

EDUCATION COMMITTEE

Wednesday 16 November 2005

Session 2

£5.00

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EDUCATION COMMITTEE 20th Meeting 2005, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

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

*Fiona Hyslop (Lothians) (SNP)

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

*Mr Kenneth Macintosh (Eastwood) (Lab)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Richard Baker (North East Scotland) (Lab)

Rosie Kane (Glasgow) (SSP)

Michael Matheson (Central Scotland) (SNP)

Mr Jamie McGrigor (Highlands and Islands) (Con)

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

*attended

THE FOLLOWING GAVE EVIDENCE:

Graham Donaldson (Her Majesty's Inspectorate of Education)

Alistair Gaw (Social Work Inspection Agency)

Neil McKechnie (Her Majesty's Inspectorate of Education)

Gill Ottley (Social Work Inspection Agency)

Jan Warner (NHS Quality Improvement Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament

Education Committee

Wednesday 16 November 2005

[THE CONVENER opened the meeting at 10:02]

Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill: Stage 1

The Convener (Iain Smith): Good morning colleagues, and welcome to the 20th meeting in 2005 of the Education Committee. Today we will take evidence from two panels on the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill.

Last week, we considered whether we wanted to hear from medical interests at this meeting. Unfortunately, although the clerks attempted to deliver such evidence, it was not possible to get all the groups present today. Therefore, I am afraid that we have had to leave that evidence until next week. As a result, next week's meeting will be fairly long, so we will have to start earlier. It would be helpful if members would be here for quarter past nine. The meeting is likely to go on to half past one. It will be a long meeting so that we can complete our evidence sessions and prepare our line for the draft report. Members should bear that in mind.

We are pleased to welcome back Graham Donaldson, Her Majesty's senior chief inspector of education in Scotland, Neil McKechnie, the director of services for the children's unit at HM Inspectorate of Education, and Jan Warner, the director of performance assessment and practice development in NHS Quality Improvement Scotland.

I know that HMIE has submitted written evidence, but given the relatively short timescale for taking evidence on the bill, I am happy for Graham Donaldson and Jan Warner to make opening remarks.

Graham Donaldson (Her Majesty's Inspectorate of Education): The remarks that I made at last week's meeting are sufficient background, from my point of view. I am happy to answer questions from the committee.

Jan Warner (NHS Quality Improvement Scotland): We did not submit written evidence, but we were keen to come before the committee to answer any questions that members may have. That is principally because we are the organisation

responsible for improving the quality of clinical services across the national health service and therefore we are keen to promote joint inspection of children's services and to implement the bill as sensitively and constructively as we can.

The Convener: I thank you both for your commendably brief opening remarks.

Lord James Douglas-Hamilton (Lothians) (Con): What are the likely resource implications of the bill? Have arrangements been made to deal with them?

Graham Donaldson: We have brought together a team from across the various inspectorates. It is close to, but not yet at, its full size. Ultimately, we expect to have a team of about eight inspectors; some will be seconded and some will be full-time staff. The resources for the team are in place. I am confident that, with that team and with staff seconded on a very short-term basis for the inspection programme, I have sufficient resources to carry that programme forward.

Lord James Douglas-Hamilton: If the purpose of joint inspections is to review and evaluate the effectiveness of the provision of services, and if they will result in reports with recommendations for improvement, why are no powers provided to require compliance with those recommendations? Does the minister have sufficient powers under other statutes?

Graham Donaldson: The process that we should follow with child protection and children's services inspections is broadly the inspection process that operates more generally. To date, our experience is that, by and large, we can work with those to whom we make recommendations in order to achieve satisfactory improvements. In respect of HMIE's work, the minister has further powers if they are required.

Lord James Douglas-Hamilton: So if any problems arose, you could report to the minister or to the Education Committee and the matter could then be speedily resolved. Of course, I hope that such situations will not happen.

Graham Donaldson: In the discussions that we have had so far and in the reception that the proposals have received, there has been a strong desire to participate in the inspection process and to take forward improvements.

Lord James Douglas-Hamilton: I have two brief questions for Jan Warner. First, to what extent was NHS QIS consulted during the bill's development?

Jan Warner: We have been fully involved from the outset in the planning of joint inspections and in all the preparatory work for the bill.

Lord James Douglas-Hamilton: Secondly, will you be kind enough to describe the procedures that are already in place and those that will have to be developed to ensure that medically sensitive information cannot be inappropriately used?

Jan Warner: Members of the committee will be aware that there are concerns in the NHS that the provisions should be implemented sensitively; indeed, it would be surprising if such concerns did not exist. We must work carefully with the service to find out what that might mean in practice.

Our experience is that every board in the land is putting a lot of work into working towards joint inspections and gathering the information that is required. Boards are keen to find out how they can improve their services because they are aware that dangers lie in the gaps—in the interface—between organisations. Robust arrangements are in place, but we welcome the chance to strengthen them further.

Graham Donaldson: Neil McKechnie may want to add to what has been said in response to Lord James Douglas-Hamilton's question by saying a little about the protocol on information that we are developing.

Neil McKechnie (Her Majesty's Inspectorate of Education): We have developed a draft protocol that deals with issues relating to access to information, particularly confidentiality and the sharing of that information. The protocol is currently out for consultation.

Fiona Hyslop (Lothians) (SNP): I have a question for Jan Warner. You said that NHS QIS was consulted about pilot inspections from the outset. Did you raise any concerns then that the joint inspection teams would not have the legal authority to access individual patients' records?

Jan Warner: Yes. We made it clear then that we understood that, as things stood, the law did not allow open access to records without consent. Indeed, we have been unable to access records during our reviews.

Fiona Hyslop: Are you saying that the Executive proceeded, despite NHS QIS telling it that there would not be the legal authority to carry out inspections in individual cases?

Jan Warner: Our advice was not that we could not carry out inspections, but that there could be problems with accessing records, given the way in which the law was written. We did not advise the Executive against the pilot; indeed, carrying out the pilot was important, because pilots demonstrate exactly where problems may arise. I am sure that other lessons were also learned during the pilot.

Fiona Hyslop: But the risk involved and price paid have been considerable.

Jan Warner: I would have to ask Graham Donaldson to respond to that.

Graham Donaldson: There are two things to say about the background to that. First, it was discovered in the exercise that lay behind the report entitled "It's everyone's job to make sure I'm alright" that the picture of access to records was a bit confused, but that, by and large, people were able to go through the process and produce the required reports.

We undertook a pre-pilot exercise with Tayside NHS Board and were given access to health records as part of the process. The view taken by Tayside NHS Board at that time was that it was appropriate to give us access to records, so we felt that we should proceed on the basis that we could get access and that the pilots would show us whether or not we required powers to get the type of access that we were looking for. There was enough background to suggest that it was worth while proceeding with the pilot, although we knew that there would always be an issue around whether we would be required to come to Parliament to seek powers.

Fiona Hyslop: Looking at the bill as it stands, does Jan Warner think, based on her knowledge of the different health boards, that they have one view on the bill? There were obviously different views from different health boards on the previous situation. Is there now a unified view from the health boards and are they now satisfied that the bill provides joint inspection teams with the legal status that they need to access individual files?

Jan Warner: Following the pilot inspections, the chief executives of the health boards consulted again the central legal office that provides the NHS with legal advice. It was made quite clear to them that, as the law currently stands, they could not give access to records without consent for the joint inspection purposes described. As it currently stands, the bill gives them the authority to give access to that information, so from the health boards' point of view, the bill makes such access lawful.

Fiona Hyslop: Is that access with or without the consent of the patient?

Jan Warner: The bill as it stands at the moment allows access without consent.

Fiona Hyslop: I would like to move on to the issue of consent. In "Confidentiality: Protecting and Providing Information", which was published in April 2004, the General Medical Council said that any information given to another agency had to be anonymised. Would that still stand for access to medical files by joint inspection teams?

Jan Warner: If the bill goes through as drafted, access would be provided without consent, so

although the GMC would continue to say that it is best practice to seek consent wherever possible and to ensure that people know what information about them is being used for, the GMC's advice would be just that—it would be advice and guidance.

Fiona Hyslop: There is obviously an issue about children and consent. Perhaps the witnesses could explain what issues arise when children are involved and the extent to which parents have to authorise consent. Given child protection issues, even trying to get consent could cause problems, because of a child's experience. I would like to explore the issue of consent and children. We need to test whether it is correct for legislation to go down the route of saying that access to information is to be provided without consent. What problems can issues to do with children and consent and parental consent cause individuals and medical professionals?

Graham Donaldson: I would like to describe the process that we intend to go through and say something about where consent may sit in that process. As I told the committee previously, the starting point for an inspection is that the only way in which we can test whether the policy and procedures that are in place in a local area have worked in practice and are understood and implemented by people on the ground is to look closely at what has happened in individual cases. It is standard practice for inspections to look at that.

At the start of the inspection process, the team will draw together from across the services concerned a sample of files relating to children who are at risk or on the at-risk register. The team will simply look at those files to identify patterns, issues and cases that it might want to follow through in greater detail. I must stress that that process is not to second-guess the action of the professionals in relation to any given case. We are not reopening child protection cases; we are looking at cases that are mainly historic, although some may be on-going, to determine whether the services have been sharing information and working together in the way that we know is necessary for good practice and the protection of children. From within that total sample, a smaller number of cases will be identified and pursued to test the process in some detail.

Fiona Hyslop: How many such cases would you expect to pursue in a general inspection?

Graham Donaldson: Neil McKechnie can confirm whether I am right, but in an average-sized authority, we would be talking initially about 80 cases.

Neil McKechnie: It would be around that number of cases. We choose a sample that is

representative of the type of cases that we have asked to have a look at and of the geographic and social mix of the local authority area.

Fiona Hyslop: Did Graham Donaldson mention about 80 cases?

10:15

Graham Donaldson: We start with 80 cases in an area and we reduce that to the number that we will consider in detail.

There are two or three reasons why consent is particularly problematic. In relation to some historical cases, I am concerned about reopening worries among the individuals involved and making them feel that what they thought was behind them will be re-examined. That issue relates to the interests of the people concerned.

More specifically, the withholding of consent might be a cause for concern in itself. Often, it is the parent who withholds consent, as a child cannot. If a parent withheld consent when child protection issues were involved, that might raise in our minds questions about what lay behind that. The fact that consent was withheld might be the reason for examining a case more closely.

If we ask for but are not given consent and we override that, we will be in a worse situation than that in which we started. The intention throughout is to deal with anonymised cases and not to reopen cases but to consider the circumstances of cases, talk to professionals and explore what happened. As I told the committee last week, in the pilot exercises that we conducted, that process had to stop at the point of interface with the health profession.

Fiona Hyslop: Is anonymity an issue for you?

Graham Donaldson: One possibility was to anonymise the cases concerned, but that is extremely difficult, because different services are dealt with. The individual concerned must be identified to allow discussion of how social work or medical services dealt with them, so it is impossible to anonymise information. Once we are dealing with cases, all the information that we hold on file is deliberately anonymised and youngsters are not named. The information that is on file is destroyed after the inspection period finishes.

Fiona Hyslop: You said that your pool would be of children who were at risk. I know of a case that raised concerns in Edinburgh. If you were considering historical cases, you might want to examine cases that involved children who were not on the at-risk register. Will anything in the bill prevent you from examining the case of a child who was not on the register?

Graham Donaldson: No. That will be possible under the bill.

Fiona Hyslop: So the bill does not prevent that.

Graham Donaldson: No.

Fiona Hyslop: That is good.

The initial inspections in England have proceeded on the basis that consent is asked for, which runs counter to the bill. Has that approach caused any problems in England?

Graham Donaldson: Child protection forms a relatively small part of the inspection process under the current inspection programme in England. The approach in England to the child protection component of children's services inspection is being reviewed and people there are looking hard at what they will require to do when they have a dedicated child protection inspection. I understand that consent has been withheld in a significant number of cases south of the border. I do not have the figures, but we can find them out.

Neil McKechnie: Safeguarding children boards are due to be established by April 2006 in England. Following that, more focus will be placed on inspecting child protection services.

Fiona Hyslop: Information about the numbers would be helpful, because we must test the consent issue when considering patient confidentiality.

I ask Jan Warner to comment on my original question about whether health boards will want to follow the GMC guidance that obtaining consent is preferable. Do you expect health professionals or health boards to have issues with the provision that will allow information to be provided without consent?

Jan Warner: Health boards are clear about the fact that if the bill proceeds as it stands, sharing information with other agencies for the bill's purposes will be lawful. Individual doctors may have concerns about specific cases and it is important for them to be able to seek professional advice about how they should deal with their concerns.

There is good evidence of good information sharing among agencies. In general, people in the medical world are more culpable if they do not share important information about children than if they do. These days, there is a strong feeling that people should share information when concerns arise—the GMC guides people to do that. If the bill will legitimise that process, it can only help the medical profession.

Fiona Hyslop: We know that paediatric consultants have concerns that the culpability and legal redress issues will put increasing pressures on them in relation to child protection cases. I

accept that health boards are satisfied with the measures, but I am concerned about individual doctors who do not want information to be accessed. Will you describe further the sort of circumstances that you mentioned? What would be the reasons for a doctor's concern? Where would doctors go for advice and how would their decision sit with the bill?

Jan Warner: We are distinguishing between consent and confidentiality. A doctor is likely to be concerned that, by breaking confidentiality without the patient's consent, they could damage the relationship with the patient and, possibly, the patient's long-term care; also, as you say, there could be legal redress down the line. A doctor who was concerned about such issues would have two organisations to which to turn for advice: the Medical Defence Union, which is experienced in such cases and which has a lot of test cases and scenarios on which to draw to give advice about likely outcomes, or the GMC, which also provides legal advice that draws on previous experience.

In my experience in the NHS—which, I must admit, is only 22 years—it is almost unprecedented for consent to be withheld once a doctor has taken advice and, if necessary, spoken to the various individuals involved. Ultimately, doctors have felt that they can share the necessary information. The process may take longer, but we get there in the end.

Fiona Hyslop: So we have to test the bill against the NHS code of practice on protecting patient confidentiality and the GMC's more recent guidance to ensure that it is robust.

Jan Warner: Yes. That is exactly the concern that the GMC will raise with the committee next week.

Graham Donaldson: To elaborate on that important point, medical records are already shared within the health service for a variety of purposes, including audit. The bill will bring inspectors who are involved in the process of child protection within the existing circle of confidentiality. As the committee is aware, confidentiality is central to the ethic of inspection—there is no suggestion that inspectorates in any context would breach confidentiality. Given how inspection works and that a circle of confidentiality exists, the next step is to say that it is in the public interest to bring inspectors within that circle for the purposes of protecting children.

Fiona Hyslop: Section 1(6) lists the persons who can be involved in inspections. Section 1(6)(g) has the catch-all phrase

"any other person or body specified".

I understand why the chief inspector of constabulary, the Scottish Commission for the

Regulation of Care, social work inspectors and so on are included, as they are already within the information-sharing circle, but who would be included under paragraph (g)? Can we be reassured that there will be no challenge, particularly from the medical profession, about who is included in that, given that it is a wide catch-all provision?

Graham Donaldson: Safeguards will exist in relation to who can be brought within the circle in addition to those who are named in the bill, as the minister would have to specify that. We work closely with Audit Scotland as part of our inspection process. Audit Scotland is represented on the group of chief inspectors that I chair, which is overseeing the implementation of the process. It is conceivable, although not necessarily likely, that Audit Scotland may want to be brought within the inspection process for particular purposes.

Fiona Hyslop: Can you give other examples of people who might be specified?

Graham Donaldson: That is hard to envisage. There is a general desire to consider the bodies that are involved in the scrutiny and inspection process, and it is hard to be certain about bodies that might be created administratively and which might have relevance to information sharing in the future. My understanding is that the purpose of the catch-all in section 1(6)(g) of “any other person” is to take account of the fact that new bodies might be created that might be relevant for the purposes of the bill.

Fiona Hyslop: I am more concerned about the persons rather than the bodies. An example of “any other person” might be educational psychologists.

Graham Donaldson: That is possible. If we had to involve specialists for a particular purpose, they would be brought into the inspection team. The provision is to extend the inspection team beyond the range of inspectorates listed in section 1.

The Convener: Under section 2, ministers could limit the access to information that those additional people might have to the specific area that they are brought in to deal with.

Graham Donaldson: Yes.

Dr Elaine Murray (Dumfries) (Lab): On that last point, the provision to specify

“any other person or body”

would have to return to Parliament to be scrutinised by the committee because it would take the form of a statutory instrument. Ministers would not be able to decide off the top of their heads that they wanted to allow somebody access to records—it would be subject to parliamentary scrutiny.

Last week, we spoke about medical information, which can be shared between professionals in the interest of an individual child. I presume that that can be done without consent. Would such information consist of solely the child’s medical records or would it include the medical records of a parent or carer where there was an indication that there could be a child protection issue in the carer’s medical history—for example, if there were physical evidence of neglect of the child plus evidence in the carer’s records that they had an alcohol or drugs problem? Could the adult’s medical records be shared between professionals in those circumstances? I ask about the current situation, rather than the situation under the bill.

Graham Donaldson: Perhaps Jan Warner can answer that.

Jan Warner: That could not happen currently. We would seek consent.

Dr Murray: You would have to seek consent to investigate the adult’s medical records.

Under the bill, could one undertake an inspection of the protection services offered to an individual child? I do not necessarily mean that one could do that retrospectively or in cases that have attracted a lot of publicity. However, if there were concerns about the protection offered to an individual child, would the bill allow those services to be inspected? If so, would only the medical records of the child be available without the consent of the parent?

Graham Donaldson: The powers already exist to undertake investigations, as required, in relation to an individual child.

Dr Murray: If one had a concern about the way in which an individual child was being protected and one wanted to inspect the way in which the agencies were supporting and protecting that child, one might want to share some of the information.

Graham Donaldson: We would want to discuss with the medical practitioner concerned the implications of the environment in which the child was living and working that might have given cause for concern in the first place. It is extremely unlikely in that circumstance that we would want to look at the medical records of other people concerned.

However, when we look at an individual child, if the parental or caring context is part of the concern that the practitioner has about the child, that would have to be discussed as part of the inspection process. That is different from pursuing the adult’s medical records, which is not part of the process.

Dr Murray: So if professionals had a concern about the general background of the child, they

would be able to share the information that they had with the inspector.

Graham Donaldson: Almost by definition, that information would relate to the child, who would be the point of focus.

Dr Murray: Therefore, one would not need consent to do that under the bill.

Graham Donaldson: That is my understanding.

Dr Murray: When the existing legislation was drafted and the pilots undertaken, were alternatives proposed to the course of action that we are discussing to enable access to information?

Graham Donaldson: Part of the reason for the pilot was to explore the tolerances in the system and see whether we could conduct inspections in a way that did not require direct access to medical practitioners in the form provided for in the bill. Without the right to such access and the ability of medical practitioners to discuss directly with the inspection team the way that they relate to other services, our ability to inspect child protection services with confidence would be severely restricted.

10:30

Dr Murray: How would you summarise the consequences for child protection of our not passing the bill?

Graham Donaldson: In the context of the reports that we are publishing and the advice that we are giving, the level of confidence that we would be able to provide in any area would be significantly reduced, because, as we know from many cases, the interface between medical and other services is critical in child protection. If we cannot explore that interface, the inspection process cannot pursue what it has to pursue in the necessary depth. Therefore, the level of confidence that we could provide would be severely restricted. As I said, in that context there is the danger that inspection could give false assurance; we might appear to have inspected child protection in a given area, but we might have fallen short, because we had not been able to pursue the inspection sufficiently. Giving false assurances could do more harm than good.

Dr Murray: We could damage the whole process by not passing the bill.

Mr Kenneth Macintosh (Eastwood) (Lab): You have touched on some of this already, but I would like you to describe the process of an inspection. How many inspectors from how many agencies are involved in a joint inspection?

Neil McKechnie: The number of inspectors is, to a certain extent, dependent on the size of the

local authority area being inspected. Generally, there would be five or six inspectors. Some would be associate assessors—people working in delivering services who we have trained specifically to join the inspection team and who provide up-to-date knowledge of the services. I could outline the inspection process, if that would be helpful.

Mr Macintosh: How many of the team would be HMIE inspectors and how many would be staff from NHS Quality Improvement Scotland, HM prisons inspectorate for Scotland and HM inspectorate of constabulary for Scotland?

Neil McKechnie: We always have representatives of the inspectorates that make up the services for children unit—inspectors from HMIC, NHS QIS, the social work inspection agency and the care commission. We also have an HMIE inspector—sometimes more than one, depending on the size of the local authority area. We bring in additional inspectors from those agencies where necessary and as appropriate. We also have associate assessors who work in the field.

Mr Macintosh: I interrupted you when you offered to describe the process, which would be helpful.

Neil McKechnie: It is a long process. A notification letter and a copy of a pre-inspection return are sent out 12 weeks before the inspection commences. The pre-inspection return asks for a lot of detailed information about how child protection services are delivered in a particular community, and it is sent to the chief executives of the council and the health board, the chief constable and the authority reporter. It is returned within four weeks with information on the background that we have asked for, such as the details of the key services and personnel in the area and organisation charts. It contains anonymised information about all children who have been placed on the child protection register in the past 12 months; all children whose names have been removed from the child protection register; children who have been referred to the social work, police or the children's reporter; children who have caused concern for health visitors; and children in need who have been receiving long-term services from a range of agencies. From that anonymised information, a case sample is selected, according to the criteria that I mentioned relating to the category of cases and their geographic area.

Phase 1 of the field work lasts for one week, during which inspectors examine case files and interview key people. The evidence from the case files is collated from all the agencies for each child identified in that case sample. That evidence is completely anonymised, so no names—including

those of particular health professionals—are mentioned. The evidence is gathered against the quality indicators. We then identify the professionals to whom we want to speak in the next phase of the inspection, and the areas of work that we want to look at more closely. We go from a general look, to a more detailed audit trail, based on our analysis of the case sample.

Phase 2 is about reading further case files as necessary; interviewing key managers; talking to professionals; interviewing children, young people and their families; observing meetings; and visiting voluntary organisations and projects. We give verbal feedback on the outcome of the inspection one week after the final fieldwork phase is completed, and the draft report is shared with senior officers of the authority—the authority reporter, the chief constable and the chief executive of the NHS board, for example—fairly quickly. The final report is published 12 weeks after the inspection has been completed.

Mr Macintosh: That is helpful. Am I right in thinking that you inspect the agencies, as well as how they relate to each other? For example, you inspect the social work department, as well as how the educational services department supports children. In other words, you inspect how well public authorities or departments perform their roles, as well as how they interrelate.

Neil McKechnie: We are answering the big question of how well children are protected and their needs met. Through case sampling we focus on outcomes for children. As part of the process we talk to senior officials in education, social work, health, the police and voluntary organisations and the authority reporter about their contribution to protecting children and meeting their needs. The report is written generally about how well children are protected, but it has specific references to individual services. Some of the recommendations will be more service specific than others.

Mr Macintosh: I have a question for Jan Warner. Will the bill give your inspectors more powers than they have now?

Jan Warner: Only in the context of joint inspection with those organisations listed in the bill—

Mr Macintosh: Because you will be inspecting other areas. I imagine that your powers for inspecting the health service mean that you do not need consent to access medical records.

Jan Warner: We cannot currently access medical records.

Mr Macintosh: You cannot?

Jan Warner: Not without consent.

Mr Macintosh: Will the bill change the relationship between your inspectorate, and health professionals and the health service generally? HMIE has a particular relationship with education services. It is highly thought of and is viewed as stringent and robust. There might be an element of fear and anxiety on the part of teachers, but that is not necessarily a bad thing. However, NHS QIS does not have the same approach. Are you concerned that your relationship with the health service will change? Will you be seen more as a policeman than as a body advising on improvement?

Jan Warner: That is an interesting question. The media currently refer to us as the NHS watchdog, which maybe says it all. In the context of our inspections or reviews of clinical services, the bill would give us no greater powers than we have at the moment. We will need to get across to the health service the message that the purpose of our inspections remains what it was, and that they are different from joint inspections of child protection services and integrated children's services. We will not change our inspection method and we will not require information different from that for which we currently ask.

Mr Macintosh: Compared with your other operations, what effect will joint inspections have on, for example, the number of inspectors that you have throughout the country?

Jan Warner: We do not employ any inspectors. We use peer review and we get unpaid input from people working in the NHS and members of the public. HMIE appoints associate inspectors from within the NHS to form part of a joint team to carry out inspections. That does not impact on our workload at all, as things stand. We will, however, support the health service to take part in joint inspections. We will help prepare people to form part of a joint inspection team, ensuring that, when they return to the health service, they use their skills wisely to improve services. We are in the process at the beginning and at the end, but the actual running of the team rests with HMIE.

Mr Macintosh: That brings me neatly to my next question. I believe that, under the current social work services inspection arrangements, only medically qualified staff can inspect medical records. You have referred both to members of the public and medical professionals. Under the joint inspection system, would there always be somebody with medical qualifications, or is that not important or essential for the inspection?

Jan Warner: Graham Donaldson can answer the part about who can be on the team. There has been a long-held tradition in the health service that two clinicians can—and do—exchange records and details on specific cases if that is in the interests of the person's care and if it will improve

the medical care with which they are provided. The bill's definition of "medically qualified inspector" is a difficult point. We often have health care professionals on our teams, but we do not always have medically qualified people. That is a grey area, and it has not been well tested.

Graham Donaldson: The intention—and the practice—is that there will always be a member of the multidisciplinary inspection team who has a medical background. The team mirrors what we expect to happen on the ground. The ability of the team to exchange information across the professions reflects what we expect to happen on the ground.

Mr Macintosh: I have two further questions, but other members could perhaps come in first, and I will come back to the witnesses later if my questions are not answered.

Mr Adam Ingram (South of Scotland) (SNP): The bill contains powers to enter premises and to seek information. I understand that HMIE has such powers already. Has it used them? Do you envisage that HMIE will use them once the bill is enacted, or are they more of a threat? In other words, do you anticipate not actually using those powers? If you do envisage using them, how would they operate and would HMIE take the lead, given its experience in this area?

Graham Donaldson: Those powers are very much in reserve. In my experience, we have never had to use them in the context of the inspection process. All my dealings with those who have been involved in the pilot inspections and who have had responsibility more generally suggest that people participate in inspections willingly and that we will not have a problem in that regard.

HMIE has been designated as the inspectorate that will take the lead in the context of inspections. We organise the inspection programme. The inspection team, as Jan Warner mentioned, is in our employ. To pick up the earlier point about medical qualifications, one member of the inspection team is a paediatrician. They are appointed to the team on the advice of NHS QIS, and we talk to NHS QIS about the nature of the medical people who we appoint to the team. However, we have the lead responsibility for organising the inspection programme, for ensuring that it is carried out appropriately and for publishing the reports.

Mr Ingram: Do the premises that are covered by the bill include private residences, such as foster carers' homes or those of childminders? Would your power apply to entry into such premises?

Graham Donaldson: I am not certain of the answer to that.

10:45

Neil McKechnie: I am afraid that I am not certain either. It is highly unlikely that we would want to speak in great detail to foster carers or childminders. We might have such people in a focus group and we would ask them what they would do if, for example, there were concerns for a child. We would ask them what processes they follow, how they work and so on. We are more likely to talk to people through a focus group than to enter their premises and talk to them in their own homes.

Mr Ingram: Surely the main thrust of the bill is to enable the examination of individual cases. One could envisage individual cases in which childminders or foster carers were involved, so should we not clarify that?

Neil McKechnie: It may be that we would want to talk to them in their own homes and therefore the powers could enable us to do that.

Mr Ingram: Perhaps you can get back to the committee to clarify that point.

Graham Donaldson: We will clarify that.

I stress that the intention of the inspection is to examine the process. The situation that you envisage would tend to relate to the investigation of a child protection case rather than consideration of the process of how child protection operates in a particular area.

Mr Ingram: The outcome of an inspection is a report to ministers. Is it envisaged that part of your recommendations may relate to the provision of additional services? If that is the case, why is that not written into the bill?

Graham Donaldson: Can you give me an example of what you mean by additional services?

Mr Ingram: I am thinking of additional services that children might require for protection in a particular area. HMIE might make such a recommendation as a consequence of its inspection, but there is no implication in the bill that such recommendations would have to be resourced and implemented to ensure the provision of the additional services.

Graham Donaldson: When HMIE recommends, in the context of a school inspection, that an additional service is required, we do not expect to need legislative backing. The expectation is that, if the recommendation flows from the context within which we conducted the inspection, the responsible services—the local authority, health board or whatever—will take on board the recommendation using their existing powers. We would not require additional legislative powers to enforce the recommendation.

Mr Ingram: But such recommendations are not uncommon in the reports that you make.

Graham Donaldson: In the main, inspection reports tend to be about practice. The recommendations tend to focus on how things are done, rather than suggest that a totally new service is required in order to meet the evaluations found in the inspection. If we concluded that something significantly different was required, nothing would prevent our making that recommendation as part of the inspection process. I do not think that legislation would be required in order for us to make such a recommendation.

Mr Ingram: We can perhaps pursue the matter with the minister.

I also want to ask you about the use of subordinate legislation—I do not know whether you have received a report from the Subordinate Legislation Committee this week. That committee had concerns about the extensive use of regulations, and in particular the fact that offences will be created by subordinate legislation, rather than by the bill. Do you have a view on that?

Graham Donaldson: That is a matter for you to take up with the minister, rather than with me.

Ms Rosemary Byrne (South of Scotland) (SSP): I apologise for being late; I was at the mercies of public transport. I will continue to ask about recommendations.

Which parts of local authorities will you look at? For example, given the number of children and young people who live with drug-misusing parents, will you look at the practices of local authorities' homelessness teams? Some children have chaotic lives because of their parents' drug misuse. In many cases families move from home to home and they may well be on the homeless list. From personal experience and casework, I know that such children often move schools frequently because there are so few decent social houses available. Often, the parents are not given houses in the area where the grandparents live, which means that the grandparents cannot give support. The children may not be on the at-risk register and may not have been referred to the children's panel, but they may well be provided with family support through better neighbourhood services or voluntary sector agencies such as Barnardo's.

Will you examine and make recommendations on the work of homelessness teams in local authorities? Also, will you consider children who are not on the at-risk register and have not been referred to the children's panel, but are somewhere in the system?

Graham Donaldson: I will ask Neil McKechnie to pick up on the specifics, but I emphasise that

the inspections will not be in-depth, separate inspections of all the various services that provide support to young people and their families. Separate inspection processes are in place to do that. We are concerned with the interface between services and how they work together, as a system, in the interests of young people. When we identify specific concerns during an inspection, we will raise them as a matter of course with the relevant inspectorate, which might want to conduct a dedicated inspection to examine the matter in greater depth. However, we do not have the resources to carry out such in-depth work as part of child protection inspections. It would be a huge job to inspect in depth all the components of all the services.

We will examine the working of the system and the ways in which children are treated and identified. As part of that work, we will consider young people who are not on the at-risk register, but who are vulnerable. How young people are identified as being in need and how they find their way on to the at-risk register is an important part of the process.

Neil McKechnie: We follow audit trails. If the cases that we examine indicate the issues that Rosemary Byrne described, we will want to talk to housing officers, homelessness units and others who work in the area. We hope that we will be able to exchange information between inspectorates so that, for example, if Communities Scotland undertakes an inspection of housing in a particular area we will be able to use that intelligence as part of our scoping and audit trailing.

We will always talk to the major voluntary organisations in the area because, as Rosemary Byrne says, they often work with children who are on the cusp of formal referral to the reporter or the social work department.

Ms Byrne: So the position of children whose families are on the homeless list is in the inspectorate's thinking. You may not be involved in taking that on board, but another agency may well be. Is that what you are saying? I am trying to explore possible ways to pinpoint the dangers of putting children into inappropriate social housing, of their frequently changing schools and of the other things that I outlined. Who will take responsibility for addressing those dangers? Doing so is an important part of protecting children.

Graham Donaldson: One of the key purposes of the new inspection process is to identify the vulnerable points in the system. That will address the points that you make. The inspections will try to consider the totality of the services that surround young people and their families and identify the points at which things tend to go wrong. Where do children fall between the cracks?

Where are they at their most vulnerable? The child protection inspections are designed to find out where that happens. Once we have identified where things go wrong, we will address how we can put things right. That is partly a responsibility of the service, but we will work with the relevant inspectorate, which might be Communities Scotland or the Social Work Inspection Agency, for example, if we think that there is an issue in a particular area that needs to be pursued in greater depth.

Ms Byrne: You could progress an issue by recommending that someone else take a look at it.

Graham Donaldson: Yes.

The Convener: Before Ken Macintosh comes back in, I want to find out how you identify when people might have fallen through the net. With the joint inspection, you take a sample of people who, to some extent, are already in the net, but how do you ensure that you do not miss people who have fallen through the net—people who the various agencies have failed to place on the child protection register?

Neil McKechnie: When we talk to senior officials in the services concerned, we ask them that very question. Our quality indicators include a section that considers specifically the children you have just identified. By asking questions of professionals and, in particular, examining some of the voluntary agencies that work with those vulnerable children, we get answers that we evaluate and feed into the report.

Graham Donaldson: The process of identification is one of the key focuses of the inspection. We want to examine the process through which the professionals on the ground have gone to identify which children to bring into the child protection system. That process is one of the key elements that we are looking at in the inspection.

Mr Macintosh: During the committee's inquiry into early years education, we visited the Jeely Piece Club in Castlemilk, which is an excellent example of a voluntary organisation that delivers services for children, that is subject to multiple assessments and inspections and has shared accountability. We are worried about the position of such organisations, which are accountable to, among others, the local authority, which is not included in your joint inspection team. How do you think that the new joint inspection regime will fit in with the lines of accountability that such service providers must follow? Will there be common standards that can be shared by all bodies so that the pressure on individual service providers is reduced?

Graham Donaldson: We are following two main tracks. This morning's discussion has

concentrated on child protection but, as well as tackling that area, we are streamlining the process by which children's services inspections more generally are carried out. That relates to the point that you made. The various inspectorates that are involved in the group that I chair have developed a common framework of questions for inspections. We have identified six key questions that inspections should answer and a set of indicators of quality to go with each question. All the inspectorates concerned have agreed either that they will use those questions directly or that the way in which they go about their inspection activity will allow them to form an holistic view of how children's services inspections generally—rather than those that relate only to child protection—are working.

We are engaged in streamlining the inspection process to ensure that one body does not get multiple visits from the same inspection body for slightly different reasons. One of the purposes of the bill is to allow inspectorates to share the information that they have so that we can cut down the extent to which inspection impacts on individual bodies. That can be a particular issue for small voluntary organisations. Such streamlining is the second major work stream and the committee will no doubt want to pursue that with me in due course, as we make progress. A consultation document is out just now about the streamlining of the inspection process. We will conduct pilot work on that in 2007 and we envisage that we will start the integrated inspection programme of children's services in 2008.

Mr Macintosh: That is very helpful. As you said, the bill focuses on child protection, so the financial accountability of organisations, for example, is a slightly different subject that would normally be covered by an HMIE inspection. Does the current bill have any implications for that kind of accountability?

11:00

Graham Donaldson: The bill seeks to enable joint working and give us powers in that context, so it has no specific implications for the work of individual inspectorates and the kind of exercise that you are talking about. However, information that we glean from the child protection inspections could be made known to individual inspectorates so that, in the course of their work, there might be areas that we could ask them to pursue. The bill focuses on the joint working of inspectors by giving us powers to work together and to pursue records in that context.

Mr Macintosh: I will give you an example. I am not so much talking about the powers given by the bill, as how they are put into practice. Once the

joint inspection regime has been put in place, would that mean that HMIE, for example, would reduce the frequency with which it visits an institution or an establishment in its individual capacity as inspector of education?

Graham Donaldson: No. I do not think that that would necessarily be an outcome of the bill. In our joint inspections under the bill we will look at the quality of education as delivered in a particular school or local authority, focusing particularly on education as a service. However, during school inspections, we will ask ourselves and the school whether it could be doing more for child protection. Is the school playing its full part as the universal service through its work in helping to ensure that children are safe and protected? The school inspection process will have a stronger emphasis on that than has been the case in the past.

Jan Warner: To add to that, we visit NHS boards annually to look at clinical governance, patient safety and risk management. Until now we have included child protection as a specific element of those visits. In future, we hope that we will be able to draw on the information collected through the joint inspections, rather than duplicate the exercise.

Dr Murray: The ministers made a commitment to the inspection of child protection services specifically. However, the legislation would enable the inspection of more general children's services as well. I believe that the first tranche of inspections would be of all child protection services in all the local authority areas as a matter of urgency.

When we come to the more general inspection of children's services, is there any likelihood that medical records would have to be shared without consent?

Graham Donaldson: There is a difficulty in drawing the line between where child protection ends and more general children's services start. Once the child protection services are in place, child protection will be one of the audit trails and one of the things that is looked at routinely as part of our overall children's services inspections. In that sense, the power given in the bill would continue to be relevant for those inspections.

However, in quite a lot of the work that we do in those inspections, consent is a much more attractive option for us to use as part of the inspection process, and some of the powerful inhibitions in relation to child protection are less strong in relation to children's services. As I say, there is a spectrum and it is quite hard to define in advance where the line should be drawn.

Dr Murray: If I understand the situation correctly, reference was made last week to inspections south of the border, but those are

inspections of children's services rather than child protection services, are they not? The content issue is therefore not so important. That might be one of the differences between the two approaches.

Graham Donaldson: Yes.

Fiona Hyslop: I have a question for NHS QIS about the general context of the bill. Obviously the bill focuses on child protection, but patient confidentiality and protecting people could extend into other areas. One area of concern might be the abuse of elderly people, for example. Are NHS boards concerned that the bill might open up an avenue that might extend to cover other patient groups, as far as access to their records is concerned?

Child protection is a sensitive and immediate issue and there was clearly a strong recommendation for joint protection for children in "It's everyone's job to make sure I'm alright". Is there a willingness to allow more sharing of information between different agencies at inspectorate level? Is there a fear that information might be required to be shared elsewhere or are people quite relaxed about this being the direction that we have to take in future?

Jan Warner: We have already started work on joint inspections for people with learning disabilities, services for older people, and people with mental health problems. They have traditionally been described as vulnerable groups and, in the past, there has been good sharing of information across agencies working with those groups.

There is a concern about how we share information and what the consequences are, but several people feel that by going down the route that we are taking in this bill, we have a good opportunity to learn how to implement that kind of behaviour, how to do it well, what works and what does not work. It makes good sense to extend that learning to other services, not least to reduce the burden of inspection. For example, in learning disabilities, a local authority area can face up to 12 different inspections during the course of a year, all of which require different information and all of which come up with slightly different recommendations. That makes it very difficult to deliver services.

There is definitely a real enthusiasm for working jointly and for collecting key information once and sharing it with all the agencies that need it. However, there is also a feeling that we must be careful about how we use information and that we should keep testing that we are using it for the intended purpose. I do not think that there is any fear, as you described it. The bill has been cautiously welcomed.

Graham Donaldson: Peter Peacock and Andy Kerr have been very clear that the bill is about children's services and they are anxious to establish that it is only about children's services.

The Convener: Do members have any more questions?

Mr Macintosh: I was going to ask if the panel is worried that they are going to be second-guessing the decisions of medical professionals. That is one of the main anxieties and I wanted the panel to expand on it, but I think that the panel members have already made it clear that they are not going to have to do that and that there will be a process.

The Convener: Do you have any views on the decision to define children's services as those which are linked to the community planning process in the bill? Could you expand on why that decision was made?

Graham Donaldson: From our perspective—Neil McKechnie might want to comment on this more generally—the community planning process encompasses all that we can envisage that we might want to look at in the context of children's services. As I said to the committee last week, one of the key issues is that the inspection process cannot get ahead of the policy process; it cannot operate outwith the context within which services are being delivered and organised. I am therefore very clear that community planning provides a good context within which we can do the job that we have to do for child protection.

Neil McKechnie: The Executive has recently issued guidance for planning for children's services and community planning partnerships have produced jointly integrated children's services plans. The inspection models that will be developed for after 2008 will reflect how children's services are planned and delivered.

The Convener: Thank you. That concludes the questions, so I thank Graham Donaldson, Neil McKechnie and Jan Warner for coming along this morning and giving the committee such helpful and full answers to our questions.

11:08

Meeting suspended.

11:11

On resuming—

The Convener: I welcome the members of our second panel, Gill Ottley and Alistair Gaw, who are depute chief social work inspectors from the Social Work Inspection Agency. Thank you for your written evidence, which members have received. As we are working to a short timescale, you might want to add a few opening remarks.

Gill Ottley (Social Work Inspection Agency):

In respect of the written evidence that we submitted, it is clear that we are strongly supportive of parts 1 and 2 of the bill. We have been involved in developing the joint inspection programme of children's services alongside HMIE from the beginning and we welcome the opportunity to be so involved.

The bill will enable our current work plans, which were developed under existing policy, to progress on the basis of explicit powers that are set out in parts 1 and 2. We hope that the measures will allow us to focus on the outcomes of services for people, which underpin our inspection methodology.

Part 2, which is specifically about SWIA's powers, does not in any way develop, enhance or expand our existing powers. At the moment, we have powers under section 6 of the Social Work (Scotland) Act 1968, which are quite specific in respect of residential care services. We also have a general power of inquiry into the functions of local authorities. Part 2 replicates the specific powers for social work services generally and gives us a much firmer backing in respect of our current activities, undertaking performance improvement inspections across local authorities in Scotland.

We conduct those performance improvement inspections in conjunction with other inspectorates. For example, people from the care commission are members of our performance inspection teams. We work closely with other inspectorates to ensure that there is minimal overlap or duplication of any of our activities.

11:15

The Convener: It might be helpful if we ask our questions on part 1, on joint inspections, before we ask our questions on part 2, on specific issues relating to the social work inspectors.

Mr Macintosh: Does part 1 give inspectors substantial new powers for joint inspections?

Gill Ottley: Only when our inspectors are part of a joint inspection programme with HMIE.

Mr Macintosh: Those powers include access to medical records. What else would you have access to?

Gill Ottley: There would be access only to medical records, which could then be shared within the team in that context.

Fiona Hyslop: What will joint inspections mean for your regular inspections? I understand the desire to avoid duplication, but if joint inspections are regarded as the key inspection in child protection, could that dilute the work of the Social

Work Inspection Agency when it considers social work departments' overall policies? Can you assure us that the rigour of SWIA's inspections will not be diminished by overreliance on joint inspections?

Gill Ottley: It is early days; we do not yet know how the two programmes of inspection will work. However, I very much hope that they will be complementary and will ensure rigour. Children's services inspections will start by focusing on child protection and that is where the focus will remain, certainly in the short term. The social work services pilot inspections—we are midway through our third pilot—will consider children's services and child protection issues as part of a general overview and inspection of social work services.

We will have to consider the outcomes from each of the inspections—that of HMIE and that of SWIA. If HMIE identifies issues that have to be further explored, it may be for SWIA to do that work in any subsequent inspection. Similarly, if SWIA identifies strengths, weakness or gaps in children's services or in child protection issues, it may be for HMIE to do further work. SWIA and HMIE will have many opportunities to develop complementarity and rigorous and robust follow-throughs.

Fiona Hyslop: We are trying to develop legislation that will stand the test of time. However, the committee has expressed concerns at the length of time that joint inspections will take—the work will not be completed until 2008. You spoke of a complementary process—will your pilots cover some of the geographical areas that are at the end of the joint inspection list? I hate to think that a local authority might not be touched until 2008—either by your agency looking at general children's issues, or by joint inspections. Can you reassure the public that there will be co-ordination of inspection activity?

Alistair Gaw (Social Work Inspection Agency): The short answer is yes. Child protection issues and the quality of children's social work services are part of the scope of general performance inspections of social work services. We will learn lessons from the pilots and we expect that the reports will be published in January, so the information will be in the public domain early next year.

Fiona Hyslop: Therefore, we will not have local authorities saying, "We are not going to be inspected until 2008, so we are not going to learn any lessons." You expect the improvements that will be learned from the inspections to be shared as of now. You feel that geographic cover should be achieved sooner rather than later if there is co-operation between the joint inspections and your organisation.

Alistair Gaw: Yes. We have just determined the 10 local authorities that we will inspect next calendar year. By the end of December next year, we will have completed performance inspections of 13 local authorities across Scotland, including an evaluation of the quality of their child protection social work services.

Fiona Hyslop: Perhaps the committee could liaise with the joint inspectorate to work out its timetable. It might be interesting to put in our report how many local authorities will have had some form of child protection inspection by the end of next year. That would be helpful.

The Convener: Graham Donaldson is listening from the public gallery; perhaps he will provide an answer.

Lord James Douglas-Hamilton: What is the extent of the Social Work Inspection Agency's involvement with inspections of service providers in the independent and voluntary sectors? How might that change under the bill?

Gill Ottley: I am not sure that that will necessarily be affected by part 1. It is certainly something on which I could comment in respect of part 2. As part of our responsibilities in inspecting social work services, we will also be looking at where those services are commissioned or purchased by a local authority. Therefore, we will be looking at voluntary and private sector providers who provide services to a local authority.

Lord James Douglas-Hamilton: Do you feel that you have enough inspectors in Scotland to do the job extremely well?

Alistair Gaw: The short answer is no. We have 15 inspectors, but we hope to recruit another five in the next couple of months. The Social Work Inspection Agency's total budget is £3 million and we have just over 35 staff in total, including 15 social work inspectors. We need a degree of growth, which has been agreed and set out in the financial memorandum. However, we depend very much on effective partnership, not only with other regulators but with the sector. We also depend on our use of sessional and associate inspectors to allow us to get through the volume of work that we have.

The Convener: Are there any resource implications in the bill that have not already been taken into account in your forward planning?

Gill Ottley: No.

The Convener: There are no more questions on part 1, so we can move on to part 2.

Dr Murray: In your written submission, you say that the bill

"does not put additional duties on the agency nor does it introduce additional inspection activity."

I was a little surprised by that, given that part 2 extends your powers on the inspection of social work services generally. Reference has just been made to the financial memorandum and to the £4 million that seems to have been allocated to enable the recruitment of more inspectors.

Are you saying that, at present, you do not have sufficient inspectors to do what you do?

Gill Otteley: Part 2 does not extend our powers: it underpins our current activity. The new programme of performance inspection that ministers have tasked the new agency with undertaking replicates the powers in the Social Work (Scotland) Act 1968 to ensure that our current activity is adequately underpinned.

Dr Murray: You mentioned some of the wider inspections that you do: thematic services, reviews of services for older people and for people with learning disabilities and so on. The care commission clearly has an important role in the inspection of child care. How does your work relate to the inspection functions of the care commission?

Gill Otteley: The care commission is a very different body to SWIA. As a regulator of care services, the care commission regulates and registers such services. The care commission inspects individual care services, such as care homes and other care settings, whereas we focus on inspectorate activity. Our inspections are of the social work services that a local authority provides. We would not ordinarily expect to focus an inspection on an individual care establishment or care home and to produce a report as the care commission does. The reports that we produce take account of the much broader provision of a local authority's social work services.

We also undertake joint and/or thematic inspections: the Borders inspection was one such example. In the recent follow-up to that inspection, we worked closely with a number of relevant bodies such as the Mental Welfare Commission and the care commission. Our team included inspectors from the other relevant agencies. We worked closely together, for example by drawing on information that the care commission had gathered about the operation of care services in that region.

Dr Murray: Your inspections, therefore, are more like HMIE's inspections of the local authority, rather than its inspections of individual schools; the latter are more like the inspections that are done by the care commission, for example.

Gill Otteley: Yes.

Dr Murray: I assume that you do not have much in the way of interplay with the private and voluntary sectors because the care commission covers that work in its inspections.

Gill Otteley: Yes. Services in those sectors are inspected individually by the care commission.

Fiona Hyslop: Eighteen months ago, in the context of the child protection review, I asked the Minister for Education and Young People whether he would introduce legislation to help deal with the problems that can arise as a result of general inspections. The minister said that he would introduce legislation if the Executive felt that it was required.

I am interested in the circumstances that led to the introduction of the bill. We understand the urgency of the child protection measures in part 1, but why has part 2 been included? It is not bizarre that SWIA cannot do general reviews? Is that because the agency has simply evolved organically or because of the urgency of the situation?

If the committee decided to proceed without part 2, would that cause you any particular difficulty? If it were not for the urgent need to introduce the measures in part 1, when and in what circumstances would you have expected the provisions in part 2 to come forward?

Gill Otteley: The Social Work Inspection Agency became an independent agency in April this year. Ministers tasked us with a new programme of performance improvement inspections for social work services and we have embarked on that programme.

As I said, the Social Work Services Inspectorate had very broad powers under section 6 of the 1968 act in respect of its inquiries into the functions of local authorities. It also had some specific but wide-ranging powers in respect of certain social work services. The bill replicates that specific but wide-ranging provision to social work services generally. The bill is very much required in order to underpin our current activity.

Alistair Gaw: From our perspective, the need is relatively urgent—indeed, it has been recognised for some years. The Executive, in its response to consultation on the Regulation of Care (Scotland) Act 2001, conceded that the powers for social work inspection needed to be clarified; it also agreed that express powers were required. The bill is the first opportunity for those powers to be provided.

It is clear that we need a statutory basis for inspections, not only for our performance and thematic inspections but for the investigations that we undertake. We cannot continue to rely on consent for some of that very challenging work. That is why it is a key issue for us.

11:30

Fiona Hyslop: So, you can carry out your activities now with consent, but you envisage that, if we did not have the bill, there might be a circumstance in the future in which you would have difficulties in performing your inspections. Can you describe a scenario that could arise if you did not have this legal underpinning?

Gill Ottley: If ministers wanted us to undertake a major child care inspection or to investigate some other situation but there was no consent from the parties involved, it could be impossible for us to do that work.

Fiona Hyslop: If there was a systematic problem that you wanted to investigate from top to bottom, but you did not have the co-operation of the local authority in question, you could not do that work. However, under the bill, you could.

Gill Ottley: Yes. For instance, we did the recent Western Isles investigation because we were asked by the Western Isles child protection committee to do so. We did that with the full consent of all the agencies involved; we would not have been able to undertake that investigation without such consent and permissions.

Fiona Hyslop: That is very helpful. Thank you.

The Convener: That clarifies the powers that the bill gives. Do members have any other questions on part 2?

Mr Macintosh: I have a similar question. Are you not referring just to the powers in part 1? Surely the powers in part 2 already exist in various different statutes and are not changed by the bill. The only difference is the powers in part 1. In a case such as that which you just described, surely only the powers in part 1 would apply.

Gill Ottley: Part 1 gives our inspectors some additional powers when they are part of the joint inspection team to enable them to access medical records. However, no additional powers are conferred on our inspectors by part 2. For example, we could not routinely access medical records. The provision in part 2 in respect of our access to medical records replicates the provision that is contained in the 1968 act.

Mr Macintosh: The bill mimics the powers that have been granted to you by existing legislation, but it does not add any new powers. If the bill was not passed, you would still be able to do the things that you do now.

Alistair Gaw: No. The bill widens the scope—the footprint, if you like—and the extent of the powers.

Mr Macintosh: Because of the definition of social work services.

Alistair Gaw: Yes.

Mr Macintosh: Okay. The way in which the bill has been drafted was raised as an issue in the Subordinate Legislation Committee. A lot of the detail is left to subordinate legislation. Is there a specific reason for that, given the fact that existing statute could pretty well be copied word for word into the bill? Is that a question for the ministers?

Alistair Gaw: It probably is.

Mr Macintosh: You have a clear and important relationship with the care commission. How do you relate to the care commission? In particular, how do you involve the care commission in trying to prevent multiple inspections and multiple levels of accountability? How do you liaise with the care commission to co-ordinate your activities? Is there a protocol or device for that, and is there any kind of legislative impact when there is a difficulty or disagreement between the two bodies?

Alistair Gaw: We have worked with the care commission for some months on the development of a memorandum of understanding. That covers areas in which joint working can be complementary and information sharing is useful. The goal is to add value to the work that both organisations do and to minimise any impact of bureaucracy on people who receive an inspection.

The memorandum of understanding covers such areas as complaints and the sharing of statistical data, and we get access to the register of services, which helps us to consider the profile of the services that are available in a local authority area. It can also cover equally important but more externally focused matters such as media handling. We are considering carrying out a number of appropriate joint investigations and certain joint thematic inspections of areas such as older people's services.

As Gill Ottley said, we think that both bodies have very different responsibilities. As a result, we can work effectively together to ensure that, for example, we can use information that is supplied by the care commission for our performance inspection of social work services to help us to evaluate any strengths and weaknesses. We can also work with the commission in the same way on thematic inspections.

The memorandum of understanding has been in development for some months. The former chief inspector and I met the care commission board in March, just before the agency was established, and we are now finalising that document and getting it signed off.

Gill Ottley: Having a disagreement would certainly be a test of our good working relationship with the care commission. However, to date, we have not tested the relationship to that extent.

Mr Macintosh: Do you think that such joint working has any legislative implications? Part 1 will allow you to work with the care commission on children's services. Is there any need for the same powers or a similar legislative agreement to work with the care commission across your broad range of duties?

Gill Ottley: Given our current working relationships, I do not see the need for such additional legislation. The matter can be addressed through good management and good practice and the evidence to date, certainly from inspectors on the front line—and, I hope, from care providers—shows that they are seeing us work with each other. I hope that that will prove sufficient.

Mr Macintosh: I am thinking specifically of sharing information and carrying out joint inspections. If, for example, you received consent from a certain body for certain information and you then wanted to work with the care commission, would you, under the current powers, be able to share the information with it?

Gill Ottley: We have certainly done so to date. Our inspections comprise inspection-specific teams, and the care commission has very similar powers to access and share information. For example, its power to access medical records is similar to our own. We have worked closely with the commission on joint inspections and have shared information without any difficulty.

The Convener: I want to pin down the purpose of part 2, because members still seem to be confused about it. As I understand it, the agency has the power to conduct inspections of certain specific social work services such as residential services for children. However, although it can also lawfully carry out inspections in other areas, it does not have the power to require local authorities or other agencies to participate and can carry out inspections only with their consent. Is that correct?

Gill Ottley: Yes.

The Convener: Is it also correct to say that, under the bill's provisions, you will be given the same power over that second category—the inspections that, at the moment, you can legally carry out but in a sense do not have the right to—that you have over inspections of other social work services? In other words, with regard to all social work services, you will have the power to require bodies to participate in inspections.

Gill Ottley: Yes.

The Convener: Is that a fair summary of the purpose of part 2?

Gill Ottley: Yes.

Fiona Hyslop: Adam Ingram made a point about offences. If any regulation or other secondary legislation that was issued under the bill were to create certain offences, that would be a serious move. Do you have any views on that?

Alistair Gaw: No.

The Convener: Perhaps we can take up that matter with the minister next week. I thank Gill Ottley and Alistair Gaw for clarifying the bill's provisions in so far as they relate to the Social Work Inspection Agency.

Under agenda item 2, committee members now have the opportunity to discuss the evidence that they have heard today. Do members have any points that they want to raise with the minister next week? Fiona Hyslop is looking pensive.

Mr Macintosh: I will not be here next week.

The Convener: Your apology is noted.

Fiona Hyslop: On the issue of creating offences in secondary legislation, it would be helpful—I appreciate that this is short notice—if we could find out whether comparable provisions exist in other legislation. Is it normal and acceptable to create offences by way of regulations? Perhaps the issue is mentioned in the Subordinate Legislation Committee's report. I would like to know whether that has happened in other legislation, including legislation on social work, and how such offences compare with the offences that are expected to be created in secondary legislation under the bill.

The Convener: It would be particularly useful to know whether the bill replicates existing regulatory powers on offences in relation to the social work inspectorate or other inspectorates.

Dr Murray: As next week's meeting will be a long session involving many witnesses, it would be helpful if we could concentrate on the specific advice that we have been given. Given that we will have so many witnesses, including a large panel of medical experts, at next week's meeting, we could quite easily get bogged down unless we home in on the specific information that we have received over the past couple of meetings.

The Convener: I am particularly keen to ensure that we raise with the minister any issues on which the committee has concerns as a result of the evidence that we have heard today.

Fiona Hyslop: I have concerns about Elaine Murray's point about access to adults' records in cases in which there is a concern about children. I would like to know what will happen in practice.

Dr Murray: We can ask the medical experts for their opinion. However, I think that the answer that we got was that, basically, the records could not be accessed without the adult's consent.

Fiona Hyslop: We will want to hear the medical experts' view on that.

Lord James Douglas-Hamilton: I want to make two points. First, we should ask the minister whether there are sufficient inspectors. That issue should be kept under review, as I suspect that there may be a case for having even more inspectors.

Secondly, after the bill has been enacted, it should be reviewed in the light of experience, in case things do not turn out exactly as anticipated. I hope that that will not happen.

The Convener: I do not mean to close off any angles that members wish to raise, but if members have any specific issues for which the minister might need background information, they should let the clerks and myself know about them as soon as possible so that we can feed those into the system. We are dealing with a very short timescale for the bill.

Fiona Hyslop: I want to ask about an issue of process that I am not sure has been discussed. Given that we have agreed to fast-track the bill, it would not be unreasonable to ask the Scottish Parliamentary Corporate Body—or whoever is responsible—whether the *Official Report* of today's meeting, which ordinarily would not be produced for some time, could be provided much more quickly than normal so that we can reflect on what has been said today. That is a reasonable request.

The Convener: The clerks have asked that priority be given to the publication of the *Official Report* of meetings in which we consider the bill. We hope that that request has already been set in train.

Fiona Hyslop: When are we likely to receive the *Official Report* of today's meeting?

The Convener: We will certainly have it before next week's meeting.

Fiona Hyslop: We asked the witnesses some questions on which they said that it would be inappropriate for them to comment, so we need to be able to raise those questions with the minister.

The Convener: We will certainly have the *Official Report* in time for next week's meeting. Obviously, the fact that we want the *Official Report* as soon as possible will be on the record, so the official report will be aware of that.

I re-emphasise the fact that next week's meeting will start earlier than usual. I hope that members who are able to attend can be here by quarter past 9 so that we can have a 15-minute chat about what questions we want to ask before the meeting starts formally at 9.30. The meeting is likely to go on until half past 1, as we will need time both to

question the minister and to chat about the issues that we want to mention in our draft report. We will consider the draft report the following week.

I have asked the clerks to circulate as much of the written evidence as possible on Friday so that members can read it over the weekend. Again, if issues arise from the written evidence that we need to raise with either the minister or the other panels of witnesses, members should let the clerks know on Monday or Tuesday. We need as much information as possible in advance of the meeting.

I thank members for their attendance. We will see you next week.

Meeting closed at 11:45.

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