure that they are covering all the avenues. Obviously, when we speak to registered bodies about the matter, they are concerned about employing someone who has offended between disclosures. When the new employer is discovered not to have checked the person, they are criticised, or the new employer may never see information that has been passed only to the other employer.

Dr Murray: That would, of course, be the case if somebody remained in the same job and offended after their disclosure. The same situation would occur with their current employer. That leads on to the issue of organisations' uncertainty over how often they ought to renew disclosures. Will you give advice on that matter?

Brian Gorman: Again, the Police Act 1997 gives no guidance on checking or rechecking existing employees. Many organisations are now considering periods of three years or five years. When a job depends on the renewal of some kind

of accreditation or pass, the time to perform another check is when the pass or authorisation is being renewed. Again, once a person has been checked, there is no legal requirement for them to be rechecked while they are in the same employment.

We had an interesting case with the health service in Glasgow when three organisations were amalgamated into one health board. Previously, when doctors were transferred to a hospital in another of the three areas, the board had them rechecked and it continued to do so after the three organisations became one unit. When we advised the board that that was unnecessary because the doctors were all in one health board area, it was happy to go down that route.

Dr Murray: It is understandable, in such situations, that organisations or local authorities might wish to err on the side of caution. However, if they insist on rechecking every six months or when somebody changes post, that must create stresses and strains on your organisation

Brian Gorman: It does. We should be aware of the policies of the registered bodies. We are trying to communicate with them to find out what their policies are, so that we can get an idea of the volume of work that is coming to us. If an organisation such as Glasgow City Council says that it will check all its staff every three years or that it will introduce retrospective checking for staff who have not been checked under the new system, we must get a feel for the volume of work that that will create and when things are likely to be done. In negotiations with the registered body, we must reach an agreement so that we are in a position to deal with the increased volume and so that we do not have backlogs.

Dr Murray: That is helpful. Thank you.

The Convener: For the avoidance of doubt, when the enhanced disclosure certificate does not contain all the information—when information has been withheld for reasons of sensitivity or whatever—is there any indication on the certificate that information has been withheld?

Brian Gorman: No. I will outline the process. The police force notifies us that it has information that it wishes to release only to the registered body. We put a hold on the issue of the disclosure until we receive that information, which is contained in a double-sealed envelope that is addressed to me. I open it and we put the sealed information in the other envelope—we do not see it either—with the registered body's copy of the disclosure. The two disclosures are then issued at the same time. The one that contains the additional information is issued to the registered body and the other one, without the information, is issued to the applicant.

Fiona Hyslop: I was interested to read what your submission said about the impact of the United Kingdom-wide demand for basic disclosures as the result of airside security issues that it fell to Disclosure Scotland to process. That might explain the sheer volume of the increase in activity and the operational difficulties that we all know about. As MSPs, we have all received correspondence from constituents who could not get disclosures in time. It worries me that one in 10 of Scotland's population could be about to need a disclosure because of the Protection of Children (Scotland) Act 2003, but you say that you are not involved in the transition to that act's implementation. That leads me to think that the same size of problem that we have had in the past year, if not greater, could be pending.

Brian Gorman: I would not say that we are not involved, because we have regular meetings with the Education Department and the Justice Department on each stage of the process. In negotiation with the departments, we have told them that we want three months' notice of their intended start date for the retrospective checking and new checks under the Protection of Children (Scotland) Act 2003 so that we have those three months to prepare and get the right staffing levels in place before the checks start. We have input to the process.

Fiona Hyslop: I am not sure whether you have seen the submissions that we have received, but organisations such as the Boys Brigade, Girlguiding Scotland and the Scout Association have concerns about the 2003 act's impact on voluntary organisations. They say that youth provision will be decimated if the act's implementation—which is what we are discussing—is not phased. They suggest that legislative changes might be needed to ensure that the act applies to the regulated bodies in the initial implementation period and that a longer period is provided for the smaller voluntary organisations to come under the act's provisions. Do you agree that legislative changes will be needed to enable that to happen?

Brian Gorman: My understanding is that ministers are considering when and how the section of the act that requires disclosure for voluntary organisations should be implemented to reduce the pressures that that will put on organisations such as the Scout Association, the Boys Brigade and Girlguiding Scotland and to phase in that requirement over a period of time to allow those organisations to carry out the checks. I do not know any more than that.

Fiona Hyslop: Would legislative change be needed to do that?

Brian Gorman: My understanding is that that section will not be implemented at the same time

as the rest of the act. A statutory instrument of some kind might be used to say when it will be implemented.

Fiona Hyslop: How does your organisation operate? Do you have a policy unit that troubleshoots when problems arise with interpretation of the legislation? Another problem that has been highlighted to us concerns parent-teacher associations. All parents with children at school are in PTAs, and if different local authorities interpret the legislation differently and request disclosures for different things, there is potential for confusion. Is there a unit within Disclosure Scotland that actively tries to identify the problem areas and resolve them with public bodies?

Brian Gorman: We do not have a unit, but we have what we call a compliance manager, whose role is to go out and speak to the registered bodies as much as he can. We also encourage the registered bodies to contact us with their problems and we try to resolve them.

As far as policy on the legislation is concerned, we work closely with the police division in the Scottish Executive Justice Department. The division takes on board any legal or regulatory problems that we or the registered bodies have and tries to resolve them. We use the police division a lot for that.

Fiona Hyslop: We might want to come back to that point; I am not sure whether the police division is the appropriate body to disseminate policy to some of the other organisations. It might not see itself in that light.

Brian Gorman: The police division consults those with responsibility for education, health and social work if an issue affects those areas; it does not make policy in isolation.

10:30

Mr Kenneth Macintosh (Eastwood) (Lab): I apologise for arriving late. I have to say that there have been no other arrivals in our household yet.

I am really pleased by the improvements that Disclosure Scotland has made. Three or four weeks ago, I applied for a check on the Monday and got the letter back the following Wednesday morning. I found that very encouraging.

The Convener: Was the letter addressed to "Kenneth Macintosh MSP"?

Mr Macintosh: No, and it was not even red-stamped as a priority application.

You have already answered some of my questions. I was encouraged to hear you mention the Bichard inquiry recommendation of getting round the problem of portability by having a card

system. Although the committee—and indeed the Executive—is concerned about multiple applications, that matter is clearly not your responsibility but is down to employers and organisations.

I am trying to work out your role in this matter. Do you try to assess risk? My interpretation of the 2003 act is that although organisations are entitled to apply for a disclosure check, they do not have to do so. However, all these organisations seem to be applying for disclosure checks in every situation, which seems to be out of all proportion to the risks involved. Do you or the ministers issue any guidance to yourselves or to those organisations? If so, does the compliance officer that you mentioned pass on that guidance?

Brian Gorman: Yes. We have a code of practice and we have produced booklets and information leaflets that are sent to any organisation that wishes to register with us. The 2003 act requires that anyone who wants standard or enhanced disclosures must be able to ask the exempted question under the Rehabilitation of Offenders Act 1974. We seek proof that they can ask the exempted question and that, under the terms of employment, the person in question would be working with children or vulnerable adults. Checks are also carried out for jobs in the Crown Office and Procurator Fiscal Service and the financial and security industries, for judges' appointments and so on, but those are already legislated for. As for the jobs that you are talking about, we ensure that the organisation in question is able to ask the exempted question; that the job involves working with children and vulnerable adults; and that the organisation is bona fide. If the organisation meets those criteria, it will be registered.

Organisations are given guidance on the circumstances under which they can ask for an enhanced or standard disclosure. After that, we frequently check that they are adhering to the codes of practice that have been issued to them.

Mr Macintosh: I imagine that you ensure that organisations do not break the law in that regard. However, I am concerned about the other side of the matter. I do not want to personalise all my examples, but I was asked for a disclosure check to start a walking bus to school. I would never be in charge of the young people by myself; instead, two mornings a week, I and several adults would take half an hour to walk children to school. I would have thought that the element of risk would be minimal, to put it mildly. Would you ever advise on whether a disclosure check would be necessary in such a situation?

Brian Gorman: We never decide on the element of risk and on whether someone should be employed; we are not empowered by

legislation to do that. The best person to make that decision is the employer, who knows what the whole job involves.

Mr Macintosh: Does the Executive produce any guidance for local authorities or voluntary organisations?

Brian Gorman: Unless social work, health or education issues its own guidance, I do not believe that any guidance is issued other than the code of practice and our booklets.

Mr Macintosh: In terms of collecting information, would you be able to tell either anecdotally or statistically whether, for example, the practice of getting disclosure checks varies from local authority to local authority or school to school?

For example, I believe that at the moment everyone is carrying out disclosure checks in every situation, but some places might be slightly more relaxed than others. Are you aware of any discrepancies, differences or variations across the country?

Brian Gorman: Since the murders in Soham, there has been an increase in the number of requests for standard and enhanced disclosures from local authorities throughout Scotland. I do not know the size of local authorities in terms of the number of staff that they employ, and that is related. I do not have figures that show that one local authority is making an excessive number of requests if that is what you mean.

Mr Macintosh: I imagine that, if a local authority encourages applications in most situations but we have now moved to encouraging applications for all situations, there will be some discrepancies throughout the country. I suppose it is a case of different employers—not just local authorities—being willing to make that judgment for themselves and to take that element of risk, although I imagine that those circumstances would be minimal.

One of my key concerns has been reflected by some of the evidence that we have heard. This is not just about employers, full-time employees and even full-time volunteers; it is about part-time volunteers, such as parents, and people who just want to help out. I have another personal example. My local school wants to have a Hallowe'en party this weekend, but there are not enough parents who have had a disclosure check for the school to be confident about running it. The school is hesitant about using parents who have not been checked, despite the fact that none of the parents will be left alone with the children and that their own children will be involved. It seems to me that there is no sense in that. We have lost all sense of proportion.

You say that your job is to ensure that people apply for disclosure checks correctly and that disclosures are handed out correctly, but that you do not advise or give guidance in such situations. There is no guidance for such volunteers, their employers or supervisors to enable them to interpret the legislation other than in a vacuum or in the post-Soham environment in which we operate and in which everyone gets a disclosure check.

Brian Gorman: If a local authority contacted us and said, "We are having a Hallowe'en party and we need two or three parent helpers. Do we need to get them disclosure checked?", we would say no.

Mr Macintosh: Thanks. That is helpful.

Brian Gorman: That is if we are contacted, but local authorities do not always contact us.

Mr Macintosh: I have a final question, although I cannot imagine that you will have this information. As the uniformed organisations and others have said, we are concerned that the inadvertent impact of the legislation might be to put off volunteers and stop activity that is for the benefit of young people. Do you have any evidence to confirm or deny that that is happening? Has the initial number of applications for volunteers tailed off? Is there any way of interpreting the data that would suggest a trend?

Brian Gorman: During the first year of operation, somewhere in the region of 10,000 applications came through the central registered body in Scotland, which is the umbrella organisation that handles voluntary applications. During the next 12 months, the number rose to between 50,000 and 60,000. The number of applications from the voluntary sector is not tailing off.

The Convener: With respect, that is not quite the same. That is just an indication of the number of applications for disclosure rather than of whether people are being put off.

Brian Gorman: You are right, but Mr Macintosh asked whether the number of applications had tailed off and the answer is that it has gone up by 50,000 or 60,000. That might be because organisations are better organised and are getting the applications through, but I do not know.

The Convener: The background to this discussion is the theme of risk assessment. One can readily understand that disclosure checks are relevant for teachers, janitors and other people who have a lot of close contact with children; I do not think that there is any argument about that. However, do we have a more general feel for what risk situations we are trying to guard against? People might have in their minds the idea that

their children might be dragged into hedges on their way to school or be assaulted in the toilets, for example. Do we have any evidence about the sort of risks that we are trying to deal with, or is such information not within your realm?

Brian Gorman: We do not get involved in that side of things. Our job is purely to issue the disclosure.

Dr Murray: Is there a need for more publicity to promote better understanding of when disclosure is required? If I may pick up on the issue that Ken Macintosh raised, I sometimes wonder whether I should have a disclosure check because I go into primary schools to talk to young people about the Scottish Parliament. I am not sure whether I should be there without having had a disclosure check. Should the Executive clarify to the general public, voluntary organisations and others the situations for which disclosure checks are required?

Brian Gorman: With the introduction of the Protection of Children (Scotland) Act 2003, some form of guidance to authorities and voluntary groups may well be provided. As I understand it, the scenario that you have portrayed—that you go into schools regularly to talk to children—would fall under the act, so you would need a disclosure check. I am sure that the Executive will issue guidance on how the act affects those whose work in some way involves dealing with children. For example, if a company has a contract with a local authority education department to install and maintain computers in a school, the act requires that those contractors be checked before they can work in the school.

The Convener: There is a sense of frustration among committee members about all that. It is all very well saying that it is up to employers and organisations, but the organisations range from big organisations that can administer the procedures properly to small organisations such as the PTAs that Ken Macintosh mentioned.

I want to put to you a number of questions that the Scottish Parent Teacher Council raised. One issue is data protection. It is all very well for local authorities to ask for information about a parent, but is it appropriate that other parents in a small organisation such as a PTA should be able to gain information about parents? Another issue is whether 18-year-old school pupils will require to be checked. A further issue is the procedure that should apply when youngsters complete part of their school programme—as the Executive is trying to encourage them to do—in further education colleges, where they will be in contact with all sorts of adults. Can you give any guidance on those complex issues that the Scottish Parent Teacher Council has raised or is that outwith your realm?

Brian Gorman: I have heard concerns being expressed about the situation with small voluntary organisations whereby four or five people live in a small village and one person registers with the CRBS to be the registered person and to send off and get disclosures on behalf of the others. I can see where the concern lies, but that is permissible under the 2003 act.

The Convener: In such a situation, could the local authority obtain the information?

Brian Gorman: The local authority can act as an umbrella body for any organisation. As long as it can ask an exempted question, it can register itself as an umbrella body and carry out checks on behalf of other organisations.

The Convener: I asked that question because the Scottish Parent Teacher Council said that it had had a complaint that

“Disclosure Scotland refused to allow a Local Authority to request police checks for a PTA because the PTA was not part of the Local Authority.”

That evidence is anecdotal, of course, but it raises an issue. I am not sure whether you can reassure us completely on that specific point, but it could probably be dealt with in one way or the other quite readily.

Brian Gorman: We would not refuse to do PTA checks through a local authority education department.

The Convener: That is helpful.

Fiona Hyslop: The point about 14-year-olds going to further education colleges to pursue vocational courses is interesting. What is your interpretation of that?

Brian Gorman: The Police Act 1997 does not put an age limit on individuals who require disclosures. If you are asking whether we should get a disclosure check done on a 14-year-old—

Fiona Hyslop: No, it is more everybody else in the college.

Brian Gorman: It is up to the college to assess the risk and how those children are supervised while they are within the college environs. One would assume that the teachers and staff in the college are already checked. Although 17 and 18-year-old students or others in the school may be supervising those children while they are there, the situation depends on the overall supervision arrangements within the college, and on those teachers or staff who have already been checked.

10:45

The Convener: Do further education colleges normally get disclosure checked as a matter of principle?

Brian Gorman: Most of them do—even universities. You can find 17-year-olds at university, if they are clever enough and get their highers. Universities and FE colleges check their staff.

Lord James Douglas-Hamilton: I wish to ask about research, although it is not within your remit. I do not expect an answer to my question today, but I wonder whether you will reflect on it. Would it help if the Administration, which has a large number of research projects anyway, were to conduct research into certain aspects relating to this subject? Would that be in the public interest? Where would that research be best focused?

Brian Gorman: There is no doubt that if there is public concern about the volume of disclosures that are required, some form of research that would produce guidelines would be helpful.

The Convener: YouthLink Scotland talked about an improvement in turnaround times, which was one of the committee's concerns. However, it also indicated problems in getting information about the stage that applications were at. That may not matter so much if applications are processed more quickly, but the indications are that there are difficulties in getting through. You said that you had increased the number of telephone lines. Are you aware of continuing issues in that respect?

Brian Gorman: No. There is no issue now. The problem arose when calls went from about 600 a week to 13,000 a week. We doubled the number of lines and the number of staff, but now that we are back to returning disclosures within the timescale that everyone accepts, the number of calls has fallen again. We have maintained a high level of call answering. On recent figures, we answer 98 per cent of our calls. Only 2 per cent of calls are abandoned and that could happen for any number of reasons; it is not necessarily the case that they are not answered. We have no problems now with the communications side. We are considering our communications with the registered bodies and other organisations. We have a draft communication policy, which is aimed at trying to interrelate better, so that the organisations that we work with—particularly the registered bodies—are more aware of what stage we are at.

We are considering engaging in some form of service-level agreements with the registered bodies, so that we can have an understanding of the timescale between the applicant signing a form and that form arriving with us. It can sometimes be a problem when the registered body takes slightly longer to get the form to us than the applicant had expected. It can look as if the form has been lying at Disclosure Scotland when in fact it has been lying on a desk in some personnel department.

We are going to engage with the registered bodies. We have already met the leader of the Convention of Scottish Local Authorities. COSLA will set up a seminar for us early next year at which we can discuss those issues with it.

The Convener: One of the issues that has arisen in my discussions is that some of the big uniformed organisations use their head office for registration. The form goes from the local group to the head office to the central registration body and then on to Disclosure Scotland. It then goes back through a similar process. Even if Disclosure Scotland significantly improves its bit in the middle, it is still only a bit of the whole process.

However, that then raises issues about the delay that arises from the system—it is no one's fault in particular—that leaves volunteers waiting for two or three months, or longer if progress is slow, before they can start to do anything. That can be a bit of a problem for volunteers who could not be supervised by other people until their disclosure came through.

The committee commented from another perspective in its report when it expressed concerns about people being employed in various posts before the full checking procedure had been carried out. The other side of the coin is that voluntary organisations can be badly hit by the inability to take up volunteers because people are put off by the delays. Is there guidance on volunteers being able to start before a full check has been completed?

Brian Gorman: Disclosure Scotland has issued no guidance and there is no guidance within the Police Act 1997. However, because the process is not currently mandatory, there is nothing to prevent an organisation from employing someone prior to the return of their disclosure. That is a decision for the employer: it is for them to assess the risk and to decide whether they need to have someone working with that individual until their disclosure comes through.

The Convener: Will that change when the new act comes in?

Brian Gorman: I am not sure about that.

Fiona Hyslop: It already has: we have information to that effect. Application was made to the Executive's children and families division to ask whether people should employ someone before the appropriate vetting checks are carried out. The division is clear about discouraging that practice. Everybody will take the defensive view and not do it.

Brian Gorman: You are right to say that that is discouraged, but there is nothing in law to prevent it.

The Convener: Does that raise any other points?

Dr Murray: I raise a slightly different topic. I return to what you said earlier—that the chief constable might consider information to be so sensitive that it would be passed only to the employer and not to the individual concerned. I was contacted some time ago by a constituent who received his disclosure, which advised him that he had committed many offences—he was supposed to have been drunk and disorderly when he was young and all manner of other things. It turned out to be the disclosure of someone else who happened to have the same name. The police force that investigated the disclosure released the details of the other person rather than those of my constituent, which caused him significant distress. He recognised that it was not his disclosure, but it is possible that information that the chief constable felt to be sensitive might be inaccurate and that the individual would have no opportunity to challenge the information that had been passed on. You might not be able to do anything about such situations, but I am slightly worried about them.

Brian Gorman: The disclosure should be applied for only when a person has been selected for the post, which would be awarded subject to the disclosure check, plus any vetting that is carried out before they get the post. If they get a clear disclosure back and they do not get the job, and it is thought to be because of the disclosure check, they can make representations to the chief constable through civil remedies to see if he released any other information.

The Convener: I am conscious that Mr Gorman has done all the talking. Does Mr Anderson have anything to add as the boss?

Cliff Anderson: Mr Gorman has done very well and it has been rather an easy meeting for me.

The Convener: I am conscious that we have asked you many questions, some of which go beyond the remit of Disclosure Scotland. We are dealing with an issue that is difficult and complex for many voluntary organisations and authorities. We are grateful for your input. I dare say that we will have further contact with you, but in the meantime, thank you for your attendance this morning.

We will now consider any implications that arise from the evidence that we have heard and whether there are any points that we want to develop. We have time to do that this morning if people want to make progress while the subject is fresh in our minds. A number of issues arise. Perhaps the central issue is about advice and the code of guidance for volunteers and voluntary sector groups in particular. That is one angle that

we should pursue. Are there any other observations?

Ms Byrne: I wonder whether we require some kind of briefing prior to the Protection of Children (Scotland) Act 2003 being implemented, particularly if its implementation is to be phased. We need a bit more information on the implications of the act's implementation. I am not sure whether the rest of the committee feels the same way.

Dr Murray: We could usefully ask ministers about their intentions.

The Convener: We could fit in a session for doing that sometime. We could get some sort of background briefing from SPICe and we could invite the minister or Executive officials to come and talk to us about the subject at a committee meeting. That should be possible at a later stage.

Lord James Douglas-Hamilton: The answers that were given to us in relation to research are important. I know that the Scottish Administration prepares a large number of research programmes, which are costed each year, but I think that a strong case has been put in this instance. Disclosure Scotland cannot do everything, nor should it be expected to. When the facts are known, that often points the way to solutions, but people often do not know the facts. There can be no harm in such research, and a substantial advantage might be gained for the public interest if it is properly focused. Mr Gorman made a recommendation of the area in which he thought research should be carried out.

Mr Ingram: That is particularly relevant when it comes to evaluating the impact of the 2003 act. I feel that we are getting things out of proportion in certain areas, as Ken Macintosh suggested, and that we have been taking a sledgehammer to crack a nut. It might be important to have some continuing evaluation of the act so that we do not overly bureaucratise the voluntary sector in particular.

The Convener: We also want a starting point, so as to develop a better understanding of the risks that we are trying to guard against and of how they relate to the various matters that we have been discussing. These are big issues and it is important to get them right.

Fiona Hyslop: The current experience around disclosure relates to things such as whether Hallowe'en parties are being cancelled all over Scotland because of disclosure checks, to refer to what Ken Macintosh was saying earlier. I am concerned about the Protection of Children (Scotland) Act 2003. There is a danger that we will be researching something that will turn out to be a moveable feast—that it will change dramatically.

We need to be cautious about our terms of reference.

To look again at the evidence received from the Scout Association and the Boys Brigade, for example, they are saying that the compliance requirements under the 2003 act are currently the subject of training. It is the current training and preparation for the act that those organisations are concerned about. It is the preparation for complying with the 2003 act that we need to get a handle on. What guidance is being produced? If we are already getting feedback that the message from the legislation is disproportionate and unreasonable and is lacking in understanding, then we need to focus on trying to help and influence the introduction of the legislation. We need to have a stocktake and establish where we are now and what the problems are.

Of more acute concern is the roll-out of the legislation and its impact. What is the current guidance? Training is going on now, but is it adequate? Does anything need to be addressed as far as training is concerned? If the provisions for the legislation prove to be inadequate, then we will have 500,000 people about to hit Disclosure Scotland. That could have quite a dramatic effect very quickly. Our concerns are for very small organisations, which could easily collapse under the stress caused by the legislation. An after-school club in which I was involved almost went belly up because of problems. We do not want what has been happening over the past six months to continue. That is where I would like us to focus.

The Convener: The letter from the chief officers of the Boys Brigade, Girlguiding Scotland, the Scout Association and Youth Scotland raises much wider issues than those concerning Disclosure Scotland. It raises the pressures of the legal duties on the volunteers, who have to have interviews and so on. It sounds like a trivial matter, but it is not—it is important, and it can be worrying for people. There is also the issue of the sheer bureaucratic pressure of having to administer all the retrospective checks. Many issues need to be put right.

11:00

Mr Macintosh: I agree whole-heartedly with what everybody has said. We need further research and evidence. The questions for us are who should do that and what our role should be. This is one of the most pressing areas where there is a need for post-legislative scrutiny, if I may say so. The first thing we need is a study of the impact of the legislation so far and of the evidence that has been gathered. Given that SPICe might be drawing up a paper for us for the next time we

discuss this, I want to flag up quite a few issues, without prejudging what we do next.

We began this process by hearing about delays in disclosure, which Disclosure Scotland seems to have dealt with quite well, so it is not the source of the problem; it is doing its job efficiently. The problem is all about guidance and implementation. The minister might have answers. There is no formal guidance, but the Scottish Executive Education Department is issuing letters such as that which the uniformed organisations quote, which includes no allowance of risk whatever. It states:

“We would strongly discourage any organisation taking on someone to work with children until all the appropriate vetting checks had been carried out.”

There is no balance in that. We need to know whether volunteers are being put off. There might be evidence on that; academic studies might be taking place, there might be anecdotal evidence or there might be better, harder evidence.

We did not even go into the question of cost. Who is meeting the cost of the checks? When disclosure checks were introduced, our initial worry was that the cost alone would put people off.

The Convener: I think that the Executive is meeting the cost—not the bureaucratic cost, but the on-cost to the training bodies.

Mr Macintosh: Most of the costs are being picked up by the state, as it were.

The Convener: Disclosure Scotland charges are being picked up.

Mr Macintosh: Yes, exactly, but I would like confirmation of that. We raised the issue two or three years ago, but it does not seem to have come back.

Elaine Murray asked what happens when something goes wrong. When a check on someone does not come through quickly is there an inference drawn that there is something dubious about the person? A whole body of people might have something murky in their past—nothing to do with children, but something that they do not want the PTA, the school or anybody else to know about. Are we ruling those people out? That is not a particularly good way to encourage good citizenship; someone might have made a mistake.

The Convener: There is an issue relating to the Rehabilitation of Offenders Act 1974, which knocks out of the standard check, but not the enhanced check, offences that were committed more than 10 years previously. A blanket descends if there has been nothing much in the meantime, except in the enhanced check. A child-type issue in someone's criminal conviction record

from a long time ago is relevant to the enhanced check.

Mr Macintosh: It is interesting to hear you say that. The letter from the SPTC quotes Aberdeenshire Council, which states:

"There are some exceptions to this at both ends of the scale e.g. some information we receive for instance, being prosecuted for fishing without a licence, is irrelevant, however anyone who say has convictions that would include them on the Sex Offenders Register".

Even given the Rehabilitation of Offenders Act 1974, there is room for interpretation.

Finally, we raised the issue that in some areas local authorities are carrying out the checks while in other areas it might be a PTA. Some PTAs might be well run and robust, but in some situations, as Mr Gorman said, the PTA is made up of five people in a small village, one of whom is carrying out checks on other people in the village. Surely that is not a situation that we want to encourage.

There are many issues for us to consider and I am keen that we take an active role and do not just expect the minister to come up with answers, but carry out some analysis, if it has not already been done. Of course, we must have regard to our rather busy timetable for the coming period. Given that the 2003 act will come into effect and given the numbers that are coming through, it is important that we do that work.

The Convener: We can initiate research, but we must apply to the Conveners Group for approval. That will cause a bit of delay, as will, I presume, the process of putting out the work for tender.

Martin Verity (Clerk): Yes, if the research is original.

The Convener: There are issues. We must find out whether research has been done. I suspect that it has not, but we should find that out. If it has not been done, we need to decide whether to pursue the matter.

Lord James Douglas-Hamilton: Would it be possible to ask SPICe to say what research programmes it could usefully carry out and what research programmes are too big for it and would be more appropriate for the Executive? The Executive undertakes substantial research programmes, which are of enormous assistance, but which cannot be done quickly or readily and which I suspect would be beyond SPICe. It would be of assistance to focus on what is achievable easily and quickly and what requires a great deal more effort.

Dr Murray: I am not sure what the timescale is for the implementation of the 2003 act, although other members may be. We have a congested timetable because of the Gaelic Language

(Scotland) Bill and so on, so I am a bit worried that the horse might have bolted by the time we come to examine the stable. How much work can we do by correspondence and in advance of hearing directly from ministers? There is clearly a lot of confusion about the matter and significant issues that will have to be explored.

The Convener: I think that the implementation of the 2003 act has already been delayed, although I may be wrong about that. There has certainly been no public announcement on the timetable. From what I have heard privately in discussion with some of the relevant organisations, and from what we heard earlier, there is a question about when the act will go ahead and on what basis. The key point is not that we do not want it to go ahead, but that the implementation should be staggered to take into account the ability of Disclosure Scotland and the relevant organisations to cope.

Fiona Hyslop: That is imperative.

The Convener: We can readily write to the minister about that—we should be able to get a response.

Would it be sensible to remit the issue of research to the convener and the clerks to look into in association with SPICe and then come back to the committee? The steer seems to be that the committee would prefer, if no research has been done, to initiate research under the aegis of the committee, if that is manageable. That will not take committee time—at least not until we get a report—but it will take research time and resource. That may well be what we should do.

A number of other issues have been raised on which we will write to the minister. We will scan the *Official Report* of today's proceedings to identify the key points on which we want information. The guidance, or the lack of it, is the other central issue that we want to raise.

Mr Ingram: One big concern is about the cultural impact of the changes. We do not want a climate of suspicion and paranoia, although obviously we want the system to be robust in delivering child protection. We must ensure that that potential downside does not come into play, if possible. We have submissions from a variety of organisations that suggest that we need to attend to that problem.

The Convener: That is absolutely right.

That was a useful discussion. We will pursue the matter as we discussed.

Meeting closed at 11:09.

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