

# **LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

Wednesday 10 June 2009

Session 3

£5.00

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## **LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

### **18<sup>th</sup> Meeting 2009, Session 3**

#### **CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

#### **DEPUTY CONVENER**

\*Alasdair Allan (Western Isles) (SNP)

#### **COMMITTEE MEMBERS**

\*Bob Doris (Glasgow) (SNP)  
\*Patricia Ferguson (Glasgow Maryhill) (Lab)  
\*David McLetchie (Edinburgh Pentlands) (Con)  
\*Mary Mulligan (Linlithgow) (Lab)  
\*Jim Tolson (Dunfermline West) (LD)  
\*John Wilson (Central Scotland) (SNP)

#### **COMMITTEE SUBSTITUTES**

Brian Adam (Aberdeen North) (SNP)  
Paul Martin (Glasgow Springburn) (Lab)  
Alison McInnes (North East Scotland) (LD)  
Margaret Mitchell (Central Scotland) (Con)

\*attended

#### **THE FOLLOWING GAVE EVIDENCE:**

Alexis Jay (Social Work Inspection Agency)  
Gloria McLoughlin (Scottish Care at Home)  
John McNairney (Scottish Government Directorate for the Built Environment)  
Jacquie Roberts (Scottish Commission for the Regulation of Care)  
Kevin Scullion (Independent Living Services)  
Stewart Stevenson (Minister for Transport, Infrastructure and Climate Change)

#### **CLERK TO THE COMMITTEE**

Susan Duffy

#### **SENIOR ASSISTANT CLERK**

David McLaren

#### **ASSISTANT CLERK**

Ian Cowan

#### **LOCATION**

Committee Room 6



## Scottish Parliament

### Local Government and Communities Committee

*Wednesday 10 June 2009*

[THE CONVENER *opened the meeting at 09:59*]

### Decision on Taking Business in Private

**The Convener (Duncan McNeil):** Good morning and welcome to the 18<sup>th</sup> meeting in 2009 of the Local Government and Communities Committee. I ask members and the public to turn off all mobile phones and BlackBerrys. For agenda item 1, can I have members' agreement to take in private item 8, which is consideration of oral evidence from the sessions on home care services for the elderly?

**Members** *indicated agreement.*

## Home Care Services for the Elderly

10:00

**The Convener:** Agenda item 2 is to take evidence from two panels of witnesses on home care services for the elderly. For the first panel, I welcome Gloria McLoughlin, chief executive of Scottish Care at Home, and Kevin Scullion, managing director of Independent Living Services. I offer the witnesses the opportunity to make opening remarks before we go to questions from the committee.

**Gloria McLoughlin (Scottish Care at Home):** I will go first to get it over with quickly.

It is a pleasure to be here on behalf of Scottish Care at Home. We are a fairly young organisation, and are just going into our fourth year. We started with just a few founder members, but we are now happy to represent more than 65 per cent of private, independent providers, and we have voluntary sector members as well. We are delighted to be able to work with the sector, which created our organisation in response to concerns about cost, quality, staffing, workforce capacity and sustainability for the future. We welcome the opportunity to feed into the committee's report, because we feel that the issue of commissioning services for older people must be addressed with regard to the services that we want in the future and the personalisation agenda.

**Kevin Scullion (Independent Living Services):** Independent Living Services was born about 11 years ago as a pilot project out of Clackmannanshire Council. Since then, we have grown to cover 19 or 20 local authorities across Scotland that have increasingly looked to outsource home care. We have grown in terms of tender opportunities and spot purchase. In addition, there has been consolidation in the sector, and we have acquired smaller organisations to try to ensure that we have the scale to invest in areas such as training, human resources and conditions of service.

**The Convener:** Thank you for those opening remarks. Alasdair Allan will ask the committee's first question.

**Alasdair Allan (Western Isles) (SNP):** Obviously, one issue that is of concern to your organisations and more generally is the effect of the Public Contracts (Scotland) Regulations 2006 on the tendering of contracts for home care services. Before we talk about anything more specific, do you have any views on the regulations? How have they have affected your work?

**Gloria McLaughlin:** On the procurement regulations, we have seen a growth in commissioning for care at home. My history with care at home spans over 20 years and, historically, much of the work was spot-purchase, call-on, call-off contracts. I was involved in my first tendering contract back in 1999. We have seen tendering increase across local authorities; it has not done so quickly, but the increase has certainly been faster in the past 24 months, which is in line with the introduction of the new regulations.

We are concerned about the fact that 32 individual local authorities are going off in somewhat different directions and taking different approaches. We have tendering contracts with frameworks that have upwards of 48 providers of home care, while other tendering contracts reduce the providers to three. The one thing of which we are sure is that we are not getting the process right: it seems a bit like a patchwork quilt across Scotland. We think that we now need to consider a national framework that gives guidance as we go forward. It would be useful to have guidance that assists the 32 local authorities to take a more consistent approach.

**Alasdair Allan:** You have talked about how the tendering process impacts on yourselves. Do you have any views on the direction in which the tendering process has developed in recent years and its implications for quality of service?

**Kevin Scullion:** There are a number of issues for me. People often talk about the ratio of quality and price, but because the process is quite sequential we sometimes saw tenders in previous years in which the quality element was a desktop exercise involving consideration of policies, procedures and various documents. For some earlier tenders, there was no physical, face-to-face dialogue with a potential provider: the quality was marked, and then the price was considered.

Often during the engagement between the potential provider and the commissioning agency, there was limited or no visibility of the volume of the contract, which directly relates to price and quality. In some ways, such an approach is right in the context of fairness, transparency and best value, but there can be difficulties if measurement is not done in a dynamic way.

**Alasdair Allan:** Is measurement adequate? One aspect of the written evidence that leaped out at me is that in some cases tenderers did not adequately measure or factor in the time that it would take carers to travel between houses. Have you had to deal with such issues?

**Kevin Scullion:** The reality of delivering dynamic, high-volume care—Independent Living Services deals with about 30,000 care episodes a week—is such that it is difficult to develop a unit of

measurement of time. We are all trying to move towards care that is more outcome based. It is difficult to factor everything in, given that people's needs can change from day to day. Sometimes, a relative or carer comes in to look after a person and, when the care worker turns up, the job that they were going to do has already been done. It is difficult to measure what we do.

We have always tried to include travel time in the discussion, but we probably have not fully understood the matter. We are investing in technology that will give us time-and-motion studies on how we deliver care and the cost of delivery in rural and urban areas. For example, global positioning systems in vehicles can tell us the true cost of delivering care.

**The Convener:** Is it inevitable that the lower-cost tender wins? In the tension between quality and cost, how often does quality win the contract?

**Gloria McLoughlin:** There is evidence that in certain situations bidders who score highly on quality do not necessarily have to drop their price because weighting is given to both factors—that has happened in a few tenders—but there is a feeling throughout Scotland that in most cases the low cost tends to be attached to the quality submission.

We have the Scottish Commission for the Regulation of Care and there is early regulation and inspection. There is almost a quality tunnel: people are striving for the same levels of quality. We now have a grading system, but, if 10 people tender and they all achieve grades 3 or 4, cost becomes the issue. That is the risk. We look at quality first and then we drive the price down, but we do not go back to the specification of the tender to check whether the unit cost can deliver the quality outcomes that we want. It is about training, supervision, monitoring, time and travel.

I agree with what Kevin Scullion said about travel time. During the past 15 years, Scottish Care at Home has not opened up the discussion on mileage and travel. Our service providers can be delivering care alongside providers from a local authority or the voluntary sector who have been able to articulate the need to build mileage and travel into the service. We need to consider evidence that can help us to ensure that travel is factored into the unit of delivery, whether that is time or activity, because it is an integral part of delivering a service. We can no longer rely on staff being prepared to use their own cars, fuel and time to deliver a service.

**Kevin Scullion:** Quality considerations can be completed in an exercise that takes place before a further stage in which price is the key driver—that is particularly true of reverse e-auctions, for example. Local authorities have certainly told me

that a winning tender was not the one that offered the lowest price, although I have not had the information that enables me to be sure about that. Sometimes when there is a framework agreement and a local authority selects a number of providers, a ruling is in place that creates almost a cascade from the first provider down. Each provider in the framework will have a different price, so there is great complexity around each case. Price is certainly a key driver.

**The Convener:** We have heard—and I think that we understand—that, overall, low cost does not necessarily mean low quality. However, is there a link between low pay and poor quality?

**Kevin Scullion:** We are in an emerging sector, in which there is a need to professionalise home care. A lot of work is needed on training staff, and a low price on a contract makes it much more difficult to find the sums involved in training staff, for example to Scottish vocational qualification level 2. When we invest in training, inevitably it provides that person with a passport to go to the local authority sector, where they will get better conditions. In some ways, we are the poor relation of the three options. Someone works in the private sector, the voluntary sector or local government—or they might work privately as an individual. We are desperately trying to invest in training and conditions. My organisation and other organisations in the sector are doing a number of things to give people guaranteed hour contracts and some sort of career path, but the relatively low rates of some contracts makes that challenging.

**Gloria McLoughlin:** I agree. We scoped the workforce last year, using funding that we got through the changing lives group—it was one of our first pieces of work. We looked at the workforce and its activities, and that gave us valuable information that has led to the development of a private sector workforce initiative, which is considering training issues, conditions of employment and capacity building for the future.

We found that around 40 per cent of the workforce were on zero-rated contracts. That is a direct effect of call-on, call-off contracts. People are frightened to risk developing a consistent and stable workforce because the work that is here today can be gone tomorrow. That does not help us to create sustainability and the capacity for the future—there are real issues in that.

In the companies surveyed, 7 per cent of the support workers and around 42 per cent of the managers had a formal qualification. We know from research that the culture of an organisation will improve with good management and leadership, and we welcome the call for managers of Scottish Care at Home services to be registered

with the Scottish Social Services Council. We would also call for more funding for support staff.

We are disadvantaged when it comes to training. Work done by the SSSC intimated that, while a local authority receives £3 for training and the voluntary sector receives £2, we are completely disadvantaged because we receive the equivalent of £1. We are starting from a low base. Companies such as Kevin Scullion's, which invest in training, bear the full cost of that. Modern apprenticeships, European funding and money that would have been available for training are no longer there. We are bearing the full cost of training, while struggling with the low costs awarded at tender.

**Jim Tolson (Dunfermline West) (LD):** I am sure that colleagues will share my concern about what I see as the poor relationship between local authorities in the care sector and organisations such as yours, which largely represent the voluntary sector.

I am grateful to Scottish Care at Home for providing written evidence in advance—it is most helpful—but I would like further clarification on a couple of points in the submission. First, you say:

“Many Councils ask for 15-minute visits.”

I am not sure whether it is many or just a few. What evidence do you have to substantiate that?

Further on, you say that many of the staff that you have trained and who work for your organisations are “poached by Councils”; they are not staff who have moved because they feel that there are better terms and conditions and salaries in the councils. To me, poached means an active effort to take something from someone else. Will you justify that to the committee?

**Gloria McLoughlin:** There have certainly been a number of contracts that have stated that there will be 15-minute visits. The committee heard evidence last week from the City of Edinburgh Council—that was in its contract. Some of our members refuse to participate in such reverse e-auctions because they do not want to get involved in 15-minute visits. If a 15-minute visit is a prompt, or if it is a check to ensure that someone is safe and well, there are probably situations in which it can be managed. However, it has to be managed along with travel time and mileage: it can become impossible to have staff buzzing about doing 15-minute call-ins. We would be concerned if 15-minute visits were seen as a mechanism to deliver any element of personal care to a service user.

There are limits to how 15-minute visits can be used, but we have certainly seen an increase in them. We have also seen an increase in local authorities asking for a 15-minute visit to be only 25 per cent of the cost of a single-hour visit. The

activity required to organise four 15-minute visits will be more than that required to organise a single one-hour visit, so there are issues around that. Although I do not have exact listings of which local authorities ask for 15-minute visits, it would not be difficult to get that information from providers. Thirty-minute and 15-minute visits have become more common.

I have totally forgotten the second part of your question.

10:15

**Jim Tolson:** It was about staff being “poached by Councils.”

**Gloria McLoughlin:** There are members of staff who will attend interviews and see posts advertised in the normal way. However, I receive e-mails from providers about this on a weekly basis. I received one yesterday from a provider who has been doing a joint run with the local authority—they are working with a local authority member of staff. The local authority has advised them that it is taking the work back in house and has asked the independent provider’s member of staff if they would like to join the council because they know the run. My remarks on poaching were directed at that kind of situation.

People are being approached face to face and asked to move from one organisation to another. That could provide consistency for the service users, but it also compounds the issues that we have with building capacity and investing in our workforce. It is difficult to hold on to staff, although we understand that people have a right to a career path and to progress.

That brings me back to the point that we have to lobby. We are not proud of the fact that many of the staff who work in the sector, who are valuable and committed to delivering a social care service, are on the minimum wage or just above it. The sector has to address that. It is certainly one of the issues that we want to take forward so that we can invest in staff, value what they do and take the service forward.

**Jim Tolson:** I am grateful for your answer. I appreciate that there has been an increase in 15-minute visits and that you do not have the full figures to hand, but could you give the committee an estimate of what percentage of tenders request 15-minute visits, to give us an idea of the scale of the problem?

**Gloria McLoughlin:** I am not a provider as such. I do not know whether Kevin Scullion can give you that information.

**Kevin Scullion:** We can certainly give you the detail. We have seen a rise in 15-minute visits over the past couple of years. A sizeable minority

of councils would accept, or expect us to do, 15-minute visits. The travel-time element and all the other issues that we mentioned are not really factored in.

**John Wilson (Central Scotland) (SNP):** I want to follow up Jim Tolson’s questions. It is important that we understand the situation. Mr Scullion, if I heard you correctly you said that you provided 30,000 care episodes a week. Will you define what you mean by a care episode?

**Kevin Scullion:** It is an actual visit to somebody’s house with a start and end time.

**John Wilson:** Is the episode the 15-minute visit? Is the episode shorter in some cases and longer in others? One thing that came out in the “Panorama” programme that sparked the inquiry is that, as Ms McLoughlin said, travel time is in many cases not factored into the visits, which means that the provider takes the travel time out of the visit and does not provide a 15-minute care episode. What is your response to that? What do local authorities expect you to deliver and what can you reasonably deliver within the framework that is set in the contracts?

**Kevin Scullion:** There is a different level of detail in each contract with each local authority. Sometimes the contract will state clearly that the assumption is that the provider has factored travel time into the tender. In other contracts, that will be less clear.

As well as working as a provider, I have worked in a local authority where I had responsibility for home care. We face a complex challenge. The technology that we aim to invest in might enable us to manage the complexity and the dynamics more readily, but we deal with real-life situations every hour of every day.

My organisation deals with about 30,000 care episodes a week. We have eight-hour shifts and complex care packages, but 15-minute visits at the other extreme. The care can vary for the individual service user, depending on their care plan. Managing logistics and efficiency is a challenge for us all, but I do not sense a deliberate attempt in the sector to use that as a way to cram in visits or avoid delivering care. Front-line staff have a high level of vocational commitment to their work. Everybody recognises the risks involved in getting it wrong. People are trying desperately to invest in the sector in a way that will allow them to address the complexity and sheer volume of care hours for workers across different geographies and the question of how to factor in the true cost.

**John Wilson:** The issue for the committee is how local authorities and other agencies award contracts. Scottish Care at Home’s written submission indicates that local authorities are not prepared to consider certain costing factors. For



example, the submission states that

"one Council now only recognises two public holidays per year".

Surely such an issue would be raised during the tendering process. If your organisations include in a tender workers' statutory entitlement to 28 days annual leave in addition to public holidays, do local authorities tend to say that they do not want that in the tender document and that they want you to tender only for work that is delivered, with your organisations covering the cost of workers' statutory leave entitlement?

**Gloria McLoughlin:** There has been a change in how we are asked to present our price. About 15 years ago, most organisations would have had a range of rates because they were very much coming from an agency basis. They were regarded as an agency service that existed to fill the gaps rather than build capacity and deliver and maintain the service on an on-going basis. The sector therefore tended to have Monday-to-Friday rates, weekend rates and public holiday rates. As the agencies' work grew and they had a core of work, local authorities responded by saying "Let's look at this. You're now doing 1,000 hours a week. We don't want to pay six different rates to 20 different organisations, so let's see if we can manage the rate." We began to see the sector changing, with it being asked for declared, fixed rates that would factor in all the different elements.

We have recently seen holiday entitlement in contracts move from 20 to 28 days. However, we have providers on fixed-rate contracts that, for example, started three years ago with provision for two single-year extensions and which have no mechanism for the providers to go back to the local authority and say that things have changed and that regulations and working time directives have moved on. We now have staff groups with improved entitlement but no mechanism to get the local authority to uplift their entitlement. Most of the rates in the tenders are set from year one to year three and for the extensions. When we do our figures, we try to work out where the sensitivities are and to guess what will happen in the next three to five years in the sector, but that does not always pay off, so we can find ourselves running tenders without having the funds to meet increased demands around regulation and employment in a growing sector.

**John Wilson:** Mr Scullion, do you have any comment?

**Kevin Scullion:** No.

**John Wilson:** I will throw a question at both witnesses, but I am not sure whether either will be able to answer it. When local authorities provide care services, how do they calculate holiday and other entitlements, including pension entitlements?

A council worker will have a pension entitlement, but I assume that the majority of the people who deliver services in the private sector do not. How do you think that local authorities can justify the conditions that they provide for their workers, given the conditions that they expect you, as delivery agents, to provide for your workers?

**Kevin Scullion:** When we consider all the functions of local government, and the different management costs that are involved, it is difficult to get absolute costs for delivery by local government because of the complexity of working out the overheads. For example, we are acutely aware of the cost of equal pay and how long it has taken to resolve. However, if someone was sitting in a local authority just now and considering the conditions of service, they would recognise that they have staff who can work regular shifts. That allows them to achieve certain allowances and to plan the rostering of staff much more effectively than our starting point, which historically has been zero-hour contracts, in which both employers and employees are unsure about where the next hour will come from because there is no strategic visibility over the next few years. My organisation is desperately trying to get that strategic direction and a sense of how much we should invest in conditions of service.

We have had a lot of debate about how much it really costs local authorities to provide care. We estimate that it is more than £20 an hour. It is difficult to say exactly what it is because it will vary from authority to authority, depending on their scale, volume, rurality and the challenges that they face, but we are probably looking at half of the costs based in the independent sector.

**David McLetchie (Edinburgh Pentlands) (Con):** It was suggested in earlier evidence that the introduction of the regulations in 2006 had led to a growth in the tendering out of the services that your member organisations provide. Is it not the case that the regulations do not require or compel local authorities to tender such services, and that they are there simply to regulate the process by which a tender is conducted?

**Gloria McLoughlin:** We welcome that line of thought. We are working along with Community Care Providers Scotland, through an alliance, and with the joint improvement team on commissioning and procurement because we believe that it is not always necessary to tender for services. Whether it is e-auction, competitive or paper-based—

**David McLetchie:** I am sorry to interrupt, but I think that you may have misunderstood my question. I am trying to establish whether the 2006 regulations compel local authorities to tender out home care services. The regulations simply set the framework under which a tender process must be conducted, as a matter of law. The growth in

tendering has nothing to do with the introduction of the regulations, which are there to regulate the tendering process. Is that correct?

**Kevin Scullion:** Much of the tendering process has involved tidying up a number of hours and services that have, over time, on a spot-purchase basis, been offered out to the independent and voluntary sectors. When people have considered the rights and wrongs of that—the fairness of contract review—they have tended to capture them into some sort of tendering or commissioning strategy, which has led to a tender process. That can create disruption and make difficulties for existing providers.

In my experience, much of the tendering is done to tidy up previous outsourcing practice. I do not see much evidence of a strategic direction, partly because there are 32 authorities, all with their own views and their own local needs. We are not seeing the concerted direction of travel in tendering and outsourcing that we have seen in England.

**David McLetchie:** We heard from the local authority witnesses last week that there is wide variation, from authority to authority, in the extent to which tendering is adopted. If I remember correctly, we were told that Glasgow City Council tenders out only 4 per cent of home care services and that 96 per cent are provided in house. I think—again from memory—that the Edinburgh figures were 65 per cent contracted out and 35 per cent in house, and that the figures for South Lanarkshire were roughly 50/50. That suggests to me that the driver for tendering out is not a legal requirement to do so, but a belief on the part of certain authorities that they obtain better value if they tender out home care services than they do if they provide them in-house. Is that correct?

**Kevin Scullion:** I see a best-value argument in there. Councils are beginning to recognise the challenge of demographics and future cost. They are asking the independent sector whether it can provide services on their behalf for better value for the public pound.

However, I see no concerted strategic direction across the 32 authorities; each authority has a different view, whether its view is based on philosophy, politics or local needs. One or two authorities have taken a genuinely strategic step. Scottish Borders Council, for example, is determined to outsource home care and to work strategically. Other authorities have spent a long time—sometimes more than a year—tidying up a relatively small amount of hours and have no intention of outsourcing beyond that.

10:30

**David McLetchie:** You talked about providers' inability to recover cost increases that arise in the course of three-year contracts and contract extensions. Does that suggest that the contracts that were negotiated were poorly drafted in the first place?

A contract is formulated on the basis of the law as it stands when the contract is drawn up. I am thinking about the law on working time, holiday entitlement, maternity and paternity leave, the minimum wage and so on. We would expect a contract that had been sensibly negotiated at arm's length between a public body and a private provider to have a variability provision, which could take account of changes to the law that directly affect employees, whether the changes come from the Scottish Parliament, Westminster or the European Union. We expect people to contract on that basis. People should not sign up to a contract that has no scope for flexibility.

**Kevin Scullion:** Many providers in the sector had no experience of tendering, so there was a steep learning curve. In general, I hope that people cost their contract proposition as best they can, but some changes are not necessarily envisaged when a contract is agreed. Some contracts clearly provide scope to renegotiate when a material change takes place, but many providers have not had the capacity and sophistication in their organisations to enable them to address such issues in the tendering process. It takes a few years to become good at tendering; someone cannot just come in cold and deliver a significant bid that requires them to provide volumes of information. Skill is needed in tendering.

People who are good at tendering probably sometimes win contracts just because they know how to present themselves. Scottish Care at Home has tried to offer expertise and support to its members, so that they can improve their ability to tender. People need to know how to cost a contract as appropriately as possible, given the timescales that are involved.

**Gloria McLoughlin:** I confirm what Kevin Scullion said. Some 50 per cent of our member organisations deliver their service from a single office in a local authority. Their only experience of contracts has been their application to the care commission in 2005 to be a registered service and their subsequent application to be on a list of approved providers.

Invitations to tender were announced in November 2008 and the contracts were awarded the following March. I have seen companies struggle with pre-qualification questionnaires and invitations to tender that were 30 to 55 pages long.

As Kevin Scullion said, a provider who is able to capture on paper what they do is probably more likely to succeed. We face challenges in trying to provide business support and signpost members to programmes such as the supplier development programme, which can help them to develop skills that will enable them to survive in the market. Providers are often not well placed when they come to the table.

In the early tenders, there was room for the provider to qualify a service specification. For example, they could say, "We have an issue with section 2.3". However, more recent contracts have provided that if the tender is qualified in any way, the bidder will be discounted from the process. Tenderers are actively discouraged from challenging the service specification.

**David McLetchie:** A function of your organisation is to improve your members' expertise in contract negotiation, so that they do not sign up to onerous and inflexible contracts that do not enable them to recover costs that arise as a result of changes in employment law, for example. Is that correct?

**Gloria McLoughlin:** We try to work with providers. We are a membership organisation and our main focus is to lobby on issues that we have concerns about. However, we are young, the market is immature and the organisation's resources are limited. We want to reach a point at which providers have the confidence and experience to say that something is not doable. Unfortunately, because of the way in which the market and contracts are moving, and the range and style of contracts that exist, people with a desire to share the risk in delivering a social care service, who have invested in their organisation and staff and who have made a commitment to service users, find that they have four or five months to save their business. Sadly, we do not have the resource to ensure that we can provide support at that early stage and we do not have 15 or 20 years' expertise in lobbying or representing the sector. Our sector has evolved and it is young and immature.

**David McLetchie:** I appreciate that—thank you for your comments.

The committee has been asked to consider a petition in the context of the inquiry. Are you familiar with PE1231?

**Gloria McLoughlin:** Yes.

**David McLetchie:** The petition focuses on public sector contracts and ensuring equity of wages and conditions between workers who deliver services in the voluntary sector and the public sector. It refers to five-year funded contracts. The petition does not say anything about people who work in the private sector, but I

think that Mrs McLoughlin said that her organisation has members who are in the voluntary sector as well as commercial providers. Do your organisations support the principles that are set out in the petition?

**Gloria McLoughlin:** The petition refers to a two-tier system—the public sector and the voluntary sector—but we would say that there is a three-tier system, because conditions in the independent private sector are well below even those of the voluntary sector. We have set ourselves an aim for the coming year to make contact with Unite, Unison and so on regarding low pay, so that we can start to lobby on that basis. We would welcome an opportunity for the sectors to be looked at in respect of cost and infrastructure, and we want to push up the pay and conditions of our sector.

**Kevin Scullion:** I get the sense that the principle behind the petition is that we are looking for better conditions. I would probably support that, but I do not think that it is about us—certainly not my organisation—wanting to see the same conditions that exist in local authorities. I want to attract the right people and the best people. That might involve higher conditions at certain times, but I want to have the flexibility to organise our company in a way that delivers appropriate services and best value.

My real worry is the cost pressure and the challenge of the sheer volume of care that will be required. It is too simplistic to say, "Give us the same conditions." We have a problem in respect of being able to cover the cost of care in the future. Organisations such as ours think that we can organise ourselves differently and demonstrate when we come under scrutiny that we are delivering good conditions of service—that might involve incentivisation and support to staff. The suite of conditions that exists in local authorities is not necessarily the right one, but I would probably support Gloria McLoughlin in that, in general terms, we know that we are far behind—particularly regarding our front-line staff.

**David McLetchie:** Although you both want to improve the pay and conditions of the people who work for your member organisations, you do not support the principle of the petition, which uses the word "equitable" as if conditions are to be the same.

**Kevin Scullion:** Equal pay is not the answer; it is much more complex than that. So long as we can attract, develop and retain our staff, conditions of service will evolve and be part of the solution. Our problems would not be resolved by offering the same conditions that exist in another sector.

**David McLetchie:** If you were forced to do that, would you be in a better or worse position to win a contract?

**Gloria McLoughlin:** There are elements on which we would want to move forward. We represent 65 per cent of providers, or just under 200 registered services. They demonstrate a commitment to delivering a service and they have front-line staff who are also committed. As Kevin Scullion said, it is not all about money. We want to lobby for the resource to train, value and professionalise staff and to have the resources that we need to deliver good, quality services that meet the national minimum standards. We have not set our sights on equitable pay, but we certainly do not want the sector to be low paid and unprofessionalised.

**David McLetchie:** So you do not support the general premise of the petition. I am trying to get to that point, because we have been asked to adjudicate on the petition. I simply want to be clear.

**Gloria McLoughlin:** I am not involved with the petition. The unions and the voluntary sector have a pact. We certainly aspire to professionalising staff and having the resources to reward them, but we would not necessarily say that everything that we see in a local authority needs to be available to the sector for the way that we work, as Kevin Scullion said.

**The Convener:** We have some late papers. In 2006, the Scottish Executive said in "Changing Lives: Report of the 21st Century Social Work Review" that there is

"a relationship between voluntary and private sector providers and local authority staff involved in delivering care which is inequitable, inconsistent and lacks a strategic approach".

Your evidence indicates that there are still many such features in the system. What has changed since 2006 that makes that relationship more equal and consistent and which shows that there is a strategic approach to the delivery of care?

**Gloria McLoughlin:** I do not think that a huge amount has changed yet. Our organisation has just come into the sector. We lobby on behalf of our members, and we think that we are in a position to influence some of the work streams that need to progress. We have made connections with the Scottish Commission for the Regulation of Care, the SSSC and the Scottish Government, and we think that we are at the early stages of being able to influence some things that will need to change in the future to deliver.

**Kevin Scullion:** On the national care standards, the grading system and the level of tendering contracts, there is much more dialogue about how we can get the sector to grow and develop so that

it is fit for purpose. My concern is that there is no pace in commissioning strategies in each of the 32 authorities. I have real concerns about the current challenges and the challenges tomorrow. Organisations such as Independent Living Services need to look to the viability of organisations and the investment that is required. We are pretty confident. We are willing and ready to invest in the sector if we can get a better sense of where we are going with types of service and the level of outsourcing, but we are frustrated that things are not moving quickly enough. Even if we were to be told that there will be no outsourcing or change, we could plan for that and deal with it. We simply sense that we could be in a position to deliver the volume of work that will be required and which will have to be balanced fiscally; we could absorb a lot of the growth in demand.

We would welcome further scrutiny with regard to contracts and care commission standards. Investments that we would make would give people comfort about quality, but it is difficult to plan and manage our organisation when we have significant responsibilities for our staff and their employment and we are unsure where opportunities will come from, or even whether they will come. From the figures that are coming through on home care, we know that local authority home care is relatively flat and that demand has been picked up by the independent and voluntary sector. That seems to be how things are going, but we do not know how or where things will happen in the 32 authorities. We get frustrated. We are willing to invest, deliver and train our staff, but we need the right environment and stimulus to allow us to do that. If we do not do that, we will always be catching up rather than planning ahead.

**The Convener:** What is strategic about driving down costs?

**Kevin Scullion:** It is about efficiency. If people can demonstrate that they are becoming more responsive and flexible and that they are delivering quality, nobody in the sector will see that there is—

**The Convener:** Let us consider things from the local authority point of view. We have heard evidence from both of you that the local authorities' prime concern is to drive down costs. What is strategic about that?

**Kevin Scullion:** I will speak about the strategy. There is far greater demand coming through. If services are prioritised, expenditure can be spread over a larger number of people and more care can be delivered for individuals in local communities. As long as quality can be maintained and innovation is seen to be coming through, the regulator and others can assess that an approach is appropriate and working. We are seeing a lot of

professional development around personalisation and increased emphasis on outcomes. If we can get much more for our money, we will reach many more people.

10:45

**The Convener:** We have had only a couple of evidence sessions, and we have not heard much about outcomes—it has all been about structures, costs, retendering and tendering. How can you build a sustainable business when you cannot reward your staff appropriately and have no capacity to train or develop them? What is sustainable about that? How do you maintain a business in that environment?

**Gloria McLoughlin:** We are in an environment in which costs are being pushed down while quality is being raised, and in which an outcome-based and aspirational service is being created. There are real risks for organisations as the downward pressure on costs bites across Scotland. When I was providing services, it was possible to do so in 15 local authorities, all at different stages of development and at different rates. When one local authority went to tender and pushed down the price, we could use the contracts that we had in other areas to absorb some of the reduction, but it is becoming increasingly difficult to do that.

As downward pressure is exerted, we will face real issues in relation to cost and quality. We need to start with work that demonstrates what the minimum cost is. We do not need a fixed cost, because there will be a range of services—generic, complex and specialist. We must articulate the rate at which providers need to deliver on cost and quality. If we start there, we will be able to deliver efficiencies, but that should not be done at the expense of quality, the workforce and service users.

**The Convener:** Is that not what local authorities are doing—taking the strategic view that too many companies are delivering small bits of care and that councils need to use the tendering process to drive some out of the market and to increase volume for those that are left?

**Kevin Scullion:** Rationalisation is taking place in tendering. Local authorities would need to say whether that is the intention.

**The Convener:** They did so last week.

**Kevin Scullion:** Five years ago, there were a number of small providers in the sector that did not know where the next hour of care from local authorities would come from. Those providers had staff on zero-hour contracts. The phone would ring on a Friday afternoon and the provider would be asked whether it could take on a package of care.

The reply would be that that might be possible, so a worker would be phoned. If the worker was not around, a relative, for example, would be spoken to. When the worker came back from the shop or wherever, he or she might say that they could not do the job. By the time the provider got back to the local authority, it might have asked four people to take on the package.

That system was not responsive. A number of service providers were unable to invest or to plan ahead because they were not sure where the work would come from. Providers in the sector cannot incur the significant recruitment costs of taking on staff whom they cannot deploy. They have grown organically to a certain size, but have been reluctant to grow more, because they did not know where the work would come from.

The convener asked how we plan without a strategy. The answer is that we take significant but—I hope—well-calculated business risks. We say that we think that the sector has a future, that we want to participate in that and that we seek as much strategic dialogue and partnership as possible. Much of the work that we are doing as providers is backed by our banks and others who believe that we can be successful. Like all organisations, we must take risks based on our best analysis of the future. Much of the risk rests with us, rather than with partner agencies on a planned basis.

**The Convener:** What is the correct number of providers for the market? What is the number now, and what will it be in two years? You have conceded that there are too many.

**Kevin Scullion:** The driving principle should be to provide choice to individuals who use services and local authorities, and to allow local authorities to spread their risk. There should be some form of competition to ensure that the market innovates in services, so we definitely need several providers. We also seek best value, so there is concern if there are 40 or 50 providers in one local authority area, given the overheads that each will have. A degree of rationalisation might work, but there is room in the sector for small providers that are in some ways more responsive. They may have better service user involvement or representation in their organisation, or they may work in a specialist area. There is a mixed economy in terms of providers.

**The Convener:** We have seen no recognition in the tendering process of the major problems that can arise from changes in the law that force costs up. For example, wages for lower grades in the local authority home care service have increased to £8.40 or £8.70 an hour. There is a growing gap between those rates and the kind of minimum wage that your sector can pay. Is there any evidence at all that the tendering process

recognises that niche providers might have problems surviving in that type of environment? Is any real consideration given in the tendering process to treating specialist providers differently, so that the cost argument that is applied to everyone else is not applied to them? Where are the indications that the niche providers are given greater consideration?

**Kevin Scullion:** They are probably still lobbying to get that kind of recognition. One of the difficulties is that many services were funded through the supporting people pipeline, so we ended up with services, many of which were regarded as specialist services, being provided at pound-per-hour rates that were in the high teens or were over £20 an hour. We can overlay that with, for example, housing support criteria and care standards for care at home and then ask what the difference is between the specialist service and the £10-an-hour home care service. A comparison of the individual job and of how each person goes about their work presents a challenge to the local authority, which must then ask why it would pay £10 an hour for one service and £20 an hour for the other.

The reality is that there are specialist areas along the spectrum of provision, but there is a sense that provision must converge towards the middle of the spectrum. However, there is still a lot of work to be done, given the pressures on every funder for specialist providers to be given a fair hearing. We are struggling with a spectrum of cost.

**The Convener:** But it comes back to cost.

**Kevin Scullion:** Yes, but it is not so much—

**The Convener:** All the time, it comes back to cost.

**Kevin Scullion:** I presume that that is partly because local authorities must prioritise their spending. There is also a need to recognise that there will be increasing demand in every client group in the years ahead, and that there will be fewer people around to fund that from taxes and fewer providers.

**The Convener:** It is about maintaining quality and choice for people as well, though.

**Kevin Scullion:** Yes. I think that everybody in the sector wants to embrace the emphasis on quality and move towards outcome-based services, but we know the amount of investment that will be required. We need to get up that cost ladder, as well as to be accountable, and we need to find ways to demonstrate that we can do it. We providers would not be in the sector if we did not think we could deliver.

**Mary Mulligan (Linlithgow) (Lab):** Last week two local authorities—South Lanarkshire Council

and the City of Edinburgh Council—presented evidence on their use of e-auctioning. What is your view of using e-auctioning for the tender process?

**Gloria McLoughlin:** Scottish Care at Home would not support reverse e-auctions. We have no difficulty with e-tendering—it saves an immense amount of paper. However, to assess quality and give people quality scores, and then go to the market with a ceiling rate that is reversed downward is risky. The local authorities do not go back after the tender process and say, “This is what you said you could do when you submitted your paper submission or your e-tender. Here’s the price we’re at.” They should ask what elements of the service will be at risk.

In the Edinburgh example, the rates were higher at the end of the reverse e-auction. We know from our providers in Edinburgh that companies that refused to take part in the process are still vibrant businesses, which are getting work on the service brokerage system on the periphery of the contract that was awarded. Once the providers on the contract reached capacity, the local authority had to look to other providers. It is not always the case that, of the winners and losers in a tender, all the losing providers go to the wall.

The process of reverse e-auctions in South Lanarkshire was also difficult for providers from a development point of view. The training was delivered in front of a fixed screen with a few minutes of telephone conversation explaining how the auction would work. The providers were not involved in a test auction before the live auction, which might at least have ironed out some of the issues, even if it did not make any difference to the price. People found themselves frustrated, anxious and in fear for the business in which they had invested in that local authority area. Members of the local community who delivered social services faced losing their businesses overnight.

**Kevin Scullion:** Historically, home care might have been viewed as a commodity if it involved just ironing or other services such as dog walking. Independent providers in the sector might have started off by providing such services, but the stark reality is that we have come a long way in terms of the complexity of care and in the challenging nature of the personal care that we deliver. That care includes dealing with challenging behaviour such as dementia, as well as moving and handling. It seems to be fundamentally wrong to deal with such services in terms of hours and to think of them as things that can be traded in an e-auction.

In both the City of Edinburgh Council e-auction and the South Lanarkshire Council e-auction—if I may pick up on David McLetchie’s earlier point—we assessed the opportunity very carefully. I had real technical concerns about how the system

worked, because quality was to be measured beforehand without any recognition either that a change in price affects quality or that the volume of care episodes that is to be achieved affects both quality and price. In addition, several e-auction participants whose businesses were at risk were allowed to drive down the price even though they had no possibility of winning, so the actual mechanism was flawed from the outset.

In principle, we need to go beyond that way of looking at things. The reality is that all those changes took place without the participation of service users and with no recognition of the potential disruption to existing care arrangements. As well as being important to the member of staff and the service user, such arrangements are often quite complex in relation to other informal care arrangements. The process just seemed totally insensitive.

**Mary Mulligan:** Thank you for that. It is quite clear that neither of you sees any advantages to e-auctions. I am pleased to say that both local authorities agreed last week that they would be unlikely to use such auctions in the future, so that is good news.

My second question, which Kevin Scullion has touched on, is about how we involve users in the development of contracts. How do we ensure that their voice is heard? Are there any examples of how that happens at the moment? What do we need to do to improve that?

**Kevin Scullion:** I have certainly seen some improvement over the past three years. For some previous tenders, contracts were awarded on the basis of a desktop exercise and the provider met the local authority only after the process was concluded. In more recent tenders, service users have been involved through other structures, such as carer centres, community care forums and the inclusion of individuals on final presentation panels and in scrutinising the documentation. In fairness, we have had at least 10 to 15 years of engaging with service users and carers so—although we will never be fully there—we have plenty of good practice and have learned lessons. Probably one or two tenders have still not fully taken on board the need for such involvement, but people are definitely beginning to include service user participation in the formal process. There is also recognition of the potential breakdown in continuity of care if care arrangements are changed through trading hours or contracts. The situation is improving, but it is not good enough yet.

**Gloria McLoughlin:** From the point of view of citizen equity, if some of a local authority's provision is in-house and some is externalised, some citizens will receive care that can be retendered and potentially disrupted if the provider and staff change, while another group of citizens

will not face those problems. That is a real issue, although the public might not be aware of it.

Given the policy pressures that are driving for self-directed support and personalisation, it would also be common sense to engage with service users before undertaking a tender process. The risk assessment could ask users whether they were happy that their services were going out to tender and whether they would like the option of having a self-directed support payment and individual budget so that they would know exactly what they brought to the market. That might provide clearer information for providers, who could then scope and invest with more knowledge about the demand.

11:00

**Kevin Scullion:** I have a related point concerning service users. Because of the challenge that they face of managing their in-house provision, many councils use our sector to deal with shortfalls arising from sickness and staff turnover. That is often referred to as agency provision. We are brought in and dropped off repeatedly, so there is no continuity of care for the individual—we fill the gaps, which makes matters difficult for us. We try to provide a service, but we lose it as soon as the local authority home care service is able to take it back. That is common practice in the sector and it does not for me tick the boxes on continuity of care, planning and investment in improvement.

**Mary Mulligan:** Once a contract has been awarded and taken on by you or a member organisation, how do you ensure that quality is delivered and that service users have a voice on whether it is working?

**Kevin Scullion:** In my organisation, there is developing professionalisation through charter marks, ISO and Investors in People. We have a quality department, carry out service-user surveys on an on-going basis and make spot checks. We are becoming increasingly involved in the development of standards, through regulation. Contracts often involve some form of monitoring by local authorities. There are a variety of ways of ensuring that quality is delivered, right through to staff whistleblowing policies and investment in other systems to provide better visibility of what is happening in the sector. We all know that we must get better at reassuring everyone that we are responding to people's needs.

**Gloria McLoughlin:** There must be a partnership. Providers cannot be on the doorstep of every care episode, but they want to be assured that they have the resources to ensure that their staff have a value base, are engaging with the quality assurance framework and national

minimum standards, and are being trained. There is an onus on the provider, the commissioner, procurement and regulators: no single organisation can be responsible. If that were the case, we would not all be needed. There must be a joined-up partnership approach post contract. Information will come forward from the care commission, through grading for improvement. I hope that we will be able to aggregate some of those results with information from local authorities and regions. In the future, will we be able to say that organisations in a local authority area were 4s, 5s and 6s pre-tender but 2s and 3s post tender, and to use that information to challenge the current procurement system?

**Mary Mulligan:** Do local authorities take sufficient notice of the involvement of providers with service users when they decide to whom to award contracts?

**Gloria McLoughlin:** There is a wide range of engagement among the 32 local authorities. From a national perspective, it is evident that some local authorities are engaging well with both service users and providers, whereas for others that is a tick-box exercise, sometimes post tender. There is a need for standardisation and guidance.

**The Convener:** I thank the witnesses for their attendance this morning and for their helpful evidence.

11:04

*Meeting suspended.*

11:06

*On resuming—*

**The Convener:** I welcome the second panel of witnesses: Alexis Jay, who is chief executive of the Social Work Inspection Agency; and Jacquie Roberts, who is chief executive of the Scottish Commission for the Regulation of Care. I offer them both an opportunity to make brief introductory remarks before we move to questions.

**Alexis Jay (Social Work Inspection Agency):** I do not really have anything to add to my written submission. Obviously, I am happy to explain anything about my organisation on which people are not clear.

**Jacquie Roberts (Scottish Commission for the Regulation of Care):** Similarly, I do not really have anything to add to my written submission, but I welcome the committee's inquiry.

**The Convener:** Let me start with some general questions. The care commission's briefing note states that

"69,000 people in Scotland receive a care at home service".

How does that compare with the number of people who are in residential care?

**Jacquie Roberts:** The number of older people in residential care homes is currently around 38,000.

**The Convener:** That is significantly less.

**Jacquie Roberts:** Yes.

**The Convener:** Yet there has been much more work and legislation on the quality and standard of residential care over the past few years.

**Jacquie Roberts:** There is a longer history of regulation of the provision of residential care and nursing home care.

**The Convener:** The briefing note also states:

"In 2008, there were 18.1 home care clients per 1000 population ... compared with 9 per 1000 in 1998".

The sector has experienced significant growth. Has the care commission taken all of that into account in its work programme? Has it kept pace with that?

**Jacquie Roberts:** That is a very good question. We started regulating care-at-home services only in 2005, when they first started being registered. Since then, we have seen a significant growth in the provision of care-at-home services. Therefore, we have constantly had to look at how we regulate such services. We have developed that as the years have gone by. We are changing our practice as we speak to ensure that we develop our regulatory activity so that it becomes as targeted and as meaningful as possible.

**The Convener:** I understand that work is being done, but I am trying to draw some comparisons between the level, frequency and notice of inspections as they apply to residential care home services and to care services out in the community. Access to people in their own homes is also an issue. Are you satisfied that enough work is being done on those issues and that you have sufficient powers to get access to people?

**Jacquie Roberts:** The Scottish Government sets the statutory minimum frequency of inspections, which is, at present, twice a year for care homes, but only once a year for care-at-home services. The challenge, of course, is that care-at-home services are agency based—the standards describe them as agency-based services. The services are delivered in people's private homes, and we do not have a statutory right of entry into people's private homes. Given that 69,000 people in Scotland receive care-at-home services, I do not suppose that the committee expects us to have a hidden camera in every person's living room to find out whether those services are being delivered well enough. Regulating those services



effectively is a real challenge. Other care regulators in the UK would agree with that.

We started off by doing the essentials. We considered what were the right systems, processes and management structures for those agency-based services. We are now moving more towards doing unannounced and short-notice inspections that involve people shadowing front-line members of staff who go into people's homes, and visiting people's homes—with their permission, of course. However, we must do that on a sample basis because we base our inspection hours on once-a-year inspections. If we have concerns about a service, we will go into it much more frequently.

**The Convener:** Is much of your work driven by complaints from relatives and service users?

**Jacquie Roberts:** Complaints can direct work on services about which we have concerns, but we also assess other information that we receive from care managers and local health staff, for example. We can determine the intensity of our inspection, how much time we spend on a service and whether one service needs more hours than another service needs.

**The Convener:** So basically you consider whether proper management procedures are in place, inspect structures and so on. I understand that there cannot be inspectors in every home, but I am concerned about the evidence that people have given that everyone is satisfied and gets a very good service. We do not accept that in the residential sector, and I do not know why we would automatically accept it in the community sector. We recognise that people have certain inhibitions about complaining about their main carer. How can that problem be dealt with? How do we get to the truth of whether people have good outcomes and receive satisfactory services, continuity of service and good-quality care?

**Jacquie Roberts:** We talk to service users, send out questionnaires, make telephone calls, go with members of staff and observe practices. Therefore, we undertake the same practices that are undertaken in the inspection of care homes.

**The Convener:** How many of the 69,000 service users are contacted annually?

**Jacquie Roberts:** I cannot tell you the figure off the top of my head.

**The Convener:** But you will provide it to the committee.

**Jacquie Roberts:** A sample would be contacted. I could give you an estimate of that sample.

**The Convener:** What percentage would that sample represent?

**Jacquie Roberts:** It would probably be about 5 to 10 per cent at the most.

**The Convener:** I am looking at the care-at-home grades by service type table on page 7 of paper LGC/S3/09/18/1. There are six gradings, from unsatisfactory to excellent. What does column 1 show? Does it show unsatisfactory or unacceptable services?

**Jacquie Roberts:** Column 1 is unsatisfactory.

**The Convener:** Is column 2 poor?

**Jacquie Roberts:** Column 2 is weak.

**The Convener:** What about column 3?

**Jacquie Roberts:** Column 3 is adequate.

**The Convener:** So, going on these figures, more than a quarter of local authority services are barely adequate. Am I reading the figures correctly? Those services are either unsatisfactory or adequate.

**Jacquie Roberts:** Columns 4 and 5 show that, under the theme of quality of care and support, more than 42 per cent of local authority services are good, and 30 per cent are very good.

**The Convener:** Does that cause you concern?

**Jacquie Roberts:** It shows that there is room for improvement in local authority home care services as well as in those in the independent sector.

**The Convener:** The care commission's written submission states:

"So far, inspections in 2008/9 resulted in 100 services with requirements."

I presume—I read this somewhere—that that means that something more than improvement is needed for those services.

11:15

**Jacquie Roberts:** Yes. They have to put something right, and they are given a specific timescale in which to do that. The information to which you refer was intended to indicate to the committee that we can scrutinise practice and find elements that need to be put right. It was helpful to hear from earlier witnesses that the regulator is regarded as part of quite a big, collective system of monitoring the care of people in their own homes. The care managers, the health visitors and the general practitioners are really important in that respect. Those who visit people in their homes need to be able to share information on whether the quality of service is good enough.

**The Convener:** Are you satisfied that that co-ordination is in place in the home care sector and is working well?

**Jacquie Roberts:** That is not the case across the country.

**The Convener:** Obviously not, if the quality of around 25 per cent of the services that are delivered by both the private and local government sectors is barely adequate, according to the care commission's submission.

**Jacquie Roberts:** The quality of services is not barely adequate; it is adequate. However, I understand your point. It is really important that care managers and community health nurses are aware of the regulator and the standards, so that they also drive up expectations. The Scottish Government recently promoted the national care standards to care managers to ensure that they are aware of the standards that should be delivered to people who receive a home care package and communicate with the regulator if they think that the standard somewhere is not good enough.

**The Convener:** You have powers, and you are considering whether the company that was referred to in the recent "Panorama" programme can continue in business.

**Jacquie Roberts:** Yes. We issued an improvement notice in May, and the company is in the middle of being inspected at the moment—significant progress has been made.

**The Convener:** But that was as a result of the "Panorama" programme.

**Jacquie Roberts:** The practice that I saw in the "Panorama" programme was totally unacceptable and shocking. It gave us additional evidence. We had some concerns about that service before the "Panorama" programme was shown, but it certainly gave us additional evidence that we could use.

**The Convener:** In that situation, your testing system of phone calls and speaking to people failed. The health visitors, the local authority and the GPs failed to identify some of the problems. There was a collective failure in that situation.

**Jacquie Roberts:** With regard to the two people in the footage that I saw on the "Panorama" programme, I agree that the whole system failed around them.

**Patricia Ferguson (Glasgow Maryhill) (Lab):** The care commission's submission states:

"Of the 736 care at home services registered ... 10.5% had a complaint upheld or partially upheld against them in 2008/9."

Have you compared that 10.5 per cent figure with the outcome of complaints that are made to the Scottish Public Services Ombudsman or other ombudsmen to assess whether it is typical? I am sure that we all want there to be zero complaints,

but we live in the real world. Is the 10.5 per cent figure thought to be high?

**Jacquie Roberts:** The average figure for levels of complaint for the different types of service is about 5 per cent, so the 10.5 per cent figure is higher than the average. However, for care homes for older people, the percentage figure for complaints is in the high 20s or low 30s. Of course, an important factor is people's knowledge and understanding of the fact that there is a care regulator. More of the general public know that there is an independent public body to complain to for someone in a care home than know that there is such a system for someone who receives a care-at-home package. However, the picture is changing.

**Patricia Ferguson:** That is interesting. We heard quite a lot last week and again today about some contracts being tendered for 15-minute slots. Regardless of how they have been tendered, do you, as the regulator, think that a 15-minute slot is ever appropriate?

**Jacquie Roberts:** It is difficult to answer that question because it depends on what the service is being asked to do in 15 minutes. Going in at 11 o'clock at night to check that somebody is safe and okay may require only 15 minutes but, if the service is expected to deliver a hot meal safely to a vulnerable older person and to assist that person, 15 minutes does not seem nearly long enough to me.

It is not the care commission's responsibility to regulate how the packages are commissioned. Needs differ greatly. An older lady whose husband has dementia could need special assistance once a week or several times a day—it all depends on what is being commissioned. That is why self-directed care packages and much more person-centred care is the way to go.

I am concerned that, in all our discussions about care for the elderly, we talk about large volumes as though we are dealing with inanimate objects. We are dealing with unique circumstances and unique people, each of whom needs something different that needs to be worked out very carefully in a partnership between the commissioner, the family and the provider.

**Patricia Ferguson:** I take your point entirely. You are entirely right—your view should give the committee pause for thought. Given the vulnerability of the client group about which we are talking and the fact that those clients' circumstances often change rapidly, have you made your opinion known to the Government, local authorities or anyone else? Have you tried to draw it to people's attention?

**Jacquie Roberts:** Yes, I have. In particular, I have been drawing our minister's attention to the

shift in the balance of care, the growth in the sector and the increasing vulnerability of older people at home—including older people with dementia—some of whom are on their own. Consider the percentage rise in the older age group: by 2031, the 65-plus age group will have increased by 62 per cent and the 85-plus age group by 144 per cent. I am also conscious that more and more people with highly complex health and care needs choose to stay at home or to be in the community. I am pleased that our minister is working with a ministerial strategic group on the growth of community care services for older people with complex health and care needs. We certainly draw the matter to their attention and constantly try to adapt our regulatory functions to the way in which services are delivered.

**Patricia Ferguson:** Since May 2008, the care commission has carried out monitoring of, inspection visits to and complaint investigations into the services delivered by the provider that was featured in the “Panorama” programme. However, we are now in June 2009. That seems a rather long period in which to try to achieve change in the provider’s services. Are you happy about that or should things have moved slightly more quickly?

**Jacquie Roberts:** We have a process whereby, if we identify problems, we set requirements that have to be met. If they are not met, we issue an improvement notice. I think that, in that service, we gradually picked up individual concerns with which the service dealt very well. The families and care managers were satisfied with the improvements for the individuals concerned. However, we then began to pick up more general concerns. We did an unannounced inspection in late 2008 and discovered more systemic issues.

My front-line staff think that those issues resulted from the company growing far too quickly; it probably took on work that it had not built the capacity to take on. That is why I am pleased about the existence of the ministerial group. We need to think about the careful management of growth and capacity in the home care sector.

I agree with what was said by the witnesses on the previous panel: staff who work in the sector need a lot of training, supervision and support from management. The workforce today is very different from the workforce that I managed when I was with Dundee City Council, when the home care workforce mainly did domestic tasks. The present workforce undertakes important personal care for some very vulnerable people.

**The Convener:** You have intrigued me with your references to “the ministerial group” and “our minister”. Are we talking about the Minister for Housing and Communities, or the Cabinet Secretary for Health and Wellbeing?

**Jacquie Roberts:** The care commission reports to the Minister for Public Health and Sport.

**The Convener:** Who is involved in the ministerial group?

**Jacquie Roberts:** The minister is just at the beginning of sorting that out, but I believe that the group is working alongside people in the Government, the national health service and the Convention of Scottish Local Authorities.

**The Convener:** Has the group met yet?

**Jacquie Roberts:** I think so, yes.

**The Convener:** When was it set up? Was it before the “Panorama” programme or after the “Panorama” programme?

**Jacquie Roberts:** I do not think that it was directly connected with the “Panorama” programme. The group has a broader interest in services for older people.

**The Convener:** Do we expect a report from the group?

**Jacquie Roberts:** I am sure that the group will be moving forward.

**The Convener:** We could perhaps make some inquiries about the group, for clarity.

**Alasdair Allan:** The witnesses have said that we cannot have hidden cameras in people’s homes. I appreciate that, but, of course, we are here because somebody took a hidden camera into somebody’s home.

I would like to know, from either witness’s perspective, how things work for whistleblowers. We have heard about individuals taking complaints to the care commission, but Ms Jay may want to comment as well. How can whistleblowers ensure that their voices are heard?

**Jacquie Roberts:** It is for that very reason that we interview members of staff privately. Members of staff have said to us that they can feel frightened of repercussions if they tell us about concerns about a service. People have a right to complain to us anonymously or confidentially—that is built into the care commission’s work. We therefore expect to receive information from whistleblowers; it is very much part of our complaints procedures.

**Alexis Jay:** During our inspections of local authority social work services, we meet staff of all grades privately. We survey them, and we obtain a great deal of information on how they treat such issues. The issue of whistleblowing has come back to prominence with the recent report on historical abuse, particularly in relation to the Kerelaw inquiry. Whistleblowing has obviously been a hugely important feature of how such

terrible incidents have been brought to the attention of the people who are running the services.

In the course of our inspections, we are left in no doubt if issues arise to do with whistleblowing. As far as I know, every council has a whistleblowing policy, although it may not be given that precise name. There will usually be protected access to a phone line, or to someone who is outwith the person's own service, if that is felt to be necessary. Someone in HR, for example, will listen to any issues that the person wishes to raise. We do not know how frequently such facilities are used. However, staff would make it clear to us if there were threats or intimidation when issues were raised.

A number of our reports have referred to cases in which staff have felt unable to raise issues to do with aspects of their employment, as opposed to issues to do with the quality of a service. When that has happened, we have made recommendations in the reports. That is slightly different from whistleblowing, but it is related to culture and the confidence of staff to raise issues in an environment in which they feel supported and taken seriously and do not feel threatened.

11:30

**Alasdair Allan:** Tendering is of interest to us. To what extent is the qualitative information that is gathered made use of when organisations retender?

**Alexis Jay:** I am sure that councils check with the care commission—as we do—the level of complaint about any aspect of their social work services' activities. I cannot believe that complaints that are received about a service, in whatever way, or the views of staff are not taken into account in retendering processes. I do not know whether that is made explicit in the tendering criteria, but I would be amazed if councils did not seek a range of views on the matter. They also take the care commission's evaluations into account.

**Jacquie Roberts:** Authorities vary in how they make use of the information in retendering. Some local authority contracting officers attend our feedback sessions to providers. One of my regional managers is meeting all the contracting officers of the authorities that the region covers, to explain all the information that we have and to ensure that they access it before they retender. Practice can be variable, but the information is available on our website. The care commission has contact managers with every local authority; we also have regular communications and a memorandum of understanding.

**Alasdair Allan:** I suppose that the same question applies to the use in retendering of information that is gathered from service users. You mentioned questionnaires. I do not want to make the retendering document even longer than it already is, but to what extent is a questionnaire that is directed towards someone in an advanced state of Alzheimer's a useful measure of their experience?

**Jacquie Roberts:** You have said it yourself. Questionnaires are of limited value—it depends on who is doing them. That is why we try to have personal contact. Our grading system is designed to ensure that providers cannot score more than adequate if they do not have a really good system for user feedback. We expect much more personal contact with service users and their carers, families and care managers as part of the quality assurance system, to demonstrate the quality of the service to whoever is commissioning it.

**The Convener:** Are the organisations that you represent able to test some of the lower-level indicators, such as the phone call that was made because no one turned up on a holiday Monday? We heard earlier about backfilling and absenteeism. Is there a measurement of lower levels of complaint, below official level?

**Alexis Jay:** I do not know whether you would describe it as a measurement but, in every council area, we speak to the person in the social work service who is responsible for the issue. Every authority has a complaints officer—someone who is responsible for looking at the range of complaints that come in, to see how the service could improve and to ensure that complaints are being dealt with properly. We interview all those people to test the volume of complaints, how well they are being addressed and whether there is a proper process for dealing with them.

The most serious complaints go to our council complaints review committee, but we seek to establish what happens at an earlier stage. What is the council's attitude to complaints? Does it seek to resolve them with providers in a way that leaves people feeling satisfied and feeling that their complaint has been taken seriously? That is the important point; in the past, councils have sometimes sought just to get rid of complaints, rather than to ensure that the complainants feel that they have been taken seriously and that something will change as a result. Good councils do that very well—they work well with providers to effect such improvements. However, as Jacquie Roberts said, that is not the case across the board.

**The Convener:** Do people have to put complaints in writing? Are phone logs kept and, if so, do you have access to them?

**Alexis Jay:** Yes.

**Jacquie Roberts:** Yes.

**The Convener:** People do not have to put something in writing before a complaint is taken seriously—those other complaints are measured.

**Alexis Jay:** In the beginning, there was a standard form which, to be honest, was a deterrent. Now there are more flexible approaches that take into account the fact that some people cannot complete a form. Councils go to some lengths to put in place a range of measures to ensure that the complaints process is accessible. That is why councils have somebody who is not involved in service management to take on that sole responsibility. The system is better than it once was, but it could probably still be improved.

**Jacquie Roberts:** We can also examine people's time sheets and compare them with the number of service users whom they are supposed to have seen that day. There are ways of looking behind the scenes, and we have used that approach.

**The Convener:** Is there capacity to do that?

**Jacquie Roberts:** We can do it only on a sample basis.

**The Convener:** The care commission has pointed out that 69,000 people receive care at home. What is the capacity to regulate seriously, rather than just to tick the boxes?

**Jacquie Roberts:** Using a sample basis allows us to pick up whether something has happened more than once, which can lead to our thinking that there is a problem and deciding to investigate further. My staff have done that. There is an improvement notice going out on another service—

**The Convener:** Does that happen in every statutory inspection?

**Jacquie Roberts:** We pick up any concerns.

**Mary Mulligan:** I will start with a question that I asked the previous panel. What are your views on reverse e-auctioning?

**Alexis Jay:** I read in the *Official Report* of last week's meeting the comments of the witness from the City of Edinburgh Council, who said that part of the reason why the council had withdrawn from using the system is that SWIA told it to do so. That is exactly what happened. When we inspected the council, we were concerned that service users and staff had reservations about the process, as did some providers, of course. We have no enforcement powers, but we made clear our view that the system might not always work in the best interests of service users. Our reservations were

sufficient for us to ask the council to reconsider its position, and I am glad that it has done so.

Several issues might have become conflated, in relation to retendering and the e-auction part of the process. I absolutely support the general need for councils to take a much more efficient approach to procurement. I have no difficulty with that, but there might be some unintended consequences from both those approaches. The feedback that we receive from service users in different parts of the country about those processes is that it has led to distress and anxiety. Other witnesses have already given the committee similar feedback. That happens in part because of how the process is conducted by some councils. When the process has been good, we do not hear about it. I am sure that retendering has been well conducted in several places, but we hear from people who have had short notice of a change of provider or who have received formal letters with no named contact with whom they can discuss issues. For some people, their relationship with a carer might be their only relationship if they have no friends or family locally. There are all sorts of reasons why the process can cause people distress and anxiety.

That is why we have said that the process of changing providers must be conducted much more sensitively and with personal contact to explain how the process will take place. There should also be the option of remaining with a provider if that is terribly important to a person. Councils must deal with the issue much better and more sensitively. However, there are areas where service users are perfectly happy with the process and it has not caused them distress.

We are also concerned by a number of retendering issues that I do not think have been raised so far but which might have been alluded to by previous speakers. For example, the number of providers might be reduced to the extent that smaller providers—which, I have to say, are often to be found in the areas that some of you represent—that have derived from the community, which reflect the right kind of social enterprise or regeneration model and which provide low-level but important preventive services simply cannot compete. They need some protection because, after all, we all want that kind of good local community support to be available to older people. If we concentrate exclusively on big providers, it will be to the detriment of these excellent little local support services.

**Jacquie Roberts:** Alexis Jay has said all that I really wanted to say. We are responsible for monitoring the quality of services, irrespective of how they are commissioned or tendered, but we have seen people upset because they have lost a particular provider. Social care is a very different

phenomenon from other services that are commissioned; it is very complex and, as I have said, unique to the individual.

**Mary Mulligan:** Did any local authorities ask for advice on the use of reverse e-auctioning?

**Jacquie Roberts:** It would not have been appropriate for them to seek advice from the care commission.

**Alexis Jay:** The Government—absolutely correctly, I should add—issued a direction on improving efficiency and best value in the procurement of goods, services and other work that councils have to carry out but, from discussions that I have had in and around Edinburgh, it appears that not enough consideration was given to the application of that model to care services. The problems arose only when the system was brought in and it became perfectly clear that the approach needed to be rethought.

**Mary Mulligan:** You are not aware of any guidance that said that that was the most appropriate approach to take.

**Alexis Jay:** No.

**Mary Mulligan:** My next question, which is on the “Panorama” programme that the convener and other members have already mentioned, is directed at Jacquie Roberts, as she is the care commission representative on the panel. Many of us were shocked by what we saw on the programme, but I have to say that that did not seem to be the care commission’s reaction. “Complacent” might be too strong a word, but do you accept that the care commission did not seem to share our response?

**Jacquie Roberts:** I think that that was the unfortunate result of editing. The programme showed a tiny bit of a very long and quite distressing interview, because we were shocked by what we saw.

**Mary Mulligan:** I ask the question because, as you oversee what is happening, people need to be confident that you feel the same as they do about these matters.

**Jacquie Roberts:** Indeed, and that is why I have said quite clearly that what was shown on the programme was unacceptable and poor practice. I was very shocked and distressed by it.

The other thing that came across in the programme was how the staff felt. That is why whistleblowing is so important to us and why, whichever service we visit, we spend quite a lot of time speaking privately with staff. They can indicate whether the service is being run well and whether they are delivering the service that they want to deliver.

**John Wilson:** I want to examine further some of the issues that have already been raised. In page 3 of its submission, the care commission says:

“So far, inspections in 2008/09 resulted in 100 services with requirements.”

The convener asked about that earlier. However, the submission then says:

“This number will increase as remaining reports, presently at draft stage, are finalised.”

Are you talking about 100 services out of the 736 services that are provided at the moment?

**Jacquie Roberts:** Yes.

**John Wilson:** That means that we are talking about 13.5 per cent of services. If, as you say, that number is going to increase, what will it increase to? Does the care commission think it satisfactory that more than 15 per cent of services might have requirements?

11:45

**Jacquie Roberts:** Requirements can vary from having up-to-date and well-put-together personal plans to having a system in place for the management of medication. Whatever the requirements are, however, we expect the service to meet them before we see it again. It is part of our job to drive improvements, and that is particularly true in the sector that we are discussing. We set requirements for the service to meet, and then we check up on it. The rate is not that high compared with, for example, the rate for care homes for older people.

**John Wilson:** I would argue that that is unsatisfactory as well.

**Jacquie Roberts:** Yes.

**John Wilson:** How many legal actions has the care commission instigated against service providers in the past year?

**Jacquie Roberts:** Do you mean how many improvement notices—

**John Wilson:** No. How many legally enforceable—

**Jacquie Roberts:** That is covered in one of the bullet points on page 3 of our submission. In 2008-09, two services were closed following enforcement notices and five other enforcement notices were issued.

**John Wilson:** Do you think that that is satisfactory?

**Jacquie Roberts:** We go through a process. If we set a requirement and the service meets it within the timescale, there is no need to go any further because the service has made the

improvements that we specified. If it does not meet the requirements, we move to enforcement.

**John Wilson:** That leads me to the issue of the company that was mentioned in the "Panorama" programme. We read in the written evidence that concerns had been raised since May 2008, but the next bullet point states:

"Information about ... complaints investigations was passed to South Lanarkshire Council in February 2008."

There seems to be an issue here. If those dates are correct, there seems to be a breakdown in the linkage between when the care commission got involved and when it raised concerns with South Lanarkshire Council in February 2008. Your submission goes on to say that you regularly monitored the service delivery.

I would like to ask you about the care commission's role, and my question also applies to the Social Work Inspection Agency. Local authorities commission services to be delivered locally. You take action against the service provider and not against the local authority that commissions the service. Is that correct?

**Jacquie Roberts:** Yes.

**John Wilson:** Why is no action taken against the local authority that commissions the service? It could be held equally liable if it fails to monitor the delivery of the service and therefore fails to protect the people who are supposed to be protected through the delivery of such services.

**Jacquie Roberts:** We certainly conveyed to the Social Work Inspection Agency concerns about how things were being done in South Lanarkshire, but our statutory responsibility is not to regulate how local authorities commission and contract. That is beyond our powers.

**John Wilson:** Do you accept that, because it is the local authority that commissions care services, it should be held equally responsible for any breakdown or failure in the delivery of such services to people in their homes?

**Jacquie Roberts:** I repeat what I said earlier. There is definitely a collective responsibility not just for the quality of the service that is delivered but for what is contracted and what the local authority commissions the service to do. Yes, the local authority has a responsibility there.

**John Wilson:** Should the care commission therefore have more powers to take legal action against local authorities where the delivery of services breaches what society regards as acceptable standards?

**Jacquie Roberts:** SWIA and the care commission perhaps need to come together on that issue, in anticipation of the enactment of the Public Service Reform (Scotland) Bill, under which

the two organisations will become a single regulatory and improvement body. We should consider what action we could take if we think that how local authorities are commissioning services and working in partnership with the other vital bodies is having a negative impact on the quality of services. I see that Alexis Jay is nodding at that.

**Alexis Jay:** Yes. SWIA has no enforcement powers. As I mentioned already, we report to ministers. In the instance that you describe, it would be for Scottish ministers to direct us to investigate. We could not make assumptions on the basis of a complaint. The complaint would need to be properly investigated.

If ministers directed us to do that, we would certainly do so and report back to them, but we have no enforcement powers. New enforcement powers may be an issue to be considered in relation to the PSR bill, which will establish a single new scrutiny body that will incorporate the two existing bodies.

**John Wilson:** I was trying to make the point that local authorities could abrogate their responsibility to the individual service user by simply blaming the person or the organisation that is commissioned to deliver the service. Perhaps as part of consideration of the PSR bill, we can examine the need for greater regulatory powers, in particular to hold the commissioning bodies to account.

**Alexis Jay:** As far as I am aware, you are right. There is a secondary liability on the commissioning body, and there is case law from elsewhere in the UK on that issue.

**Bob Doris (Glasgow) (SNP):** I am perhaps stating the obvious, but can you confirm that neither SWIA nor the care commission has any active role in the tendering process for care services in a local authority?

**Jacquie Roberts:** Yes.

**Alexis Jay:** Yes. I will explain our position further. You are right to say that we have no active role but, as we mentioned earlier, we inspect the processes that are used and we look at whether there is a commissioning strategy. We make umpteen recommendations in different council areas about the lack of a commissioning strategy, but you are correct in that we would not be involved in the detail of the retendering of a specific contract.

**Bob Doris:** You are involved in the implementation of wider strategic guidelines for tendering but not in the tendering of individual contracts.

**Alexis Jay:** That is correct.

**Bob Doris:** Are you automatically informed that there is going to be a tendering or a retendering process?

**Alexis Jay:** No.

**Jacque Roberts:** No, but we might find out when a local authority comes to us to get some information about the quality of services.

**Bob Doris:** And, as you mentioned, the care commission has a statutory duty to inspect home care providers at least once a year.

**Jacque Roberts:** Yes.

**Bob Doris:** As the providers could be involved with a number of local authorities, a number of inspections throughout the country would be necessary.

**Jacque Roberts:** Yes.

**Bob Doris:** It is a long and laborious task, as there is a great deal of home care. Some of the investigations could be intelligence led, not only on the basis of what you are told by whistleblowers; if you are aware that a particular retendering process is lowering the cost of home care from £15 an hour to £10 an hour, you might be interested in investigating the service. To give another example, a decrease in the average visit time to a vulnerable person from 30 minutes to 15 minutes might, if it is flagged up to either of the two agencies that are before the committee today, be of interest to the care commission. In other words, do you use that intelligence to visit certain care providers more frequently than you otherwise would?

**Jacque Roberts:** We can certainly use that intelligence to inform our risk assessment process that a particular service needs more time and attention than other services.

**Bob Doris:** But that would apply only if you were aware that a tendering or retendering process had taken place.

**Jacque Roberts:** Yes. We do not deliberately try to find that out.

**Bob Doris:** Is it true that some of that information—for example, that the cost had dropped from £15 an hour to £10 an hour—is commercially sensitive and would not be publicly available?

**Jacque Roberts:** Yes. We are not involved in the details of the tendering process at all.

**Bob Doris:** You would not have that information. An auction or any other arrangement would take place behind closed doors.

**Jacque Roberts:** It would.

**Bob Doris:** Would you find a reporting

mechanism helpful, so that local authorities could inform you of some of the details of tenders? Obviously, there are commercial constraints, but you would not pass the information on to third parties. If you are intelligence led and focused in your reporting on and investigations into care standards, you might be more likely to go to a local authority that has retendered care services, and where there has been a 30 to 40 per cent cut in the per hour cost of the care. Would you like to be made aware of such information as a matter of course?

**Jacque Roberts:** I would have to give that careful consideration, because it is extremely important for us to have an independent approach. You should remember that we regulate local authority-provided care-at-home services as well as care-at-home services that are provided by the voluntary sector and the private sector.

**Bob Doris:** I find it curious that, with an industry as massive as the care-at-home industry, you cannot use intelligence such as the unit cost. I am not talking about making judgments about whether it should be £15, £14 or £10 per hour, but about using such data to establish whether there has been a change. Would the fact that there had been a retendering process make you more likely to compare the new service with the old service?

**Jacque Roberts:** We definitely pay more attention when we see that services that have been retendered are growing fast, because we recognise that that presents a risk to the quality of the services that are delivered.

**Bob Doris:** I want to try to interpret the data that you provided us with. You said that 100 services were issued with requirements. Has any number crunching been done to find out what percentage of the providers of those services had won a retendering contract in the previous year?

**Jacque Roberts:** No, I have not asked that question, but I could certainly look at that.

**Bob Doris:** If we could look at that over a number of years, we might be able to see whether there is a trend in your issuing of improvement notices and whether that is related to the retendering of services.

**Jacque Roberts:** That would depend on such information being available. I am not totally sure that the information would be available to do that analysis, but I could make some inquiries about that.

**Alexis Jay:** As you pointed out earlier, many councils have not embarked on retendering for home care or any other services. It is not the case that every council has done that, which is one reason why intelligence gathering is difficult.



**Jacquie Roberts:** Some of the 100 services that were issued with requirements are local authority-provided services.

**Bob Doris:** I find that quite interesting. At a later date, I might try to find out more about the information that both your agencies get in relation to the tendering process, because there is definitely intelligence that you could use to focus your operations more effectively.

**Alexis Jay:** The other key issue is that the tendering process is set within the framework of councils' standing orders and their general procurement processes, not just those that relate to care services.

**David McLetchie:** Good morning. I want to put the care commission's figures in context. As I understand your submission, on 31 March 2009 736 care-at-home services were registered with the commission. You inspect those services annually and have been responsible for regulating them since 2005. Is that right?

**Jacquie Roberts:** Yes.

**David McLetchie:** I want to ask you about the trends over the years for which you have regulated those services. In 2008-09, 10.5 per cent of the care-at-home services that were registered with you in March 2009 had a complaint about them upheld or partially upheld. Is the level of complaints upheld increasing or decreasing in comparison with the baseline in 2005-06?

**Jacquie Roberts:** The number and percentage of services against which complaints are upheld or partially upheld is increasing. There is a confounding factor, which is that more and more people are aware of our responsibility and are more prepared to refer a complaint to the independent care commission to investigate, so it is hard to say whether the increase is a direct result of deteriorating services or whether it is a result of greater awareness of the care commission.

**David McLetchie:** Okay.

The convener and others have asked questions about your grading system. If we take categories 4, 5 and 6 as good—

**Jacquie Roberts:** They stand for good, very good and excellent.

**David McLetchie:** Categories 1 to 3 range from unsatisfactory to adequate.

**Jacquie Roberts:** Category 3 is adequate.

**David McLetchie:** Right, but it is not good.

Over the four years for which you have inspected care-at-home services, have the providers' grades improved?

**Jacquie Roberts:** This is the first year of grading. We moved into grading last year as a direct result of knowing that people who use the services want to know our judgment about their quality. We do not have any comparisons yet. We will have to wait until the end of this year for a comparison.

12:00

**David McLetchie:** We will have to wait another couple of years to see whether there are trends.

**Jacquie Roberts:** One of the main reasons for moving to grading was to get an indication of whether there was improvement in the services.

**David McLetchie:** That is fine.

You have awarded service providers grades under the categories: quality of care, quality of staffing and quality of management. It is probably fair to say that in round terms the local authority providers and the private sector providers score roughly the same in terms of positive grades. My sums suggest that, in relation to quality of care and support, local authority providers have 73 per cent positive scores and the private sector providers have 75 per cent positive scores. The picture is much the same in relation to quality of staffing, where the figures are 71 per cent and 70 per cent, and quality of management, where the figures are 62 per cent and 62 per cent. The figures seem pretty eeksie-peeksie.

However, we see a huge improvement in the figures for the voluntary sector in all three categories. The voluntary sector providers have 92 per cent positive scores under quality of care and support, 88 or 89 per cent positive scores under quality of staffing and 88 per cent positive scores under quality of management. So, there is a step-change in quality standards between the council and the private providers on the one hand and the voluntary sector providers on the other hand. Why is that?

**Jacquie Roberts:** I would like to be able to give you a short answer to that. The answer is that I do not know the reasons and we will have to consider that.

Last week, Annie Gunner Logan told you about some early findings that indicated the trend that you describe. The data in my submission are more recent. We have to ask the reasons for the trend. My understanding is that a lot of the voluntary and not-for-profit providers are providing some of the niche services and have very robust systems for service-user engagement and feedback as part of their quality-assurance systems. There is some excellent practice in the voluntary and not-for-profit sector. However, that is not a total analysis of the reasons for the difference in the figures.

**David McLetchie:** Ms Jay, would you like to comment on that?

**Alexis Jay:** I do not think that we can directly attribute the figures to any factor. The difference is interesting and we would have to see whether it was consistent over time.

**Jacquie Roberts:** Yes.

**Alexis Jay:** It is known that the voluntary sector has specialist areas of interest—niche provision if you like. The sector is often used for developing and testing new models, when the councils contract with it. However, the reasons for the difference are not sufficiently clear. We would have to go back and put our data together to see whether we can be much clearer about what the evidence is telling us.

**David McLetchie:** I return to the petition that we are considering. The difference in the figures cannot be attributable to pay and conditions, because the voluntary sector people are telling us, through the petition, that they want better pay and conditions, or pay and conditions that are comparable to those in local authority providers. All the evidence that we have in the care commission submission is that the voluntary sector providers are providing a superior service, by reference to your gradings, at, in effect, a lower cost, which is better value for the taxpayer. Is that a fair assessment?

**Jacquie Roberts:** That is how it appears, which is why Annie Gunner Logan raised the issue.

**David McLetchie:** I have a couple of questions about your submission, Ms Jay. There were a couple of things that I did not understand. You tried to explain to us the difference between commissioning and contracting, which I have to say I am struggling with slightly. Will you enlighten me on that? One of your conclusions is:

“There is too much contracting activity and not enough commissioning, which is frequently used to describe only external purchasing of services and not to apply to in-house services”.

Will you translate that for me please?

**Alexis Jay:** The issue is complex. I have heard people referring to commissioning this morning as if the word were to be applied only to externally purchased services—what is outsourced—but that is not the case. The thinking about strategic commissioning, which we heard a lot about earlier, should apply when people are thinking about developing services to meet an area’s needs. The word “commissioning” should apply to any service that you want to put in place, regardless of whether the provider is the council, the private sector or the voluntary sector. The same rules and approaches should apply to all of them, not just to the outsourced services.

We need a more transparent process of strategic commissioning. As we heard earlier, that is about identifying people’s needs over a five to 10-year period, working out what people aspire to, how they want to live their lives and what they want, and then working out with the partners—principally health partners, of course—what kind of services must be put in place to meet those needs. That process also involves looking at all the local markets, at who the providers are, and at how the council wishes to approach the provision of services: it must look at what services it plans to provide itself and which services need to be provided by others and why. Outside provision should be chosen not because you feel like it and want to protect in-house services, but because there is a proper rationale for managing the social care market externally. Our view is that not enough strategic thinking goes into councils working out that position: the share and kinds of service that they should provide and the share and kinds of service that the private sector and the voluntary sector should provide. In the past, I have often heard the accusation that councils like to cherry pick the easier work and give the tougher work to the external providers, either because councils prefer them to do that work or because they could do it more cheaply.

That is what we mean by commissioning. Individual contracting is to do with the technical bits involved in setting out what will be delivered for a given price at a certain time.

**David McLetchie:** I want to simplify things. If I have understood your explanation, you are saying that for every contract, there must first have been a commission, but every commission does not necessarily lead to a contract.

**Alexis Jay:** That is true, because—

**David McLetchie:** I am sorry to stop you there, but how can you then say that

“there is too much contracting activity and not enough commissioning”,

given that, logically, there must be more commissioning than contracting? I do not understand your statement.

**Alexis Jay:** The focus in all areas of work over the years has been on the technical aspects of contracting; there has not been enough focus on the strategic activity of commissioning. Often, contract officers in councils concentrate on the technical bits, sometimes in the absence of a master plan. It is not that we do not need contracting—of course we do—but it must be set in the context of a clear plan that includes the kinds of services that you want to develop to meet people’s needs. Often, all the activity and resource of staff have gone into the contracting and not enough has gone into thinking about how people

want to live their lives, how we will meet their support and care needs in future, and engaging them in the process.

**David McLetchie:** So the resources and the focus of activity, rather than the actual numbers, is the issue.

**Alexis Jay:** That is correct.

**Jacquie Roberts:** Joint commissioning with the NHS is also vital. I am not sure that that happens enough.

**David McLetchie:** My final question to Ms Jay is again based on her written submission. You say in that submission:

“there is not enough self directed care, including use of direct payments”.

Why is that the case? Why are people not opting for that? Are they aware of their right to do so?

**Alexis Jay:** That is a key question. People in some parts of the country are extremely active in ensuring that those who use services know all the options relating to how services and support can be delivered. In other parts of the country, there is very little awareness raising or promotion of direct payments for people who need services. They are not necessarily told that they have the option of receiving cash in hand to purchase services with support.

Self-directed support, which is more developed south of the border, is also very restricted. With self-directed support, the individual is given an outline budget and can decide which services should be provided. That is slightly different from direct payments, because the individual does not need to manage the cash.

If we are all committed to more personalised services, we should wish to see more people take up those options. There should be greater awareness of the possibilities that are available to people if they wish to manage their care for themselves.

**David McLetchie:** Who currently has the legal responsibility to make people aware of their rights in that respect?

**Alexis Jay:** The local authority.

**Jacquie Roberts:** The local authority.

**David McLetchie:** So local authorities are failing to provide that information to service users.

**Alexis Jay:** In some instances, but that is not widespread. Some local authorities are much better than others at providing such information.

Direct payments are only one way of achieving personalisation, but the range of ways in which services could be provided is not always fully explained. That ties in with my written

submission's first bullet point, which mentions that “older people ... do not think there is enough choice”.

That choice is not just about whether people go into a care home or day centre, but a whole range of other things about how services are provided. That needs to be fully discussed with the old person at the initial point of contact when their care and support needs are assessed.

**David McLetchie:** Should the Government perhaps have a role in directing local authorities to fulfil their obligation and to up their game so that more people know what their entitlements and rights are?

**Alexis Jay:** For some councils, yes.

**David McLetchie:** The issue could perhaps be included in the next concordat.

**Alexis Jay:** I would very much like to see something in the concordat about personalisation.

**The Convener:** I will let Mary Mulligan and John Wilson ask a further question, but the minister is travelling along the corridor as we speak.

**Mary Mulligan:** I will be very quick, convener.

The written submission from Ms Roberts states:

“In May 2009 the Minister for Health and Sport announced that the Scottish Social Services Council will undertake the registration and regulation of care at home managers.”

Can she expand on that? Will that apply just to the private and voluntary sectors?

**Jacquie Roberts:** Registration will apply to all sectors. Joining a number of categories of social services workers—including social workers and residential care home managers—care-at-home service managers will now be required to be registered with the Scottish Social Services Council. Registration is always qualification based, so care-at-home managers will be required to have qualifications as well.

**Mary Mulligan:** Was that previously done by the care commission?

**Jacquie Roberts:** No, it was not being done. That is why the announcement was made.

**John Wilson:** I have a question for Ms Jay on direct payments. What hard evidence is there to show that local authorities are failing in their duties to advise possible users of services that direct payments are available? Having advised on the issue prior to entering Parliament in May 2007, I know that many are reluctant to go down the direct payments route because they would in effect take on the legal responsibility of being an employer. To suggest that direct payments would be an easy option for people misrepresents the role and responsibility of those who accept the direct

payments route for the provision of services. In effect, such people become a legal entity as an employer.

**Alexis Jay:** Direct payments are one way of achieving personalisation, but they are not the only way. I have been at pains to point that out. That is why I mentioned self-directed care, for which people do not need to handle the cash and are not the employer, but can control the resource that is allocated to meet their needs. I made that distinction clearly.

The evidence that is available is that the extent to which direct payments are taken up differs vastly across the 32 councils. In some instances, that might reflect the fact that people are satisfied with their current arrangements and do not wish to take on those employment responsibilities. As you probably know, relatively few older people choose to go down the route of direct payments in comparison with under-65s. That is interesting, because it might suggest that more over-65s will choose direct payments over time.

12:15

The hard evidence of differential numbers is available now. That is not the whole picture, of course. One question is how much effort is directed towards making people aware of the system. Some councils have contracted individual providers to assist with the promotion of direct payments and they have provided development officers to support people in the employment role if they wish to go down that route. That seems to work effectively.

Older people are certainly not choosing the option in large numbers, but it is only one means. Evidence shows a differential input from councils into promoting and raising awareness about direct payments.

**The Convener:** I thank both witnesses for their attendance and for their evidence.

## Subordinate Legislation

### Planning etc (Scotland) Act 2006 (Consequential Amendments) Order 2009 (Draft)

12:16

**The Convener:** Item 3 is oral evidence on the draft order from Stewart Stevenson MSP, the Minister for Transport, Infrastructure and Climate Change, and from Scottish Government officials. I welcome to the meeting the minister and, from the Scottish Government, John McNairney, deputy director of planning; Alan Cameron, senior planning policy officer; and Norman Macleod, senior principal legal officer.

I give the minister the opportunity to give a brief introduction.

**The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson):** I hope that my statement will be commendably brief. Thank you for allowing me to come to discuss the statutory instruments that are on the agenda, which form part of a suite of legislation to reform the planning system. The committee will recall the previous discussion of instruments that contained the main legislative reforms. The latest instruments will make largely technical changes, but they are nonetheless important parts of the overall package.

The draft Planning etc (Scotland) Act 2006 (Consequential Amendments) Order 2009 will amend primary legislation as a consequence of changes to procedures on planning applications, appeals, local reviews and enforcement. Broadly, the order has two purposes—making technical amendments to reflect new terminology in other primary legislation and ensuring that some existing provisions on planning appeals also apply to local reviews. I will not go through the technical amendments one by one, but my officials and I are happy to take any questions that the committee has.

**The Convener:** Thank you for your introduction.

Do members wish to ask questions?

**Jim Tolson:** Good morning, minister—I beg your pardon, as it should be good afternoon; that has slipped by us.

Can the extra costs of advertising for planning be covered in planning application fees? Some local authorities are moving to online advertising. Do you encourage that? Many people feel that online advertising is not as well read as newspaper advertising is. As you know, newspapers throughout Scotland are feeling the strains of a drop in advertising revenue. In that

context, what is your view on planning advertising or the lack of it?

**Stewart Stevenson:** The issue will be covered under agenda item 5, but I am happy to respond now if that is appropriate, convener.

**The Convener:** We will address the question under item 5.

**Jim Tolson:** I beg your pardon, convener.

**Stewart Stevenson:** I have taken note of the question.

**The Convener:** As there are no further questions for the minister, I ask him to move motion S3M-4197.

*Motion moved,*

That the Local Government and Communities Committee recommends that the draft Planning etc (Scotland) Act 2006 (Consequential Amendments) Order 2009 be approved.—[*Stewart Stevenson.*]

*Motion agreed to.*

### **Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 (Draft)**

**The Convener:** Item 5 is consideration of a second draft affirmative instrument. I offer the minister the opportunity to make some brief introductory remarks.

**Stewart Stevenson:** As adumbrated in Mr Tolson's question, the regulations relate to recovering the costs of advertising planning applications in newspapers. The criteria that trigger such advertising by the planning authority are set out in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432), which the committee considered in January. Those criteria are broadly unchanged from current requirements. We are taking the opportunity to extend the recovery of the costs of advertising to include the advertisement of applications that are contrary to the development plan. Three other types of advertising are already provided for. I and my officials are happy to answer any questions that the committee may have about the detailed provisions in the regulations.

If you are comfortable with this procedurally, convener, I will now answer Mr Tolson's question.

**The Convener:** I would be happy for you to do that, minister.

**Stewart Stevenson:** Mr Tolson addressed a number of different issues, including whether we should advertise in newspapers or elsewhere. Much of the advertising that is undertaken by local authorities and Government is prescribed in legislation to be in newspapers and, in many

cases, in the *Edinburgh Gazette*. We believe that we should address and reform that over time but, given the prevalence of such provisions throughout our legislation, that is pretty much a long-term project. We are conscious of the printed media's dependence on such advertising and we are taking account of that as we go forward.

More generally, the provision simply covers the fourth type of advertising, for completeness. It is already possible to recover the costs for the other three types of advertising.

We are in discussions with the development industry and the Convention of Scottish Local Authorities about planning application charges generally. Depending on the outcomes of those discussions, we are likely to produce in due course a change in the basis on which charges will be made, the scale of charges and the services that will be required to be delivered. There is active engagement on the whole subject, although it is at a relatively early stage.

**Jim Tolson:** I thank the minister for his answer. I am sorry that I jumped in a bit early with my question, but I was keen to get going—probably keen to get my lunch.

I appreciate that the discussions are at an early stage. There is an on-going review, which we hope will report in fairly early course. However, given the fact that the Government and local authorities are statutorily obliged to advertise with regard to planning applications, will local authorities be required to take account of the completed review?

**Stewart Stevenson:** It is too early for me to give a specific response to that question. In general, we adhere to the principle that at least a substantial proportion of the costs associated with a planning application—particularly a significant application—should be borne by the applicant. As to outcomes, I am afraid that we are not at a stage at which I could bind us to any conclusions. In particular, our discussions with the Convention of Scottish Local Authorities are not at a stage at which we could make such a commitment in advance of the further discussions that will take place.

**David McLetchie:** As I read the regulations, they seem to be regulations upon regulations—or regulations to supplement regulations—because, if I am correct, the requirement to publish a notice in a newspaper in respect of the relevant applications arises from regulation 20 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432). Is that correct?

**John McNairney (Scottish Government Directorate for the Built Environment):** Yes.

**David McLetchie:** So the local planning authority is under an obligation, by law that arises from the 2008 regulations, to publish a notice and there is now another instrument that says, "Ah yes, but you can recover the costs of doing so." Is that correct?

**John McNairney:** The development management procedure regulations are negative, but the regulations that we are discussing—the charges for publication of notices regulations—require to be affirmative, which is why we have had to separate out the provisions. The development management procedure regulations, which have been approved, set out the types of adverts that are required for different categories of applications. The charges for publication of notices regulations, because they are affirmative, set out the mechanism for recovery of costs by the planning authority.

**David McLetchie:** Why is it that you could not devise a set of regulations that said, as in regulation 20(1) of the 2008 regulations,

"The planning authority must publish a notice"

blah blah, and include in the same regulations a provision that said, "if you do so, you can recover the cost from the applicant"?

**Stewart Stevenson:** I think that the point is a legal one.

**David McLetchie:** That is exactly what I am coming to.

**Stewart Stevenson:** The point is that we are required to exercise certain powers via negative instruments and others via affirmative instruments. There is not a process—unless I am advised otherwise, and I am not being so advised—by which we can consolidate powers that are exercised under negative instruments with powers exercised under affirmative instruments into a single instrument. That is why we are where we are.

**David McLetchie:** So you cannot have such a thing as hybrid regulations?

**Stewart Stevenson:** Correct.

**David McLetchie:** Why is that? Would that not reduce the volume of regulations with which parliamentary committees have to cope?

**Stewart Stevenson:** If I may, convener; I am asked why that is the case and the simple answer is because Parliament has chosen to make it so.

**David McLetchie:** Perhaps we should put the matter on the public services reform agenda, minister.

**Stewart Stevenson:** I can hardly wait for the excitement of such legislation.

**The Convener:** Some of us are getting excited about lunch, minister, so we will press on.

We now move to agenda item 6. I ask the minister to move motion S3M-4203.

*Motion moved,*

That the Local Government and Communities Committee recommends that the draft Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 be approved.—[*Stewart Stevenson.*]

*Motion agreed to.*

**The Convener:** Thank you very much for your attendance, minister.

**Stewart Stevenson:** My pleasure as ever, convener.

**The Convener:** Enjoy your lunch.

### **Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order (SSI 2009/184)**

### **Local Government Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Regulations 2009 (SSI 2009/186)**

**The Convener:** Item 7 is further consideration of two negative instruments that were first considered at last week's meeting, when members agreed to seek further information from the Scottish Government. That information has been received and circulated to members as one of the papers for today's meeting.

The first instrument is Scottish statutory instrument 2009/184. Do members agree that they do not wish to make any recommendation to Parliament in relation to the instrument?

**Members indicated agreement.**

**The Convener:** The second instrument is SSI 2009/186. Do members agree that they do not wish to make any recommendation to Parliament in relation to the instrument?

**Members indicated agreement.**

**The Convener:** We now move to agenda item 8, which we previously agreed would be taken in private.

12:30

*Meeting continued in private until 12:53.*

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