EDUCATION COMMITTEE

Wednesday 15 November 2006

Session 2

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CONTENTS

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EDUCATION COMMITTEE
24th Meeting 2006, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)
*Ms Rosemary Byrne (South of Scotland) (Sol)
*Fiona Hyslop (Lothians) (SNP)
*Mr Adam Ingram (South of Scotland) (SNP)
*Mr Kenneth Macintosh (Eastwood) (Lab)
*Mr Frank McAveety (Glasgow Shettleston) (Lab)
*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Richard Baker (North East Scotland) (Lab)
Mr Jamie McGrigor (Highlands and Islands) (Con)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)
Mr Andrew Welsh (Angus) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

John Anderson (General Teaching Council for Scotland)
Alex Davidson (Association of Directors of Social Work)
Anna Fowlie (Convention of Scottish Local Authorities)
Detective Chief Inspector Andrew Gosling (Association of Chief Police Officers in Scotland)
Deputy Chief Constable Tom Halpin (Association of Chief Police Officers in Scotland)
Una Lane (General Medical Council)
George MacBride (Educational Institute of Scotland)
Christina McKenzie (Nursing and Midwifery Council)
Val Murray (Scottish Social Services Council)
Stephen Smellie (Unison)
Lynn Townsend (Association of Directors of Education in Scotland)
Dave Watson (Unison)
Carole Wilkinson (Scottish Social Services Council)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 6

Scottish Parliament

Education Committee

Wednesday 15 November 2006

[THE CONVENER *opened the meeting at 10:06*]

Protection of Vulnerable Groups (Scotland) Bill: Stage 1

The Convener (Iain Smith): Good morning and welcome to the 24th meeting of the Education Committee in 2006. We have only one item on the agenda—our first stage 1 oral evidence session on the Protection of Vulnerable Groups (Scotland) Bill—but that does not mean that the meeting will be short. We have three panels of witnesses. On our first panel we have Tom Halpin, who is a deputy chief constable, but our papers do not say where.

Deputy Chief Constable Tom Halpin (Association of Chief Police Officers in Scotland): Lothian and Borders police.

The Convener: Thank you. I see that it says that further on in our papers. Tom Halpin is chair of the Association of Chief Police Officers in Scotland, and has responsibility for the family protection portfolio, which reports to the crime business area. We also have with us Detective Chief Inspector Andrew Gosling, from Lothian and Borders police, who is with the ACPOS Bichard implementation team; Lynn Townsend, from the Association of Directors of Education in Scotland, who is head of service at West Dunbartonshire Council; Alex Davidson, who is vice-chair of the community care standing committee of the Association of Directors of Social Work; and Anna Fowlie, who is the team leader for children and young people at the Convention of Scottish Local Authorities.

I welcome you all. We have your written evidence, but if you wish you may make introductory comments. I stress that we have a lot of witnesses this morning, so please keep any comments brief.

Deputy Chief Constable Halpin: Our opening comments are in our written submission.

Lynn Townsend (Association of Directors of Education in Scotland): It is the same for ADES.

Alex Davidson (Association of Directors of Social Work): The ADSW shares a submission with COSLA and ADES.

Anna Fowlie (Convention of Scottish Local Authorities): I agree.

The Convener: That was commendably brief. I ask members to keep their questions brief and to direct them to specific panel members. If panel members wish to follow up on any points that are made, they should feel free to do so.

Mr Frank McAveety (Glasgow Shettleston) (Lab): The panel may be aware that the bill has already had an interesting journey through different committees of the Parliament. The Finance Committee had what I would euphemistically call some troubled perspectives on the bill. I do not know which witness feels most qualified to respond, but one of the central points about which members were concerned and animated is whether the bill will have a substantial impact on volunteers. Given what some might perceive as a level of intrusion by the bill, how might it affect people who volunteer, particularly to work with young people?

Lynn Townsend: If we give out sufficient information and explanation, I do not think that volunteers and volunteer organisations will be put off by the bill. However, on the financial memorandum, I would like volunteers in the statutory sector to be covered by the financial arrangements, particularly as we are trying to give volunteering a much higher profile and involve more of the community in voluntary work. I am thinking specifically of the not in education, employment or training strategies. We are trying to involve young people, who are often involved in volunteering through their local authority and statutory bodies. It would be a financial burden for local authorities if they had to pay for young people's vetting.

Deputy Chief Constable Halpin: The experience of the current arrangements is that, although volunteers have to go through a bureaucratic process, people are not saying to us that it prevents them from volunteering. We do not anticipate that that situation will change.

Anna Fowlie: Similar concerns were raised when the Protection of Children (Scotland) Act 2003 was introduced. We have carried out a trawl of councils, which shows no evidence that the act has had a negative impact on volunteering.

Mr McAveety: What about the costs? We have received strong submissions that the overall costs, particularly to the voluntary sector, could be large. That was one of the issues with which the Finance Committee tussled.

Anna Fowlie: The costs from fees will not impact on the voluntary sector, because volunteers will be exempt from paying them. Costs may arise from the administration of the scheme, but I do not envisage them being hugely greater than the costs of administering the existing scheme.

Dr Elaine Murray (Dumfries) (Lab): I want to follow on from Frank McAveety's comments. The Finance Committee heard evidence that far larger numbers of people are likely to be involved under the bill than have been involved under the Protection of Children (Scotland) Act 2003, yet Disclosure Scotland has had problems coping with the numbers of disclosures that are required under that act. The new scheme will rely on information technology systems working properly. As your organisations may have interacted with the IT systems, are you confident that they will be able to cope with the volume of records? On the back of that, are there any alternative ways to achieve the same aim?

Detective Chief Inspector Andrew Gosling (Association of Chief Police Officers in Scotland): We realise that the bill largely will produce new business and that we will all have enhanced responsibilities, particularly for continuous updating. More people will be in the scheme and the work that will be involved in maintaining it will be greater.

One issue that we have identified is the disparate IT systems in Disclosure Scotland, the Scottish Criminal Record Office and police forces. Other agencies may encounter that issue in time, as they come into the scheme and supply more information that could be useful for vetting. We appreciate that IT is a problem, and we are at the early stages of scoping the issue. We are working with the Scottish Executive to find out where the difficulties and challenges lie and how we can overcome them. We acknowledge that IT systems will play a big part and must talk to one another.

Alex Davidson: It has been extremely difficult and expensive to join up health and social care IT systems throughout Scotland, with each local authority and health board having to work together. Our experience suggests that we need a central drive to the information-sharing part of the bill to make it work well. The process is complicated, difficult and costly.

Dr Murray: At the United Kingdom level, many people have still not been transferred to the Child Support Agency's new IT system, because it cannot cope with the volume. The Finance Committee heard that a million people in Scotland could be involved in the new scheme, if we take all the volunteers into consideration. If we multiply that up, that means that 10 million people will be involved in the scheme south of the border. Are you confident that we will get the system right?

Deputy Chief Constable Halpin: There is no doubt that the bill has big implications for the police service and other agencies in ensuring that no gaps arise that people can exploit to prey on vulnerable adults and children. As a result of the Bichard recommendations, there are enormous programmes in the wider police service to join up police systems, not just in Scotland but throughout the United Kingdom. The impact nominal index is one development that we are working on in the Scottish police service to ensure that the information that we are talking about is accessible. That work will continue.

The idea that information can be held by various agencies and brought together makes the business processes and information-sharing protocols and requirements that go along with the IT important. We believe that all the measures added together will be a significant factor in protecting children and vulnerable people. You asked whether the system will work: I believe that it will work, but we must ensure that we do not rely simply on IT for it to work, because the business processes are equally important.

10:15

Ms Wendy Alexander (Paisley North) (Lab): I wish to ask each organisation about ends and means. The end, or stated aim, is to have a vetting and barring scheme with a list that is available to employers. That requires a qualitatively different level of information sharing than has been the case so far. There is unanimity around that. The vetting and barring scheme should not simply cover historic convictions; it should draw on a wide variety of other information and should attempt to identify all those who could pose a significant risk to children or vulnerable adults. If that is the end, there seems to be near unanimity on it.

My question is about the means that the bill has chosen to deliver high-quality information sharing around a vetting and barring list, namely the requirement on all employees and volunteers to make individual applications that can be checked against the central list that is being drawn up. Did your respective organisations consider whether that means is the right one to deliver the end of having a high level of information sharing, vetting and barring?

It would be quite proper for you all to reply that the Executive has already determined the means by which it wants to deliver the outcome, and that your organisations have commented on the detail and have not reflected on whether having a million or more individual applications is the most appropriate means to deliver the end of a workable vetting and barring list. However, I am interested to know whether any of your organisations considered whether having that number of individual applications is the best way to deliver the shared outcome of the vetting and barring scheme and a high level of information sharing at the centre.

Anna Fowlie: That is a hard question. You are right to suggest that we have, of course,

considered what has been presented to us. I struggle to see what the alternatives might be. The one that springs to mind is simply having a big list of everybody who is known to every agency, but that would be questionable in human rights terms. Moreover, those people might never wish to work with children or vulnerable adults, so why would we hold a host of information on them? That would be even more unmanageable than dealing with a million applications. Drawing up such a list would potentially be a huge undertaking.

Ms Alexander: Why would that be the case? The list for vetting and barring would constitute a tiny proportion of the Scottish population, and not one in three adults.

Anna Fowlie: Of course it would, but how would we know that for sure? How would we find that out in a robust way?

Ms Alexander: Surely it will be vital to draw all the information together, so that the one in three adults in Scotland who apply can be tested against it. You will need to have shared information at the centre about who you debar.

Thank you for that answer—let me also ask the witnesses from the other two organisations. Did you think about or comment on the means that have been presented, that is, having a million applications?

Alex Davidson: I have a different take on that. People volunteer for a whole range of reasons, for example to find a way into employment. Some of the other legislation that the Parliament has enacted has emphasised reciprocity and helping people in that regard. Under the bill, we might need to set up the means to help people to volunteer.

In social work, health and many other professions, we are well used to being regulated. It is part and parcel of our daily business, so it is not a surprise to many people in the field. Almost 39 per cent of the services that are provided in social work are purchased from external organisations. That is a big issue. We need to give something back. It is a matter of finding different ways of doing that. When it comes to individual volunteers and small voluntary organisations in particular, there needs to be something to assist individuals to find their way through the process.

Deputy Chief Constable Halpin: Andrew Gosling may also want to comment on this issue. ACPOS's position is that we responded to proposals given the experience of operating the current scheme. We played a full part in the consultation, and I compliment the civil servants who were involved. Introducing such a scheme is a significant challenge. The process inevitably causes us to reflect on where we are and how we can develop our systems and structures to respond. We considered the means but, given the stage at which we did so, it may not have been the cause of the change. I agree with Anna Fowlie that the alternatives do not seem to be workable.

Detective Chief Inspector Gosling: During the consultation, there was no suggestion that there might be an alternative to the process that has been described. Like Anna Fowlie, I struggle to think how an alternative would work. The only possibility would be for organisations to take on the responsibility of carrying out the detailed checks that are necessary. That begs the question whether they have the capacity or capability to do so. It makes complete sense for the process to be centralised in one unit. The key issue is the identification of individuals, not organisations. The fact that someone in an organisation is wayward and is identified as such does not mean that the organisation is wayward. We are trying to assure individuals within organisations.

Deputy Chief Constable Halpin: A comment was made about the means by which people come into the scheme. We must be careful to ensure that individuals are not able to exploit gaps between the different administrations and jurisdictions in the United Kingdom. We are working hard in that area, but we still have concerns about it.

The Convener: I would like to explore the issue further. I am not clear about the loopholes that are often referred to. How will people exploit such gaps? How will the problem manifest itself, if in England there will be a system akin to that which already exists in Scotland, and if anyone who moves into the workforce will be subject to checks? I do not see why the regimes must be identical on both sides of the border to prevent loopholes appearing.

Deputy Chief Constable Halpin: The systems that we put in place must ensure that if a check is performed under the Scottish scheme, there is absolute confidence that it is also valid for England, Wales and Northern Ireland. The technology involved should ensure that the system is continually updated, so that we know it is accurate. There are separate organisations and administrations within the different jurisdictions. The systems and IT that we use must ensure that there are no loopholes. We are alert to the issue and are seeking to close gaps as we work through the solutions.

The Convener: You are talking more about the technicalities than about the legislative framework.

Anna Fowlie: The legislative framework is also relevant, because the tests that are applied to determine whether someone is included in the schemes and systems in the different jurisdictions must be consistent. I agree that they need not be

identical, but they must talk to one another. We must be convinced that there is consistency and that everyone is applying the same standard.

The Convener: I am not entirely clear about that point. Vetting information is subject to the judgment of chief constables, so there will always be some variation in what is presented for vetting or other purposes. Presumably, the important point is that information that you receive from sister or brother organisations in England, Ireland and Wales should be robust. The test that will be applied to determine whether a person is appropriate to join the workforce in Scotland will not be a test from England; it will be the same test that is applied to people from Scotland.

Anna Fowlie: Yes, but the test of whether information is needed, which takes place before that point, must be consistent. The issue is getting foggy, but we are talking about the information that is provided from somewhere in the system in England. The information that we get is subject to a decision-making process in the other jurisdiction before we get it. We make our employment or listing decisions on the basis of that information.

The Convener: Yes, but the information that is provided by Disclosure Scotland is already subject to different decisions, because different chief constables might interpret matters differently.

Anna Fowlie: They might, but there is less subjectivity.

The Convener: That is because fewer chief constables are involved.

Detective Chief Inspector Gosling: I think that what Anna Fowlie is saying—with which I concur—is that we are pushing towards a situation in which, given the same set of circumstances and the same information, both central barring units will come up with the same decision, such that one administration will not be seen to be particularly soft or particularly hard.

Fiona Hyslop (Lothians) (SNP): The fact that the Safeguarding Vulnerable Groups Act 2006 received royal assent last week means that if there has to be some consistency with the system in England, we are stuck—we will have to work with the system that we inherit.

At this stage in examining the bill, we must address its fundamental principles. If we reflect on the lessons that we learned from the Protection of Children (Scotland) Act 2003 and the problems with disclosure that we are aware of, we should consider not only whether the proposed system will have a logic to it and will make sense once it is up and running, but how we get there in the first place—judging from previous experience, that is probably the more important task. Some of the submissions say that getting there in the first place may cause so many problems that we will never achieve the ideal system that should provide the protection that is needed.

The submission of ADES and the ADSW uses strong words in relation to section 46. It states:

> "the intention for implementation is a minefield, which needs to be resolved as a matter of urgency … If councils offload large quantities of information to the Vetting and Barring Unit, the Unit will be swamped".

Given the volumes that we are discussing, there is a great deal riding on the ability of Government to work with private providers such as BT to produce systems that will work. What are your concerns about getting to the ideal system? Should we include in the bill provisions about retrospection or phasing, to ensure that we get a system in the first place? Do you have anything to say about the transition period?

Lynn Townsend: We need to strike a balance between trying to be completely comprehensive and thinking of every single thing, and having a system that is manageable. We must keep matters in perspective. The bill is only one aspect of protecting children and ensuring safer recruitment; it cannot possibly eliminate all risk and cover every eventuality.

We have concerns about the practicalities, on many of which the bill does not provide clarity. We are concerned that much of what is proposed hinges on codes of practice and guidelines. It is important that those are clear so that local authorities, for example, do not worry about being in breach of their duty if they do not tell the central barring unit everything that they know about anyone whom they are concerned about. We seek clarity from the guidance so that we are not overwhelmed and do not overwhelm any central body.

Anna Fowlie: We need to learn the lessons of POCSA's implementation and, in particular, what happened with Disclosure Scotland. As you will recall, we were extremely critical of what happened, although the situation was resolved successfully. The bill will add another dimension.

The paragraph in our submission on section 46 is about the fact that it has been difficult enough to provide the existing levels of information, yet the bill proposes to impose a range of new requirements. The intention behind that is understandable and fine, but we are not clear about what will be provided and when it will be provided—we are working on that with the civil servants. For example, will we have to report everyone who is an antisocial tenant, even though they might never apply to work with vulnerable groups? When will that information have to be supplied and to whom? Where will the information be kept if it is not provided at the time, but the

person concerned subsequently wants to work with vulnerable groups? “Minefield” is not too strong a word to describe the extent of the practical details that will need to be addressed. We are talking about new and highly complex territory.

10:30

Deputy Chief Constable Halpin: Andrew Gosling would be the best person to explain the position. My only point is that the process of updating information as it changes through the lifetime of the scheme has to be automated. We are still working on solutions to that. We cannot rely on someone deciding that it is important to tell us something, because they might not tell us in the end. Information needs to be updated and we need to examine how we can be certain that that is done.

Detective Chief Inspector Gosling: We do not continuously update information at the moment, so the proposal in the bill that we should do so is welcome. That will add value to the system, which is what we aim to achieve.

The challenge for us is the sheer size of the task. By the nature of the work that the police do, we come into contact with and receive information on people and circumstances that might be relevant for vetting purposes. There is an issue about the flow of information from the operational officer who deals with someone on the street. If that information is relevant—and we have to determine the relevance of all such information—we have to get it to the central barring unit and/or an employer for consideration.

Fiona Hyslop: What is the logic behind how the system will work for small voluntary organisations, for example? You will have millions of bits of information to use to try to protect us from a few hundred people—perhaps you can give us a better idea of numbers. A lot of sifting will have to be done. If an individual commits an offence and information about that goes into the police information system, and the individual then joins a small organisation, how will the information get to that organisation? If the system is automated, updated information will go to employers and social work departments, but how will it get to the small voluntary organisation that the individual joins?

Detective Chief Inspector Gosling: That is the nature of the beast: the problem is how to do that. We are examining primarily how to get information from the central barring unit or from Disclosure Scotland, which will be the clearing house for information. How will we tell the central barring unit or Disclosure Scotland what the information is, and how will they then tell the organisation? I am not sure about how the information should be physically passed on.

Fiona Hyslop: But how will you know that the person has joined the organisation anyway?

Detective Chief Inspector Gosling: Because they will have joined the scheme and their details will be held by Disclosure Scotland.

Fiona Hyslop: It will be easy if they are a new member of the scheme, because the voluntary organisation will check with Disclosure Scotland, but what if there is an update with more serious information? How will the organisation get that information?

Deputy Chief Constable Halpin: Our existing disclosure work practices mean that we assess changing circumstances all the time. Whether the information has come from the originating police agency or has been shared by another agency, our system of analysis assesses the impact of that information.

If information about an individual who is registered with Disclosure Scotland is updated, part of Disclosure Scotland’s role is to assess the new information and not just process it. Updating information puts in motion a chain of actions to ensure that the information gets out. There is no doubt that everyone’s workload will increase because of the bill—we understand that—but it could result in a chief constable having discussions with a member of the scheme about voluntary or existing disclosure or saying to an employer, “The certificate that you have is no longer relevant. Here is where we are today.” The process will not just be automated: information will always need to be assessed.

Mr Kenneth Macintosh (Eastwood) (Lab): I have two questions, but it might be worth the witnesses formally stating their position on the bill on the record, as they have done in their written submissions. My understanding is that they all support the bill and believe that it is a major step forward and an improvement on the current situation.

As Wendy Alexander said, the key is the sharing of high-quality information. I note from the ADES, ADSW and COSLA submission that you are concerned that the police can withhold information if they believe, for example, that doing so will prevent a crime. I note in the ACPOS submission that you might not want to share information that you hold on an individual because they will find out where you obtained it. The ADSW, ADES and COSLA argue that social work should have a similar provision. Will you expand on that?

We have not yet reached the point of knowing exactly what information will be shared. I am not saying that there is interprofessional rivalry, but

there is a practical difficulty. How far do we have to travel to reach a point at which we understand the importance of the information?

I have too many questions here. You suggest that a way around the problem is to include at the beginning of the bill an unambiguous statement that the child's welfare is paramount and that that should be the guiding principle.

Alex Davidson: That last point could be the starting point—putting pressure on local authorities and their partners so that the protection of children and vulnerable adults in the community is at the highest level. That has already started in the work on child protection.

The second question is about the front end of the process, and it goes back to a previous question on risk management and understanding child and vulnerable adult protection issues in communities. I hope that the Adult Support and Protection (Scotland) Bill will soon be enacted.

There is a balance to be struck in risk management. We have to be proportionate when thinking about the risks of certain decisions. In social work, we have defined processes—through child protection, adult protection, case conferencing and other mechanisms—to weigh up risk. Decisions have to be made on when and how we begin to pull the trigger to let information flow. We have to weigh up everything with our colleagues in the police.

In child protection work, there might be a criminal prosecution and a balance might be required in deciding how quickly we report and how quickly we move on investigations. We need to work in a multi-agency way—we already do that—when weighing up risks and considering how best to fulfil our obligations in sharing information and feeding information into the barring process.

Anna Fowlie: We have made the point that more than specifically police information might be involved in a police investigation. There might be social work evidence and there might—although I do not know this—be medical evidence.

Mr Macintosh: The police will not wish to disclose to an applicant anything that will give them a clue as to how the police got the information in the first place. I take it that social work does not have the same concern. Your concern is more that information that you hold might be of benefit in a criminal investigation.

Anna Fowlie: Yes.

Alex Davidson: Yes.

Deputy Chief Constable Halpin: There is no difference between us in accepting that agencies have to work together. Tensions about disclosing or not disclosing information exist within the police organisation. Our point, put simply, is that the release of some of our information might put someone else at greater risk—indeed, that risk might be greater than the risk involved in the situation we are trying to prevent. The current arrangements allow us to work quite effectively, but there is a gap.

Mr Macintosh: Can I just put a second question to ACPOS? The ADSW, ADES and COSLA suggest that certain information—I am sorry. I will have to come back to this. I have made a wee note here. Can I come back in a second?

The Convener: Yes.

Ms Alexander: Only a very small number of people have bad intentions towards children or vulnerable adults. Nevertheless, people with such malintent have, in the past, proved pretty adept at avoiding the law and evading detection, which has been a huge challenge to the police service.

Frankly, if someone is a child sex offender of any kind or has malintent towards children, they will not apply to join the scheme. In that sense, are we simply creating a perverse incentive? I do not know whether you saw it, but last week's "Panorama" documented the activities of a former sex offender on probation who decided to hang around a school. It occurred to me that that person would not be captured by the system, because although he clearly represents a danger to children he has not applied to be a volunteer. By introducing a system in which people are required to apply to be a member, are we not creating certain risks? All the evidence suggests that this very small minority of badly intentioned individuals will not apply to a scheme that bars them from certain work but will, as we saw last week on television, find other means of making contact with children. Is it the case that the scheme, as designed, would still allow a former sex offender to hang around children but would not officially bar him if he did not apply to work as a formalised volunteer?

Deputy Chief Constable Halpin: The scheme as designed is one layer of many layers of measures to protect children and to prevent that individual, who will be committed in his intentions and devious in his actions, from getting to them. We cannot look on the scheme as the only means of providing protection.

Ms Alexander: But does the system create any perverse incentives? What if, because they know that they will be debarred, every sex offender with malintent chooses not to apply and instead decides to seek other means of contacting children?

Deputy Chief Constable Halpin: That might be the case for some. However, that puts the responsibility on employers that do not operate the scheme.

I point out that some offenders have never confronted the fact that their actions are wrong and will apply to the scheme in the belief that what they have done is irrelevant and that they will be able to argue their case. In such cases, the scheme is still needed and relevant.

Ms Alexander: But, as ADES pointed out, there is no central list of people who represent a risk, because that is not permitted by the European convention on human rights. Surely such a list would catch every sex offender in Scotland. However, if we introduce a scheme that requires one in three adults in Scotland to bid in to it, sex offenders will decide not to do so and will therefore stay below the radar. Surely such a scheme runs the risk of creating perverse incentives. Has that issue been thought through or worked through with the bill team?

Deputy Chief Constable Halpin: My role takes in the whole range of family protection issues. However, throughout the consultation, issues such as the management of sex offenders and the future of serious and violent offenders have been raised and discussed constantly. As I said, the scheme is one of the layers in a range of child protection measures.

Detective Chief Inspector Gosling: It might help if I point out that people who should not be in such positions in the regulated workforce continue to apply for these jobs and are very often caught by the current Disclosure Scotland system. They often try to subvert the processes and get into the workforce by giving false or misleading information. I think that, with the new scheme, people will still try to challenge the system to get into these positions. After all, one can see from their challenges their absolute commitment to what they are doing and their drive to get that access.

10:45

The Convener: Ken Macintosh has remembered the question that he was going to ask earlier; I will let him in before he forgets it again.

Mr Macintosh: I have had my mid-morning moment, thank you. My brain is now back in gear.

The ADSW, ADES and COSLA have sensibly suggested that the bill's complexities should be reduced; they have suggested, logically, that there should be one list rather than two lists for children and adults. It is logical to say that someone who is a risk to adults could also be a risk to children, although I am not sure whether someone who is a risk to children would also be a risk to vulnerable adults. Does ACPOS have a view on the matter?

Deputy Chief Constable Halpin: We have discussed it, and we find it difficult to believe that someone who would be unsuitable to work with children would be suitable to work with an elderly person in a care situation. That is an issue.

Mr Macintosh: Many submissions have mentioned issues relating to the definition of vulnerable adults, who are defined in the bill as adults who receive certain services. However, the panel has not mentioned those issues. I wonder whether two lists have been proposed because of those issues. From what has been said, it seems to me that a similar judgment would be made in assessing a person's suitability to work with adults and a person's suitability to work with children. ADES, COSLA and the ADSW think that the same judgment has to be made. Even with the two different definitions that are involved, could one list work?

Anna Fowlie: We have raised that matter. The definition of a vulnerable adult, or protected adult, to use the phrase that is now used—I always get the phrases wrong—is related to the service that is provided to them, but a child is not defined as vulnerable in the same way. We would consider the vulnerability of the individual rather than whether they receive a service.

Alex Davidson: The ADSW is concerned about the concept of vulnerability because it almost means that somebody with a disability will be branded as being vulnerable, which they clearly should not be. We are all vulnerable at certain times of our lives, but we are not necessarily vulnerable all the time. We must address that issue. The committee will receive other representations on the matter; I know that the independent voluntary sector, for example, will make a representation on it that will be much stronger than what I say.

We must respect the views of service users and carers. Similar tensions have developed in the debate on the Adult Support and Protection (Scotland) Bill in the Parliament. We must address such issues.

Mr Macintosh: Would somebody who is on a list because they have a history of taking advantage of children be a threat to vulnerable adults? Are such threats demonstrated by experience and practice?

Alex Davidson: I come to the issue from a different angle. People move round the care system in search of job opportunities, and some people can work in any sector. They can cross over into other sectors and different settings in which there are jobs and opportunities for any form of abuse to take place.

Mr Macintosh: I want to take things a step further. The bill is structured round the definition of a protected adult as a person who receives a service, but it has been suggested that the definition in the Adults with Incapacity (Scotland)

Act 2000 should be used. Would that be a better definition to use? Would it provide a less complex way of proceeding? There could be one list, similar definitions and similar treatments of dangerous adults.

Alex Davidson: Perhaps I would use less discriminatory language than the language that you have used; perhaps I would use language that focuses more on people's needs, addresses those needs in a different way and identifies what might be done to assist people. The Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003 do exactly that. Language that addresses such matters is already part of our legislative framework.

Mr Macintosh: I ask ACPOS the same question. If we were to move from defining a vulnerable adult as a person who receives certain services to a definition of vulnerability, would that be an improvement to the bill or a difficulty?

Deputy Chief Constable Halpin: The ACPOS perspective comes from considering the behaviour of predators rather than the decisions of potential victims. We are concerned that people who act in a predatory way act randomly. It cannot be said that someone who has offended against children will offend only against children in the future—that is not our experience in our workplaces.

Alex Davidson: In social policy, there has been a move towards the personalisation of services. That is the thrust of the social work report "Changing Lives: Report of the 21st Century Social Work Review", which was published earlier this year, and it is reflected in "Delivering for Health" in the idea of the expert patient. The personalisation of services involves people having more control over their individual care packages, direct payments and so on. We need to get in and around that to protect people at the lesser end. We are employed not by organisations but by service users and we need to ensure that we have robust ways of protecting people.

Mr Macintosh: I did not ask about that, not because I had forgotten, but because your written evidence made it clear. For example, it covers whether bus drivers should be vetted by the bus company or by the council. Your submission is a helpful piece of evidence.

Mr Adam Ingram (South of Scotland) (SNP): I ask you to address the basic question of whether the bill is necessary. It is clear that that we need safeguards to protect children and vulnerable adults from sex offenders, but would it not be more effective to use police intelligence to do that rather than the bill's huge scatter-gun approach? That approach would create a vast bureaucratic panoply that targeted teachers, social workers, all local authority workers and voluntary organisations. Surely that is totally disproportionate.

Secondly, is it not a fact that focusing on this small part of the child protection agenda—or the child and vulnerable adult protection agenda—is a huge distraction from the major problems of child neglect and abuse in Scotland? The number of children who are referred to the children's panel and the children's hearings system rises year on year. Resources are being poured into the bill, but its focus is surely a huge distraction and a wasted opportunity.

Deputy Chief Constable Halpin: People who abuse and cause harm to children and vulnerable adults are the most committed and devious individuals and they will take every opportunity to overcome the safeguards that we put in place. It is critical that the line of defence for communities includes proper supervision of those who are employed in what has been determined as the regulated workforce. We must create mechanisms that will allow agencies and others to report concerns so that they can be assessed.

You suggest that it would be effective to use only the police intelligence system. I would love that to be the case, but it is not. Even in our workforce, we have to put in an awful lot of time and effort to train and educate staff to report their concerns into the intelligence system. If concerns were to arise at the level of a care worker in a care home, how would we ensure that the information filtered through and eventually came into the system? We can make the proper assessment and safeguard the groups that we are talking about only if the information is in the system.

I believe that the scheme is critical. However, we must also be aware of and have our eyes open about the fact that if a check under the scheme comes back blank, that does not provide a clean bill of health, particularly because the wonderful influx of migrant workers means that we are now sharing information across international boundaries and not just the national boundaries of the United Kingdom. Even if we sort out the information in the new member states, it is not as reliable as data in the United Kingdom. That raises many issues. The scheme is critical, but we must have our eyes open about it and take the layer approach that I described to protecting people.

Lynn Townsend: I agree with all that. I reassure the committee that the bill will not distract us from our wider child protection duties. I return to the point that the bill is one tool. We need aspects of the bill; I am not qualified to comment on whether what it does could be achieved in another way.

We are doing work on lots of different fronts. We are helping children to be more resilient and more able to protect themselves because, ultimately, that is the way to crack the problem. If somebody is hanging about a school, we want children to report that. We want children to feel safe and to know what is and is not appropriate in their home as well as in the street, because we know that they could be more at risk at home than at the school gate. We are also doing much work to ensure that the whole community takes responsibility. Not just employers, but neighbours, shopkeepers and everybody must realise that child protection is their concern. However, safe recruitment is a major part of that.

Vetting is not the only measure; we agree that it is sometimes a snapshot. Vetting captures only people who have been convicted, so some people out there who are preying on children have never been caught. However, we hope to catch them if employers are vigilant.

We definitely need parts of the bill, but I assure the committee that we are not distracted by it and that we will not rely solely on it.

Alex Davidson: Social work operates in an environment in which significant other legislation around the process protects, and provides services to, people. That legislation includes the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adult Support and Protection (Scotland) Bill when it is implemented, and provisions on child protection and criminal justice work, such as the monitoring of sex offenders with our colleagues in the police, to try to catch the guy who stands at the school gate. We try to monitor sex offenders as well as we can.

As I said, that must be backed by good risk assessment, good understanding, professional judgment and multi-agency working. That is the backcloth and the bit that makes the bill stack up. The bill confirms a gap in services that may seem small, but I have sacked people who, we have found out through word of mouth, have left my office and walked down the road to work in a voluntary organisation. That happens—we can show that—so real problems exist. We must have risk assessment, professional judgment and a multi-agency context for how we do the business.

Decisions need to be made on the basis of proportionality. Not everything and everybody is involved; you are right to say that, otherwise, everyone would be on the register. I would worry about that, too. An element of judgment is needed.

Anna Fowlie: Everyone else has summed up the situation well. The bill is about employment and volunteering; it is not designed to tackle the wider issues. Other measures are available. As Lynn Townsend said, councils and other agencies are not distracted by the bill, but there is loads of evidence from many cases that people seek out employment and voluntary work with children and vulnerable adults. The bill is designed to address that and we believe that it will do so.

Mr Ingram: I still do not have a clear picture of how the bill will do a better job than would be done by enhancing information sharing about known sex offenders. If we focused on that and tried to improve information sharing with other agencies, would that not be more effective than drawing half the population into something that is needless as far as they are concerned? It would be bureaucratic and could lead us to take our eye off the ball, which is being carried by a small group in our society who prey on children and vulnerable adults.

11:00

Deputy Chief Constable Halpin: We need to remember that we are talking not just about sex offenders. Some individuals make their business by preying on people as bogus callers and using certain forms of employment as a front for getting into people's homes. The disproportionate effect on victims of crime such as bogus caller crime—to use one example—is often not reflected in the circumstances that are reported in court. The victim loses their life savings and, in the long term, their confidence in living in a stable environment. I do not want to focus on just one predatory group that the bill will protect us from.

Ms Rosemary Byrne (South of Scotland) (Sol): Ken Macintosh touched on the responsibility for vetting people who are not directly employed by local authorities. There is a paragraph in the COSLA submission about that, and I want to take the point further. How broad is the definition of people who are not directly employed? I imagine that it could be very broad. How do we get the parameters right, and how much thinking has been done about it? It could be taken to the extreme of including people who work in parks and gardens in which children play, for example. How broad in scope is the definition?

Anna Fowlie: People who are employed in parks are directly employed by local authorities and would not come under that scope.

We mentioned the issue and are particularly concerned about it because concerns have been raised about the vetting of drivers involved in school transport. Those concerns have highlighted an anomaly. The expectation among the public and our elected members—who have been vociferous to me on the issue—is that the council is responsible when kids are on a school bus. It does not matter whether the bus is run by a local contractor such as First; it is the council that put

them there. However, legislation does not currently allow us to check the drivers. We have to rely on the bus companies to do that. The same applies to public-private partnership schools, in which some ancillary staff are employed by contractors but provide a service to councils.

The scope of the definition could be wide, but we would want to make it precise and as tight as possible. We do not want it to be disproportionate, but we want to ensure public confidence.

Lynn Townsend: Local authorities often wrestle with school transport. The test for us is whether somebody has regular friendly access to children, as that is when they can develop a relationship with or groom children. A bus driver could certainly be in that position. Crossing patrol people are also important and positive characters in children's lives, but if they have bad intentions, they are in a dangerous position to exercise their power. We could apply tests—there could be consensus about how to do that—and ensure consistency about which posts are covered.

Alex Davidson: Adults with learning disabilities and mental health problems need particular care and attention when we are providing transport and other services. There are crossover issues—the issues for users are different but the risks are the same. Good risk assessment and management would be needed.

Detective Chief Inspector Gosling: The decision about where to set thresholds in employment is a matter for the sector concerned. We respond to requests. We do not have a real view on who should and should not be vetted, because expertise on that lies with the individual sector. Our expertise is in gathering the information and intelligence that might help to support vetting inquiries.

Ms Byrne: I want to probe that a little further. This might sound ridiculous, but there are people who work around schools who are subcontracted and not part of the local authority, such as the person who comes to clean the windows. When children see someone in a playground, they immediately think that they can trust them. I know that we do good work to educate them otherwise. Where does it end? How much thought has gone into all that? We would not want complacency to set in, which could happen if people think that all the checks have been made, when, in fact, someone has fallen through the net.

Lynn Townsend: I assure you that there is a lot of discussion about that in councils. We have considered the electricians, plumbers and what not who are around schools, but feel that it is not necessary generally to make provision for that, because they should be supervised. We should not have people—whoever they are—strolling around schools unsupervised. Education authorities and councils must ensure that we have proper supervision of people in buildings.

Ms Byrne: Are you content with section 70, which leaves open the possibility of greater private sector involvement in the vetting and disclosure function, but not the barring function, than is currently the case?

Deputy Chief Constable Halpin: That situation exists in England and Wales, and it works. Contractors deliver the service and our staff might be seconded to work alongside them. It is not a difficulty in principle.

Lord James Douglas-Hamilton (Lothians) (Con): I have two brief questions, the first of which is for Lynn Townsend, Alex Davidson and Anna Fowlie. Notwithstanding all the reassurances that have been given, charities and voluntary organisations fear that they will face substantial extra costs. If that should happen, do you think that the Executive should pay?

Mr McAveety: There is a standard response from COSLA to that question. [*Laughter.*]

The Convener: And the next question is whether the money should be ring fenced.

Anna Fowlie: You ask whether the Executive should pay the voluntary sector's additional costs. I cannot give a COSLA view on that, because I have not tested it, but my gut reaction is yes, the Executive should pay.

Lynn Townsend: Local councils could not pay.

Lord James Douglas-Hamilton: My other question is for Deputy Chief Constable Halpin. The premise from which we are starting is that we want a system that will operate effectively but which will not be overloaded and whose purpose is to be proportionate and not too heavy handed. Do you think that the bill will achieve that or should adjustments be made to it?

Deputy Chief Constable Halpin: We believe that the bill will achieve that. There is no doubt that the scope of the bill will greatly increase the demand on all our systems and we will have to learn what that means for our capacity in due course.

Mr McAveety: If the convener limits me to one or two questions, perhaps other members will put the other questions that I wanted to ask.

I make the observation that, leaving aside the issues of cost and proportionality, the experience of IT systems in other structures has not, to say the least, been one of efficiency. Even with the kind of legal framework and commitment that are proposed under the bill, I worry that police officers and the other people involved in the different agencies might not be able to get the desired

impact of being able to track people, follow them through and share information.

My question follows up on Tom Halpin's earlier response, which touched on the uncertainty about the numerous migrants from the accession states. I have a pressing concern about a number of folk in one part of my constituency, on the south side of Glasgow, who, senior police officers suggest, are involved in a series of activities in their home country that cause problems in this country. There are issues to do with the vulnerability of children and our broad duty of care because of the activities in which some of those individuals are involved. I worry that a wee concern might mean that we do not introduce legislation until a future date, whereas those guys are able to operate to a swift and efficient timescale without being tracked. If we hang about for two or three years to sort out things, they might already have done a substantial amount of community damage and personal damage to some of the youngsters in or near their activities. How can we address much more expeditiously the issue of overseas workers, which is an immediate concern in the area that I represent?

Deputy Chief Constable Halpin: I can give the assurance that the issue is at the top of the agenda across the United Kingdom. The Criminal Records Bureau in England and Wales provides the central access point for the UK and similar arrangements are being put in place across Europe and elsewhere. We took the view that we do not want people from other countries wondering where to access information from the UK and where to send information to the UK. They will send the information to the UK central access point and the systems in the UK will disseminate that information so that we can access it. I am greatly encouraged by that work, which is on-going.

Given the reality of globalisation, my concern is that different countries will have different types of data and different quality and security standards. It is possible for the data to be manipulated; we will always need to assess carefully the facts in front of us even if we sort out all the other problems. At this stage, we need to point out to employers that a blank answer does not mean that all is well. Employers need to make a judgment based on what is in front of them, so employee interviews will be crucial. However, enormous issues are involved.

Mr McAveety: If we cannot track the people who have been caught, charged, convicted and then released in Scotland, what hope do we have of dealing with this issue?

Deputy Chief Constable Halpin: Every time that we have an experience, we learn from that experience. We continually debrief people and alter the systems to ensure that such experiences do not happen again. I am confident that, if an individual is recorded within the United Kingdom scheme, the information will be available. We will still need to deal with the issue of multiple identities, which we always need to be careful about, but that is true for any person in the scheme.

Dr Murray: We have heard the argument that we need to introduce equivalent legislation to that which has been introduced down south. To a certain extent, I remain to be convinced about that, but there is a difference between the legislation in England and Wales and what is proposed in the bill. In England and Wales, it is an offence for someone who is not on the scheme to work with children and vulnerable adults, whereas in Scotland that will not be an offence. The Finance Committee was told that that was to try to respond to concerns that occasional volunteers who help out at a crèche or whatever might be criminalised. Is there not a danger that, under our proposals, certain people who are not on the scheme and are a threat to children might be able to work with children and vulnerable adults? I am thinking particularly of people who might advertise their services as private tutors to children, or people who might be paid under the direct payments scheme as carers for vulnerable adults. In trying to balance one concern, have we now let the door open to people who intend harm towards children, because they will not be criminalised for offering that kind of private services?

11:15

Deputy Chief Constable Halpin: Under the current scheme, that is a possibility. There is also a responsibility on those who employ outwith the scheme.

Fiona Hyslop: I would like the witnesses from ADES and the ADSW to comment briefly on overseas workers and to say what proportion of their workforce is from overseas.

I would also like the witnesses from ACPOS to give us an indication of the cost and resources involved for the police. I presume that you have been doing some scoping of numbers, so can you tell us for what percentage of individuals checked the vetting information will contain conviction or non-conviction information, bearing in mind that Bichard emphasised the importance of soft information as well?

Alex Davidson: I cannot tell you the number of overseas workers in our workforce, but I suspect that it is quite low, for a variety or reasons, of which communication is probably the key one. Most of our work is hands on. It is about caring for people and talking to people, which is something

straightforward that might prevent people from getting a job. I know from discussions that we had last year that there is considerable anxiety in England and Wales about people moving into home care and services of that kind in an unregulated way. That might be something that we need to address in Scotland soon, but I do not have figures at the moment.

Fiona Hyslop: Could you supply figures later?

Anna Fowlie: Yes, we could.

Lynn Townsend: Similarly, we could not give you figures for overseas workers from an education perspective. The figures will vary across the country, because populations vary and councils face different issues, but the number of overseas workers is certainly a growing issue. As we said in relation to school transport, there has been a recent influx of Polish bus drivers.

Deputy Chief Constable Halpin: I can also supply you with figures in writing. There is increasing demand on the services that we already provide and we would be concerned that there should be no impact on those services. I believe that we must ensure that we have the capability to protect people and, once we have achieved that, we must address the capacity issue. However, at this stage, let us concentrate on getting the capability.

Ms Alexander: I want to ask Tom Halpin about the future evolution of the scheme. There are roughly 5 million of us in Scotland and about 1 million kids. The assumption is that there are 1 million adults who, whether through employment or through volunteering, are in a position to build a relationship of trust with children, and who could therefore groom them. That implies that there are 3 million adults in Scotland who are not in a position to build such a relationship of trust with children or to groom them. As we have just heard, you have to choose whether bus drivers or parkies are in or out. It seems to be inevitable that some of those 3 million people are, in fact, in a position to build a relationship of trust with children, and that we will quickly find ourselves in a situation where somebody working in a park, or a sweetie shop owner, for example, is convicted. Surely, in those circumstances, there will be a demand to expand the scheme to include new categories, because it just is not plausible to suggest that 3 million adults in Scotland are not in a position to build a relationship of trust with children.

Does that mean that IT systems that are currently being developed to manage data for 1 million adults in Scotland will, on the basis of early conviction evidence, have to be expanded to cover 2 million or even 3 million adults? It seems more plausible to say that it is not just one in four adults who can build a relationship of trust with children, because an awful lot more than 25 per cent of the Scottish population are in a position to do so. Does that mean that the flexibility of the systems and the costs need to be capable of expansion to double the size currently envisaged, based on the response of the people whom we are trying to target?

Deputy Chief Constable Halpin: I am confident that experience will show us, in due course, that there are those who have to be included in the scheme who are not there at present. We have never introduced a scheme for which that has not been the case. We will have to learn lessons. The numbers that you have cited are frightening. I am not convinced that the figure will be that high, but it will be higher than it is now. The approach to the convergence and consolidation of IT systems across the public sector—certainly within the police service—is that we are looking at how we share and manage information, rather than at the creation of an all-singing, all-dancing big box, which seldom gets delivered. We will grow organically as we learn from experience, but the impact of the possible increase in the figure in no way negates the relevance of the bill.

The Convener: Finally, Rosemary Byrne.

Ms Byrne: My comments follow on from Wendy Alexander's questions and relate back to my earlier questions. I am still worried about complacency. If people think that folk have been checked, they will be more complacent. Should more training be given to ensure that people can see the warning signs? Such training can help people to understand that the fact that there has been a check does not mean that everything is rosy, that some people will not have been checked and that others may have been checked but may have slipped through the net for various reasons. What level of training should be given? Should something be included in the bill, or perhaps in the guidelines or the code of practice, to point up those issues?

Lynn Townsend: Again, I reassure you that we have already done a lot of work with our workforce to stress that the scheme is only one tool and that vigilance, proper supervision and all the other commonsense steps come into play. We have carried out a lot of training, but there certainly needs to be much more training on the mechanics of the new system, because it could be confusing to begin with.

Anna Fowlie: There will be a requirement for training, as there is for any new piece of legislation. As Lynn Townsend says, safer recruitment is an on-going issue in local authorities. People are continually being trained in better practices, but the bill is not the place for those issues to be addressed. If there is a place

for that, it is in guidance or in agencies' own interpretation of the rules.

Detective Chief Inspector Gosling: ACPOS has always said that complacency is a danger, particularly if people have some information but not an awful lot. That is the case especially if it is non-conviction information. Conviction information is easy to digest, but non-conviction information can be harder to deal with.

We accept that there must be a better understanding among people working with all these groups of the role that they must play in the day-to-day monitoring and supervision of the workforce. We are confident that, broadly speaking, measures are in place for supervision, audit and compliance with rules and regulations and so on within local authorities and other such organisations. However, far more work probably still has to be done in the voluntary sector.

Perhaps the greatest concern is that the administrative burden that the scheme will bring might be too much for some organisations, so the check will not be done. A member raised the issue of whether a part-time worker who works only occasionally would be checked and whether the cost of the check would be a factor. From our perspective, it is not necessarily the cost, which is set fairly low, but the administrative burden that might put some people off. The focus of the requirement to improve education and awareness probably sits more in the voluntary sector and in relation to the circumstances that you mentioned—the private individual who engages a piano teacher for their child—to ensure that people understand that the fact that nothing is known about the person does not mean that they should be left unsupervised. That important message needs to go out across the sectors.

The Convener: Although I said "Finally, Rosemary Byrne", I want to explore one other matter with the panel. It is the bit that the Executive forgot about: part 3 of the bill, on the sharing of information for child protection purposes. Does the panel consider that the consultation on part 3 has been adequate to date? I note that the Executive has circulated to the committee a paper that says:

"Ministers do not consider that their policy objectives in this area can be achieved through existing legislation."

Do you think that there are any obstacles to effective and adequate sharing of information for child protection purposes that require legislative change to address? Do you have any concerns about areas in part 3? The submission from ADES and the ADSW refers to section 79, but I wondered whether there were any other areas that the panel might have concerns about.

Anna Fowlie: We need to be realistic about the consultation question. We acknowledge that there was no formal consultation on this part of the bill, but the informal processes that the Executive has gone through with us have felt very inclusive and have made us feel that we were consulted on all aspects of the bill. I do not know whether other people feel that they were consulted and included in that way.

On the point about legislative change, I think that most of the barriers to information sharing are within organisations' cultures. We cannot yet say whether legislation will change those cultures but, in our view, it will not do any harm. COSLA is not traditionally pro-legislation if legislation can be avoided, but this is one area in which we believe that legislation will help to ensure that agencies understand that there is nothing to say that they cannot share information. That is an important point because partner agencies often tell us that they feel that they are not allowed to share information. The valuable part of legislation would be to do with enabling and allowing rather than forcing.

Lynn Townsend: I agree. The bill is a bit light on detail, so I am not entirely clear what the intention is. However, there is currently a lot of confusion and concern in multi-agency children's services about the issue of what can be shared between organisations. That is separate from the IT issues that are to do with how we can share information when we all have different systems and, at the moment, no resources to make them compatible. I would be concerned if the bill took us down a road that did not allow us to consider things such as the integrated assessment network, which is on the horizon. Information sharing will play a big part in that. However, the bill does not give me enough information to allow me to comment further.

Alex Davidson: I think that Anna Fowlie is right to say that the weaknesses that exist are cultural rather than the sort that can be fixed through legislation. However, I think that we need to engage more properly with health colleagues in relation to some of that work. The Caldicott system can sometimes be used as a means of protecting information that needs to be shared and we might need to examine that further.

Deputy Chief Constable Halpin: As Anna Fowlie said, the informal contacts that we have had with the Executive have been good. We welcome the way in which we have been included in a number or working groups in relation to the development of information sharing. In that context, we feel that we have been included in the process.

We feel that legislation would help us by allowing people in other agencies to feel sure that

they can share information. I am not suggesting that they should be compelled to share information, because that is about the management framework. The real barriers might well be cultural, but a lot of that culture will have built up because people believe that there are legislative barriers to their sharing information. ACPOS seems to overcome those barriers more often than not. Our culture is about ensuring that information is shared appropriately and legally.

The Convener: In that respect, should the bill talk about a power to share information, backed up by appropriate guidance, rather than a duty to share information? If it talks about a duty, inappropriate information might be shared because organisations were frightened that they might fail to fulfil a duty.

Anna Fowlie: Because of the difficulties that have been encountered in accessing information from partner agencies, there needs to be a duty to share information. That is the view that our colleagues in local government have come to.

Deputy Chief Inspector Gosling: ACPOS would agree with that, too. The root of the bill is Sir Michael Bichard's inquiry, which was about the failings in information management on the part of the police and other agencies that came into contact with certain individuals. Because the police and other agencies took decisions relevant to Ian Huntley based on information that they had at that time, rather than looking at a broader picture, he was able to wreak his particular work. From that point of view, the duty to share information allows a much more holistic view to be taken of the situation concerning a child or a vulnerable person, rather than things being looked at as individual incidents that a person is involved with.

The Convener: Thank you very much. I think that that concludes the questioning. We could probably have talked to this panel all day but, unfortunately, we have two other panels to deal with this morning.

11:31

Meeting suspended.

11:34

On resuming—

The Convener: We now move on to our second panel of witnesses, who represent a number of the regulatory bodies with an interest in the proposed legislation. I welcome John Anderson, head of professional practice at the General Teaching Council for Scotland; Una Lane, assistant director of fitness to practice with the General Medical Council; Carole Wilkinson, chief executive of the Scottish Social Services Council; Val Murray, legal adviser to the Scottish Social Services Council; and Christina McKenzie, head of midwifery at the Nursing and Midwifery Council. We have received your written submissions. I do not know whether any member of the panel wishes to add anything briefly before we go to questions. If you are happy to rest on your written evidence, we will begin the questions.

Fiona Hyslop: I will start with the part of the bill that deals with information sharing, on which we did not spend much time with the previous panel. The General Medical Council's written evidence mentions the need for "Consented sharing". It states:

> "Decisions to disclose should remain a matter for professional judgement, and legislation compelling such sharing without reference to a public interest test … may cause confusion and lead to harmful sharing of information."

We recently passed the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006. Various issues have arisen, and we know that the medical profession is particularly concerned about the sharing of information, especially without consent. Does the GMC have any particular concerns about part 3 of the bill? Are there some things in it that the GMC would like to be changed? How strong are the concerns? Does the GMC simply wish its concern to be noted while not being fundamentally opposed to part 3?

Una Lane (General Medical Council): There are two separate aspects to the issue of information sharing. One is to do with the information that we, as a regulatory body, would share with the central barring unit; the other is to do with the information that that unit might share with us about doctors who have been vetted and barred from working with either children or vulnerable adults. The bill is drafted in broad terms in that respect. A lot appears to depend on how the code of practice will work in reality.

Our concern is to do with the trigger points for referring to the central barring unit information that becomes available to us. There is a danger of a fog of information developing across agencies and regulators and between the regulatory bodies and the central barring unit. Let me give an example. At the General Medical Council, people raise with us approximately 5,000 complaints and concerns a year about individual doctors working throughout the UK. Some of those complaints and concerns involve allegations about doctors working with vulnerable adults or with children. Some of the information comes from the police, some from the courts and some from employers. There needs to be a certain level of clarity about when each body

may refer the information to the central barring unit.

Fiona Hyslop: Aside from the central barring unit aspect, part 3 of the bill is more about the general issues of child protection and the sharing of information. We have just been discussing whether there should be a duty or a power to share information. I suspect that the medical profession has concerns about the relevance of any duty to share information.

Una Lane: Part 3 is more about individual doctors sharing information that might come to their attention. On the standards that we expect of doctors, we would be concerned about a duty to share information automatically. We provide doctors with quite detailed guidance about every individual patient having a right to confidentiality with respect to the medical services that they seek and receive. That of course includes children. We provide detailed guidance about when information should be shared in the wider public interest or in the interest of the patient.

There needs to be some balance in considering whether certain information should be shared and what is the most appropriate information to provide. We are not against the principles or the notion of a duty but, as some of the earlier witnesses said, the bill as currently drafted takes a broad-brush approach. The devil will be in the detail of the code of practice or the guidance that stems from the legislation.

Fiona Hyslop: Do you think that the bill will change people's behaviour?

Una Lane: From our point of view, it is important that the Executive works closely with us and with other regulatory bodies. We have quite detailed guidance for the professionals who fall within our ambit. It is important not to have differing guidance from different agencies about disclosure and the sharing of information.

Fiona Hyslop: I want to ask the other witnesses about the sharing of information. The question for us is whether we need new legislation—we are examining the bill's general principles at this stage. Will part 3 of the bill bring about a significant change in the behaviour of the individuals who work in the sectors that you cover? From your perspective, do we need the provisions on sharing child protection information as presented in part 3 of the bill?

Carole Wilkinson (Scottish Social Services Council): We are quite clear that the law needs to be improved. We are a relatively new regulator and in seeking to bring people on to the register, our experience is that there has not always been clarity around what information can be shared. As the previous witnesses said, there is concern among local authorities about the information that they can share with one another and with us. The bill provides an opportunity to make much clearer what information can be shared and to clarify some of the issues around data protection.

Christina McKenzie (Nursing and Midwifery Council): The Nursing and Midwifery Council supports the view that there is a need for a duty to share information. Our experience is that sharing of information can be patchy. Like the GMC, we have codes of conduct and clear guidance for our registrants. The situation of people who are already on the register is trickier; if information is not being shared consistently, that makes it difficult for us to investigate people and take off the register people who need to come off it.

John Anderson (General Teaching Council for Scotland): The duty to share information is very important. There must be clarity. If such a duty to share information existed, there would be no data protection issues; they would fly away and information could be shared with confidence. A very clear cultural change needs to be pushed along ahead of that.

Mr McAveety: Do the witnesses believe that the bill will make any real difference to how their members operate in practice, or will it be a significant burden?

Christina McKenzie: It will make little difference to how our registrants practise because our codes of conduct, guidance and standards already cover the issues. The scope of the bill concerns us because it is not really clear whether it will apply across the health sector and regulators in the way that it should.

It will not make a difference to most of our current registrants, although it might to those who are self-employed or who work in the private or voluntary sector. The systems that cover those people might not be robust enough.

Mr McAveety: Is the GMC concerned about confidentiality? The issue has popped up several times in other pieces of legislation and the GMC has taken a strong position on it. Does the GMC have similar views about confidentiality in relation to the bill?

Una Lane: The confidentiality issue probably pertains mainly to individual practitioners and how they work rather than to the sharing of information between regulators and agencies and between regulators and any central unit. Some doctors might be concerned about an unqualified duty to share information in all circumstances—as currently drafted, the bill appears to propose an unqualified duty. In our submission, we suggest that we would like to work closely on the drafting of a code of practice or guidance on the sharing of information so that the standards that we expect of doctors across the UK are not confused by

differing approaches to guidance in different countries, organisations or agencies.

Carole Wilkinson: It is not clear in the proposed legislation to whom the duty would apply. The list of relevant persons ought to be revisited. We wonder why the bill does not include social service workers, which would encompass the range of workers who work in the care sector and would align with the workers whom we regulate.

As earlier witnesses said, it is important to see the bill in the context of the wider raft of measures that is in place to protect people and to regulate the workforce. Those pieces of legislation should be aligned so that the jigsaw puzzle fits together and flows out in alignment to the UK. As people have said, we should not rely too heavily on the bill closing a major loophole; we should see it as just one piece of a jigsaw puzzle.

11:45

Mr McAveety: I will ask about another matter on which it would help to have your comments for the record. Section 19 gives the Scottish ministers the power to obtain information from other public bodies when deciding whether to list an individual. Are you all familiar and content with what will be required of you under section 19? Of the four bodies that are represented here, two—the GMC and the Nursing and Midwifery Council—are not mentioned in the bill. Would you like to be brought within the scope of that section? In practice, is that likely to happen? Just in case, I say for the record that I have probably been registered with the GTC.

Christina McKenzie: The Nursing and Midwifery Council would like to be brought within the scope of the provision. We are happy to share information on our registrants, but we would like to be included in information sharing in the other direction.

Una Lane: We understand that we will be included under

"Any other person specified in an order made by Ministers".

Mr McAveety: Are you all content with the expectation in section 19?

Val Murray (Scottish Social Services Council): The SSSC welcomes the opportunity to share information with ministers.

John Anderson: We, too, welcome the provision. The Protection of Children (Scotland) Act 2003 provided an element of discretion, so the ability for the Scottish ministers to require information from us will help.

Fiona Hyslop: My question arises because the witnesses are registering organisations and governing bodies. One way in which the bill differs from the legislation in England is that the Scottish ministers will have the duty and responsibility to establish the lists, whereas an independent agency will do that in England. Is that appropriate?

Val Murray: We are happy with that, as long as the process complies with human rights legislation and as long as the panels that are established to make listing decisions can justify their decisions under the general law. The answer is yes.

Fiona Hyslop: I take it that the GMC does not have a view on the matter.

Una Lane: I will give my personal view. As long as the system and the processes that are in place are fair, objective and transparent, whether it falls to ministers or an independent agency to make decisions on the barred list is not an issue.

Fiona Hyslop: Whether the ministers or others should take the decisions is a political issue.

Una Lane: Sure.

Dr Murray: Sections 10 to 13 propose that when an individual is being considered for listing, they can continue to work, subject to safeguards—for example, their employer and regulatory bodies such as you will be notified. Will that provide adequate protection?

Una Lane: The GMC has powers to take interim action in relation to a doctor when allegations or issues are brought to our attention and before we make a substantive decision about that doctor. As long as the information about doctors is made available to us—whether it will be is one of our concerns—we are confident that we can take fairly swift interim action if serious allegations are brought to our attention.

John Anderson: The GTC has similar powers of interim suspension, which were commenced on 1 July. It is important that whatever codes of practice are drawn up form the key element, with due respect to child protection issues, in how we deal with a person who is under consideration for listing and who remains to whatever degree in the workforce.

Val Murray: The SSSC has powers of suspension, so we would welcome notification that somebody was being considered for listing. We need information about why an individual is being considered for listing—otherwise, it is difficult for us to put in place our suspension processes and to consider suspension. We ask for notification not just of consideration, but of the reasons for consideration.

John Anderson: We agree strongly.

Una Lane: That is one of the GMC's key concerns—we raised the issue with Westminster during the progress of legislation there. We feel strongly that the information behind any decision to place a doctor on a list must be made available

to the GMC so that we can take interim and substantive action when appropriate.

Christina McKenzie: The Nursing and Midwifery Council has similar powers to make interim orders of suspension. In addition, for midwifery, we have local supervising authorities throughout the UK, which can immediately suspend someone from practice and then notify us. That is why it is important that we have the information that someone is being considered for listing and the reason why.

The Convener: Should the central barring unit have powers of provisional barring as well as powers to consider an individual for listing? I think that, under the bill, the unit will have the power to put an individual provisionally on the barred list.

Christina McKenzie: That would be worth exploring. We investigate allegations and we may consider that some of those allegations are serious enough to warrant suspension. It would be helpful if the same approach should apply in the bill.

Mr Macintosh: Una Lane said that there are complaints against 5,000 doctors a year throughout the UK. I ask each of the organisations to give me a feel for how many of their members would be likely to be affected by the bill. I do not know whether the witnesses know that from experience or whether they will have to estimate it. In how many past cases would they have had to decide whether to suspend a professional under the criteria that apply in the bill?

Val Murray: The SSSC is a new regulatory body. Our register opened in 2003 and we have only 11,000 members at present but, in future, we will have more than 130,000. In the past three years, we have had 250 complaints about registered workers. Under the proposed procedure in the bill, we would want to get a scheme record for each person on our register. As Carole Wilkinson mentioned, we have concerns about whether we will be able to do that for all the people who are entitled to go on our register, as some positions are not covered by the bill. We expected the positions that the bill covers to be the same as those that are covered by exceptions orders under the Rehabilitation of Offenders Act 1974, which, in our case, means all social workers, all social service workers and anybody who holds an office or employment with the Scottish Social Services Council.

Una Lane: Based on past history, the number of doctors to whom the bill would apply would be very small. Currently, 220,000 doctors are registered to practise in the UK. Although 5,000 complaints and concerns are raised with the GMC each year, we take action on only a small proportion of them. Over the past number of years, we have taken action on the registration of something in the region of 300 to 400 doctors a year. Within that figure, the number of allegations of inappropriate behaviour, inappropriate relationships or sexual relationships with patients is extremely small. Such allegations are usually brought to our attention as a result of a police investigation or a conviction.

John Anderson: We have 65,000 active teachers on the register and we investigate approximately 450 complaints per year, but those complaints range across the scale. We take action on and remove roughly 15 to 20 teachers per year. Not all of those will be for child protection-related offences; they could be for theft, dishonesty or fraud.

Christina McKenzie: The Nursing and Midwifery Council has 682,000 registrants. Probably something in the region of 4,000 to 5,000 allegations are referred to us a year and approximately 1,300 of those proceed to misconduct cases and hearings; the rest are weeded out. The bill may increase that number slightly, because of improved information sharing. This may mean that we will start more investigations, as we now have the power to start investigations without an allegation.

Mr Macintosh: Thanks—I just wanted to get a feel for the numbers.

I will put my next question to the GTC representative, as the issue is covered specifically in his written evidence, but it is probably for all the witnesses. All the professional bodies that are represented suggest that information should be shared backwards and forwards, because a decision to put somebody on a list would almost certainly mean that they would be suspended by their professional body. You feel that you need access to that information. The GTC's evidence states that, at present, under an informal agreement, it receives information, for example, on criminal convictions. Is that correct?

John Anderson: Yes. We are given information under circular 5/1989, which is a formal, but not statutory, arrangement. It is important that we continue to get such information. The CBU may decide to bar a person based on a child-related offence or other information, which is fine, but our concern is that we must get information that does not lead to barring and we must continue to get information about non-child-related offences. Regulating the profession is primarily about child protection, but it is not solely about that—we take into account honesty, integrity and other matters to do with a person being a teacher. The same applies to other professions such as doctors. We therefore want the bill to put on a statutory and fully formal basis the information flow that I have just described, so that we can continue to regulate

as we have done, or perhaps even more effectively.

Mr Macintosh: So you already get information, which you use to make judgments about somebody's moral character and whether they should be a teacher. For example, you would require information about somebody if they were a fraudster.

John Anderson: Yes.

Mr Macintosh: At present, you receive such information.

John Anderson: Yes, we do.

Mr Macintosh: Do you think that you will not receive that information under the new system? It strikes me that you will get additional information.

John Anderson: We are unsure about that, but we are sure that we want the information.

Mr Macintosh: Are you concerned that, in effect, the CBU will have access to the information and will take decisions for you, which will be fine, except that, ultimately, you might make a different decision, based not only on child-safety grounds, but on grounds related to moral or professional issues?

John Anderson: Absolutely. We apply several different tests. As our written submission states, we consider not only whether people are suitable to work with children, but whether they are suitable to join the workforce of registered teachers. Obviously, those issues overlap, but there are differences, too.

Mr Macintosh: Do the other professional bodies have a similar view?

Carole Wilkinson: Yes. I cannot imagine a situation in which somebody who was on a barred list would be deemed suitable for registration. However, like any other regulatory body, the SSSC cannot have decisions made for it. We must make individual judgments and to do that we need all the information that we can possibly get. As John Anderson said, the issue is not only about child protection; we take into account a much broader range of offences, behaviour and conduct in judging whether someone is fit to be on our register.

Christina McKenzie: To emphasise that, even if a decision is made not to put someone on a list, the fact that they have been investigated may be of interest to us. We may take a different view about their suitability to remain on our registers. We want to know about the issues, even at the investigation stage.

Mr Macintosh: I want to follow up a question that Elaine Murray asked. Your organisations will be notified if somebody is put on a list, but you say that you will want to know why. However, if you apply for a full vetting check, will that not tell you why?

John Anderson: We need permission from the person concerned to do that.

Mr Macintosh: So there is a consent issue.

John Anderson: Yes—that is one of the elements.

Val Murray: We also need access to updated information. The scheme record may change, but we have no way to access that unless, with the individual's consent, we can access the full scheme record. There needs to be a trigger.

Mr Macintosh: If the record of someone who had been working for you, who had been checked and had no record, changed would you be notified?

12:00

Val Murray: My understanding is that we would not be notified of that. We would be notified of a change in barred status, but the scheme record contains not just that information but all the vetting information.

Mr Macintosh: That is right. If there was a change to their barred status you would be notified, but if the change stopped short of that, you would not be notified.

Lord James Douglas-Hamilton: I have two quick questions. The first is to the General Teaching Council for Scotland and the Nursing and Midwifery Council. Do you think that you should have a power under the bill to refer a particular individual for inclusion on either list if the circumstances justify it?

John Anderson: Yes. The power is discretionary. The wording in the bill is similar to that in section 4 of the 2003 act, which allows us to use discretion. I hope that that helps you.

Christina McKenzie: We want the bill to be strengthened to say that people must be members of the scheme, rather than that they

"may apply to Ministers to join the scheme."

In the same way, we would want the power to say that a person must be added to the list if we found that there was a case to answer.

Lord James Douglas-Hamilton: Thank you. Una Lane said that the proposed code of practice should be subject to parliamentary scrutiny. What exactly do you have in mind? Do you think that the Education Committee should comment on it before it is issued?

Una Lane: Our concern is that a lot of the detail will be in the code of practice. We have been

involved actively thus far in the development of the bill and would like to continue to be involved in the production of the draft code of practice. The code of practice will contain the detail that all the witnesses have been discussing. Given the importance of it, we think that it should be subject to the same scrutiny as the bill.

Christina McKenzie: I agree.

The Convener: You said that you want the bill to say that people must be—rather than may be—members of the scheme. Is it not the case that, given how the bill is drafted, people will have to be members of the scheme? There is no discretion, because it is an offence to employ anyone with barred status and the only way to determine whether they are barred is to apply for the scheme record of the appropriate level. In effect, any member who is working will have to be a member of the scheme in any case.

Christina McKenzie: We did not think that that was clear in the bill. Our reading of the bill was that it provides that people may join the scheme, rather than that they must be in the scheme.

Una Lane: There might be issues with individuals who work exclusively, privately and independently, rather than for an employer or contracting authority. It is not clear to me how the legislation would apply to them if there is not an obligation on the individual to join the scheme or if it is not an offence for somebody to practise while barred. That is an issue for us, given that some doctors work exclusively and independently as sole practitioners in private practice throughout the UK.

Carole Wilkinson: The other issue is how far the bill reflects how services are changing, which some of the previous witnesses talked about. We are moving towards more services being smaller and personalised, with individual service users employing their own carers, and away from building-based services. The bill refers to services as if they are building based. It needs to be future proofed so that it captures some of the workers who are not captured in the current definitions.

Mr Macintosh: I have an associated question. The bill would place obligations on the statutory sector. The voluntary sector is concerned about how the bill would apply to it. Should those obligations also apply to the voluntary sector?

Carole Wilkinson: The voluntary sector should not be seen as one thing. There are very large voluntary organisations that are as big as or bigger than local authorities and for which the bill's demands will be significant, although I do not think that those demands will result in the concerns that have been mentioned, and there are small voluntary and private organisations for which the bill will have an impact. If an organisation employs social service workers and delivers care services, the provisions should apply to it, whether it employs two people or 2,002.

The Convener: Do panel members want to comment on the definition of harm, specifically in the section entitled "Referral ground"? Are you concerned about that definition? Are the representatives of the General Medical Council and the Nursing and Midwifery Council concerned about the referral ground for individuals who have

"given inappropriate medical treatment to a child"?

Una Lane: Yes. The provision is woolly. I am not sure about its intention, although the other grounds for referral are quite clear. The phrase "inappropriate medical treatment" could cover a multitude of treatments that are provided to patients. Again, we would like to work with the Executive and others to ensure that the definition is clearer.

Christina McKenzie: We support the GMC's position on that.

Val Murray: We have an issue with referral grounds. The bill refers to harm that has been done by

"an individual who is or has been doing … regulated work with children".

Children should be protected from a person who has been found guilty of harming a child in a situation in which they have not worked with them or carried out regulated work with them. We have given an example in our submission. Somebody could be dismissed from their employment in another sector as a result of harming a child, but that would not constitute a referral ground under the bill. That individual would not be listed unless the harm to the child came out in a court conviction, was a relevant offence and led to a discretionary or automatic barring.

The Convener: That is a valuable point.

I have one more question about "inappropriate medical treatment". Someone suggested that teachers and social workers, for example, might not give first aid to children because they might be concerned that they will give inappropriate treatment. Do you have any concerns about that?

John Anderson: That is a difficult area at the moment and the provision could make things more difficult. The Educational Institute of Scotland may discuss issues relating to teachers and to giving paracetamol to children, for example. There could be issues.

The Convener: As no panel member wants to add anything and members have no more questions to ask or comments to make, I thank John Anderson, Una Lane, Carole Wilkinson, Val Murray and Christina McKenzie for their valuable

evidence. There will be a brief suspension while the panels change.

12:09

Meeting suspended.

12:11

On resuming—

The Convener: I welcome our third and final panel of witnesses: George MacBride, who is convener of the Educational Institute of Scotland's education committee; Dave Watson, who is Scottish organiser at Unison Scotland; and Stephen Smellie, who is chair of Unison Scotland's social work issues group. We received your written submissions and I invite you to make brief additional points before the committee asks questions.

George MacBride (Educational Institute of Scotland): I will add one point, which was omitted from our written evidence. The bill provides for the sharing of information within the United Kingdom, the Isle of Man and the Channel Islands. We are concerned about how information would be shared in relation to applicants to the teaching profession who come from the European Union and Commonwealth countries, who have a right to enter the UK. In particular, we would be extremely concerned if the bill placed barriers in the way of refugees in the UK who want to enter teaching. We have a clear and strong policy on the matter.

Dave Watson (Unison): We have nothing to add to our written submission.

Ms Byrne: The submission from the EIS expressed serious concerns. I will pick up on one issue. Does the proposed vetting and barring scheme represent a distraction from what should be the main focus of policy on child and adult protection, or is it a legitimate part of a package of policy measures? In paragraph 3.2, you say:

"statistics recently published by the Scottish Executive on Child Protection demonstrate that in 2005/06 there were 10,527 child protection referrals; 38 per cent of which resulted in an inter-agency case conference. Over 80 per cent of children who were subject to a case conference were living at home prior to being referred. These cases, sadly, arise from action (or lack of action) on the part of those closest to the children whether their parents, carers or other family members."

Does that mean that the bill is a distraction?

George MacBride: I do not think so. Our greater concern is probably the media and public reaction. Media headlines tend to say that there is an issue when there is a serious and distressing case that involves a youngster and a person who was paid to be responsible for her or him. We accept that there will be legislation in the area, but people are seriously mistaken if they think that legislation is the only course of action that is needed. There must be a culture in which all citizens, whether or not we are employed or working as volunteers, are concerned about young people's safety. The bill alone—necessary though it might be—cannot address the need for such a culture. The bill, subject to necessary amendments, must be part of a package.

Ms Byrne: Are there signs that such a package will be in place timeously and that it will be relevant to the current situation?

12:15

George MacBride: We believe that although many elements of the package are present, they have to be supported, partly by resources and partly through publicity—and that has to continue.

Ms Byrne: I worry about the complacency of assuming that the job is done because people have been checked and gone through the system. We talked about that with the first panel of witnesses, too. Will staff be trained well enough to see signs of abuse?

George MacBride: There must be training and I sincerely hope that there will be. Education authorities already require all teachers to undergo annual training in child protection issues. That should continue and it should not be tokenistic. It is important that people recognise in children the possible signs of abuse that requires intervention and that they are aware of signs from their colleagues that might raise concerns.

There must be recognition that training will often be complex and produce difficulties. People might not be happy about what they see in a child but fear that if they take it further they could be casting aspersions on the family. There must be a culture of support if people take their concerns further. If their original judgment is mistaken, that should not held against them. Rather, further training should be offered—to the individual and to the whole organisation.

Ms Byrne: I put the same question to Unison.

Dave Watson: We do not regard the bill as a distraction, although we recognise and agree with the EIS's point that there are very few cases and that most abuse does not take place in circumstances where children are cared for. The bill is part of a wider package of measures, but that does not mean in any way that it is unnecessary. We think that it is necessary and we welcome it.

We need to strike a balance. It is clear that protection of children and vulnerable adults is the paramount consideration, but we do not want miscarriages of justice that mean that staff who

can and do make a valuable contribution to the care of children and vulnerable adults are blocked from doing such work when there is no good reason. The balance must be in favour of protecting the child or vulnerable adult, but we must recognise that point.

Another important point is that the people who work in such environments want this legislation. I must have dealt with hundreds of cases that involve staff who have been accused of various things. It is almost always other staff in that environment who report the abuse. They want protection under the law as much as everyone else.

Stephen Smellie (Unison): Training is given in social care and social work, although it can be argued that there is never enough training. There is a clear need for child protection awareness training to go further than the specific care environment of teachers and social workers. Good local authorities, for example, offer training to a wide range of staff who might come into contact with children or vulnerable adults—for example joiners and electricians who go into council housing. They are given awareness training in what to do if they see something suspicious. We need such training, which would contribute to the culture of awareness in the community of which George MacBride spoke.

People need to know what the issues are, what to do and how to recognise thresholds. People can be caught in a difficult situation: they see something that does not look 100 per cent right, but they do not know whether it goes far enough for them to do something. We need to open up discussion and provide clarification of what it is appropriate to report and what happens afterwards.

Mr Ingram: What is the EIS's position on the proportionality of the measures in the bill? In your submission you criticise the bill for its one-size-fits-all approach and highlight the difference between the responsibility of a teacher for his or her class and a parent who is just helping out on a school trip. Why should both individuals be subject to the same level of check?

There are concerns about the scale of the bureaucracy and costs involved in establishing a system as defined in the bill. Can you give us some insight on that and perhaps some other ways of moving forward?

George MacBride: I would not seek to speak on behalf of voluntary organisations, although we understand that they have concerns. Our concerns arise from a practical school point of view. Let us take the example of a head teacher who requires an adult to go on a trip with a class teacher and classroom assistant or auxiliary, because regulations require three adults to accompany the number of youngsters who are going. Under the bill as we read it, if a parent volunteers, possibly at a late stage, the head teacher faces a difficulty. If the parent is not already a member of the scheme, they have to become a member, which will not happen in one week however efficient the scheme is.

There are cost implications, but we suspect that bureaucracy and delay are bigger issues. I am not going to be very helpful, because we have not thought of ways of dealing with that, but guidance on definitions of responsibility would probably be the best way forward. There is a definition of a responsible person in the bill, but there should be a broader definition of responsible person and possibly of the responsible roles that they play. I am sorry that that does not take us far, but it would be our starting point.

Mr Ingram: Are you saying that the professional who is in charge of the operation should take responsibility, rather than that anyone associated with the activity should have to go through a check?

George MacBride: Our understanding of the bill is that it defines the responsible person at school as the person responsible for managing the school—the head teacher—or, in their absence, someone who is a member of the scheme. We recognise that, however briefly they are employed, all teachers will have to be members of the scheme, and we assume that that also applies to other staff employed in the school, although we do not speak on their behalf.

Our concern is about people who participate as volunteers, possibly only rarely, and always under the direct supervision of an adult who is a member of the scheme. Some education authorities already take a defensive approach and say that any adult who comes into a school, other than when visiting about their own child, should have Disclosure Scotland status. That can be a barrier to some.

Mr Ingram: Does David Watson agree with the EIS standpoint on that?

Dave Watson: It would be difficult to define the levels of responsibility for different checks. I understand the context of large schools, which are large units, but a lot of our members work in small units, particularly in social care and the voluntary and housing sectors. Such units care for as few as two or three persons or, in some cases, individuals. In those circumstances, it would be difficult to define the level.

To be frank, supervision is non-existent in some units. There have been many cases, certainly in some community care settings, when staff have been recruited virtually off the street. Staff are

supposed to have supervision, but in reality some are looking after four, five or six cared-for persons on their own. It would be difficult to rely on a managerial structure that is sometimes non-existent. The drift of social care and, to a lesser degree, health care seems to be in the direction of greater personalisation and smaller units.

Mr Ingram: So you would approve of an approach in which individuals had to apply for registration.

Dave Watson: It would be extremely difficult to define the difference. If it could be done, fine, but the reality of social and health care means that it would be difficult to do.

Mr Macintosh: The professional bodies that gave evidence earlier argued that as well as their sharing information with the central barring unit, the central barring unit should share information with them, so that there is no discrepancy between whether someone is barred and whether they have any professional standing. There is logic to that—it would ensure common decision making across the board and a lack of confusion. Do you agree that there should be an exchange of information both ways?

George MacBride: Yes. The bill makes clear the duties on the General Teaching Council for Scotland to share information with ministers. Our reading of the bill is that the central barring unit would share information with the regulatory bodies. I heard what the representative of the GTCS had to say about other criminal activities in which teachers may have been involved. We take the point that that information should be shared with the GTCS.

Mr Macintosh: Should the vetting information, as well as the barring information, be shared?

George MacBride: If the vetting information is of high quality and is valid—there may be concerns about that—it should be shared.

Mr Macintosh: So the information should be shared if the procedures are robust enough for us to be confident about it?

Dave Watson: We are involved in social work and health, as is the Nursing and Midwifery Council. In principle, we have no difficulty with sharing information, as it is helpful if everyone is working with the same robust information. We have concerns not about sharing information, but about how the information is used and about double jeopardy. In practice, there is sometimes triple jeopardy, as people are dealt with in their employment situation and through regulation—the barring and vetting system, the list and so on. There are an awful lot of stages in the process. That is not a problem in the most obvious cases, but it is a problem in marginal cases. Inevitably, different bodies apply different standards, because they are set up under different legislation. However, that should not stop the sharing of high-quality information.

Mr Macintosh: You have put your finger on it. The issue is whether sharing information is likely to make a decision a common decision, made on common criteria across the board, or whether it will lead to three different decisions being made by three different bodies.

Dave Watson: That is right.

Mr Macintosh: I have a further question for Dave Watson. The different regulatory bodies have different relationships with the central barring unit. The GTCS is included automatically, but the SSSC is not. Do you think that all regulatory and professional bodies should have a common relationship with the legislation? At the moment, that seems to be a matter for ministerial discretion.

Dave Watson: I can think of no good reason why they should not. The current position is probably just a result of the way in which legislation has developed over the years. The SSSC is a relatively new body and there is not a great deal of case law on how it has dealt with disciplinary matters. There is no reason as a matter of principle for one profession to be treated differently from others.

George MacBride: We would be much happier if all regulatory bodies were clearly included in primary legislation. We are not happy about the number of occasions the bill proposes that powers be given to ministers. We would rather that as many powers as possible were included in the bill or made subject to the affirmative procedure.

Lord James Douglas-Hamilton: I have one or two short questions. Although there is a unanimous view that children must be very strongly protected, does George MacBride agree that to prevent malicious or vexatious accusations of abuse or inappropriate conduct being made against teachers, it would be appropriate for teachers against whom accusations are made to remain anonymous until the issue has been decided one way or another?

George MacBride: Fundamentally, our position is that when accusations are made against a teacher that may result in criminal court action being taken against her or him, anonymity should be preserved until he or she is found guilty. That raises tensions in the context of the bill. The length of time that is available to ministers to use their discretion to place someone on the register should be explored, because there is an issue to do with ministers' lack of accountability—I do not mean to Parliament, but under the bill. People who make vexatious allegations will be accountable, but ministers will not be accountable for their final

decisions. Such details should be explored further.

12:30

Lord James Douglas-Hamilton: If there are any draft amendments that you consider appropriate, please send them to the clerk.

I have a second question. There may be ECHR reasons for having two lists rather than one. Would you prefer there to be just one list, if that were competent?

George MacBride: We do not have a view on that. Our concern has been to comment on the list of people who work with children.

Lord James Douglas-Hamilton: Does Mr David Watson have a view on that?

Dave Watson: We have considered the matter and have decided that we have no difficulty with there being two lists. We asked our members whether it would be a problem to have just one list. In our field, we could not think of a circumstance in which someone would be barred under one list but able to work under the other. There may well be such circumstances, but we could not think of any. If a decision was made to have just one list, we would not rush the barricades.

Lord James Douglas-Hamilton: Against the background of the free movement of labour in Europe, were a public perception to develop that some people had been checked less rigorously than others, what reassurance could usefully be given?

Dave Watson: As we highlighted in our submission, our concern is that such reassurance could not be given at the moment. We have been involved in discussions at European level about common systems and common qualification routes, but I am not convinced that they have been developed yet.

We highlight a further problem, which is a counter-scenario. Unison in Scotland has a large overseas nurses network, which has some 2,000 members. It has examples of the home countries of refugees who have fled political persecution not being minded to be sympathetic to their applying for positions in this country, with the result that they cannot prove that they have a track record. They may have criminal convictions from their country of origin that would certainly not have stood up in this country, but which mean that they are blocked from doing work that they are well able and well qualified to do. There are two sides to that argument, but there is no evidence that Governments have addressed the issue.

Lord James Douglas-Hamilton: Do you feel that the processing time for disclosures will be sufficiently short to ensure flexibility? For example, will it allow parents to accompany teachers on school trips or to help with various sports activities?

George MacBride: We hope that the proposed scheme will be much more efficient than the current Disclosure Scotland procedures. Our experience is that Disclosure Scotland appears to operate at highly variable rates—sometimes it responds quickly and sometimes it responds slowly. We do not know where in the system the delays occur. It is our reading of the proposed scheme that it will be a more efficient way of ensuring that information is fed back to employers quickly—provided that they are already members of the scheme.

Dave Watson: Our experience of the Disclosure Scotland procedures is similar—the length of time that they take is extremely variable. At present, I could not provide any assurance that the system is operating quickly enough. We welcome the proposal to set up a new executive agency to replace the current arrangements and agree with the EIS's point about any future changes. [*Interruption.*]

The Convener: If anyone has a mobile phone switched on, could they please switch it off because it interferes with the sound system.

Mr McAveety: Both organisations' submissions favour a series of amendments to modify some of the bill's excesses. The concluding page of Unison's submission says that it might well be better

"to have a lighter statutory touch in terms of duties and place greater emphasis on development of good practice."

Will you expand on that statement because that is not necessarily what we heard earlier?

Dave Watson: That comment is on part 3 of the bill. It is certainly not our view on parts 1 and 2.

Our concern about part 3 arises particularly from the views of our members who work in social care and health. The various groups of staff who are involved have different professional cultures. I am head of legal services as well as being responsible for policy, so I see the precognitions in cases where we provide legal support. If I read a precognition from a health care worker and one from a social care worker about the same incident, their approaches will be different. I am sure that the approach of an education worker would be different again.

However, things are coming together through the joint futures agenda. Social care workers and health care workers are working together and other arrangements include education people. In recent years, good practice has developed and a number of local authority areas have great initiatives in which groups come together in

partnership to agree common reporting systems and approaches to the sharing of information. That is great progress.

I do not want to overstate this, but we are slightly concerned that, if we place a duty on someone but it is not clear in the hierarchy how that duty is to be applied, there is a risk that they will behave in a highly defensive way. They will think, "I have a duty to share information, so I'm going to share virtually everything that crosses my desk." There is a risk that practitioners who make professional judgments every day of the week will veer too far in the direction of being defensive. We are concerned that the bill might tip the balance too far in that direction.

Mr McAveety: You answered some of my questions in your response to Lord James, particularly in your comment on new workers who come to the UK. There is a history of individuals from overseas making a substantial contribution to the health service, and it may well be that their political and social circumstances back home are markedly different from those in Scotland.

Earlier, I raised a particular concern with the ACPOS representatives—it is mainly a constituency concern—about what I see as a temporary group coming in from one of the accession states in substantial numbers. They have had a history of difficult records. Some members of that community might settle here and move into the care sector, but at the moment the community leaders are not necessarily the nicest people to meet. How do we strike a balance that addresses that concern? The Home Office and the police are a long way from resolving the immediate problem, particularly in urban parts of Scotland and the UK. People can easily rent accommodation and disperse quickly if there are pressures. How can we address the concern that you raise in your submission?

Dave Watson: There are great difficulties. The only way to address them is to have common standards at the European level, but those are still some way off. To be honest, information sharing is a challenge within Scotland and the UK, let alone between the UK and states such as Romania and Bulgaria, which do not have the infrastructure that we have. There are huge challenges. I have noticed an increase in the number of cases that cross my desk. It works both ways, but I accept that you have a valid concern.

However, I add a caveat, which follows on from one of Lord James's points. As we state in our submission, malicious accusations are made in a significant number of cases, particularly in the private care sector. For example, a nurse or care worker falls out with the owner or manager of a care home. The worker says, "Right, stuff you. I'm off to get another job," but they find that they have been referred to the regulatory body as someone who is a not a fit person. In other words, a malicious accusation—or, at best, a misleading accusation—is made. The person's new employer says, "Oh dear," and may well withdraw the job offer. In employment law, the only remedy is a notice period of a month's pay. The person is left with no job and no money and their employment prospects are damaged.

We hope that there will be no delays in any of those processes, but some things can take an awful long time to be resolved and a person can be left in limbo as the result of a malicious accusation. That is why we focused on the particular issue of damages. I accept that there has to be a balance, but there must be some penalty for those who provide misleading or malicious information.

Fiona Hyslop: First, I congratulate George MacBride on his ability to give evidence to two committees on the same day—

Dave Watson: And me.

Fiona Hyslop: And you, yes. We are impressed by your multitasking abilities.

The EIS expressed concerns about governance and indicated that it was pleased that governance would be by an Executive agency. The difference in Scotland would also be that ministers would have legal responsibility, unlike in England, which has an independent barring board. The EIS then goes on to express concerns about section 70 of the bill, which provides that ministers may outsource some of their functions. The proposed system will be underpinned by complex IT solutions and the state does not have a good record of delivering IT solutions in a range of areas. How realistic is the EIS's opposition to section 70? David Watson might also want to reflect on that.

George MacBride: I emphasise that we do not believe that any part of the minister's functions should be outsourced. We acknowledge that the state has not always been good at providing IT systems. The record is even worse where it has bought IT solutions from the private sector—the English national health service is currently crashing to defeat having done so.

Good IT solutions have been found and provided to the public sector at local authority and national level, so it is possible. Frankly, it is more cost effective for the public sector to provide IT solutions than to outsource that provision to the private sector.

We would also be concerned if sensitive information that could impact on people's careers, employment, income and social life was outsourced to organisations that could not be held

fully to account in the way that an Executive agency could be. The management and administration of the list and the scheme must be carried out by people who work within the public sector and its ethos, and who are accountable for their actions through the public sector. We were unaware that the English model—or the Westminster model—was different, but it is appropriate for such a duty to lie with ministers because they are ultimately accountable.

Dave Watson: We agree with that, largely. Big IT projects do not have a very good record, but a lot of private sector schemes are not much better. Big public sector schemes are usually underpinned by private sector companies and contractors who have not been able to meet the specification. There are also plenty of examples in the commercial sector of big IT schemes breaking down. Big ICT solutions seem to cause problems to whoever delivers them.

We also want to highlight identity fraud. Members might have seen that the BBC did an investigation quite recently into ID fraud and contact centres. We contributed to that investigation because we have done some work on that and we have quite a lot of experience, having between 4,000 and 5,000 contact centre workers in Glasgow, mostly in the private sector. Strathclyde police are concerned about ID fraud.

There is a high risk of ID fraud where there is a high staff turnover, and commercial contact centres and solutions have higher than normal rates of staff turnover. In some parts of Scotland, the staff turnover can be as high as 100 per cent a year. In such circumstances, it is very difficult to inculcate the sort of culture that George MacBride was talking about. However, an Executive agency would have a very clearly understood public service ethos running through it. I accept that there is no absolute guarantee of that, but Executive agencies are less likely to have some of the problems of the commercial sector.

12:45

Fiona Hyslop: There are obviously implications in the handling of a million pieces of information about a million individuals.

This question is particularly for Unison. There is and has been a problem with individuals not sharing information in serious child protection cases. Some of the solutions have been based on IT systems to share information about children but, by and large, the approach seems to be piecemeal. Earlier, we heard from ACPOS—you did not hear this because you were at the Communities Committee meeting—that the process is likely to be evolutionary and that existing systems, rather than a big new IT solution, will underpin the new procedures. How comfortable are you that the new information-sharing system under part 3 of the bill will be adequate to protect your members from allegations? Your members will be protected by information-sharing systems if they work but, if they do not work, your members may be more vulnerable. Is sufficient progress being made on that?

Dave Watson: You raise two concerns. The first, which we raise in our written evidence and which I mentioned earlier, is that the bill could lead to more defensive practices and a huge increase in the amount of information. The amount of data that the ICT systems will have to handle will increase vastly. Although the police have some well-developed systems—which are run largely by our members who are civilian police workers—those are not quite there and, frankly, local authorities and health boards do not have appropriate systems in place. Therefore, the process will have to be evolutionary, because the appropriate systems are not in place at present. We have a concern about that.

The second concern is that, even if the systems are in place, an issue arises about security of data. A lot of information is at present shared either verbally or through paper-based systems, not IT systems, which leads to all sorts of difficulties with information flow. However, a balance needs to be struck. We understand the importance of the verbal and paper-based systems. The bill is driven by one or two well-publicised cases, but there is nonetheless a lot of good practice in information sharing using the available systems. I am afraid that anyone who thinks that, in a short period, we will have fabulous ICT systems buzzing round local authorities and health boards to implement the bill is sadly mistaken. If we are to have such systems, the bill's financial memorandum is, frankly, a joke.

George MacBride: I would be concerned if we thought of ICT as the only solution to the issues, particularly those that part 3 of the bill attempts to tackle. We can put information into an effective and efficient ICT system that joins up the various services but, if nobody is there to make use of the information, or trained to make use of it, the exercise will be pointless and simply about gathering information. It may be much more cost effective if, when a teacher has a concern of a child protection nature, they work in a culture in which they know who the designated social work colleague or social work manager is and can telephone them to raise the issue. That can be much more effective than simply giving a piece of information to an administration worker, who then puts it into the system, hoping that somebody at the other end of the system will read it when it is flagged up. ICT is not the only solution; it helps, but first we need a culture of interagency working.

Fiona Hyslop: We have heard a strong message from you and from ACPOS that, at the end of the day, the critical issue will be the human action that is taken, rather than the underlying IT system.

Dr Murray: The witnesses have touched on my concern, which leads on from Lord James Douglas-Hamilton's questions about whether there will be sufficient protection from the possibility of malicious accusation. A constituent of mine who was offered a job working with children in the leisure industry had the offer withdrawn because somebody complained anonymously to the police that she had been seen in a pub taking an illicit substance. She seemed to have absolutely no right of appeal. There obviously are not sufficient safeguards at present against that type of malicious accusation. Are you reassured that the proposed system will be sufficiently rigorous to prevent such accusations causing people to lose their jobs?

Dave Watson: We do not see rigour in the proposals, although, in fairness, it is difficult to build that into systems and there is not an easy solution to the problem. We have highlighted gaps in the bill and COSLA, ADES and the ADSW have highlighted technical concerns about issues on which the balance has not been shifted fairly or on the right basis.

There are rights of appeal under part 1. We are reasonably happy with those, but it must be acknowledged that appeal to the sheriff, the sheriff principal and then to the Court of Session on a point of law is a very long process to put something right. In part 2, we can see no right of appeal at all. It appears that the central barring unit will take a view and that will be that, even if the information is inaccurate.

I do not think that anything can be put in place on malicious accusations. We are talking about a wide range of different employers who are entitled under other legislation to make common-law judgments about who they employ. It is a basic principle of employment law that it is impossible to force someone to work for somebody or force someone to employ somebody. That principle has underpinned Scots employment law since time immemorial and I do not expect that that will change. Therefore, it is necessary to include penalties for people who make malicious or even misleading accusations to discourage them from doing that.

It is interesting that, in recent years, better protection for malicious references has been developed in employment law. I refer to the concept of malicious falsehood, for example, under which there is now at least some defence for people against whom false references are given. That protection is not perfect by any means and is not good enough, but it is better than it was. Perhaps some refining of section 38 might achieve similar protection. I accept that there is a balance to be struck. We do not want to make the protection so threatening that people will not pass information on because they might get sued but, on the other hand, we must realise that someone's livelihood could be lost for a long time. I accept that it is a difficult judgment to get the balance right. Unison does not wish to discourage the sharing of information, but we cannot afford to allow good members of staff to have their careers and lives ruined because of malicious accusations.

Lord James Douglas-Hamilton: Some helpful points have been made. If the witnesses feel able to send the committee any amendments that they think would improve the bill, that would be extremely welcome. I ask them to send amendments to the clerk.

Fiona Hyslop: The GTC says that trainee teacher should be identified as a registrable occupation. Does the EIS have any views on that? Is it sensible?

George MacBride: We consider it sensible. We agree with that.

The Convener: I will finish by asking the same questions that I asked the previous panel of witnesses on the bill's definitions of "the referral ground" and "harm". Do the witnesses have any concerns about those definitions?

George MacBride: I will raise an issue about the definition of harm. Glasgow City Council had a policy that none of its education employees could give a child—or even a young person aged 15—a sticking plaster, for example. The EIS would be concerned if any of the definitions in the bill exacerbated that overdefensive attitude. We do not have a detailed view on the definition of harm, but we share the concerns that Unison colleagues expressed about encouraging such an overdefensive approach.

Dave Watson: Unison flagged up a number of definition issues. We have been having discussions with colleagues in the bill team who have been working on the definitions, and the code of practice might resolve some of the issues. The important thing is that people need to know what they have to do. Uncertainty is not helpful, particularly when duties are involved, because it has an impact on disciplinary procedures in the public authorities and the voluntary sector organisations that work in those areas. There has already been a lot of defensive work, particularly in the health sector, in nursing care and social care. It is even difficult to encourage people to provide first aid in workplaces, which people are more and more reluctant to do. To be fair, there is nothing in the bill that adds to that, but there is a general

problem of litigation and risk management, which has deteriorated in recent years.

The Convener: Given the serious implications that referral would have for your members, is it satisfactory that some of the issues will be left to guidance or secondary legislation? Should the bill perhaps contain clearer definitions?

George MacBride: The EIS would prefer to have clearer definitions in the bill, but we would have to go away and think about what they should be. If we come up with any answers, we will submit possible amendments.

Dave Watson: We would like clearer definitions in the bill. That is usually our approach, as we share others' nervousness about the powers of secondary legislation. However, many of the issues are extremely complex and cover a wide variety of professional practice. If the bill was only about education, social care or health care, we could probably put clearer definitions in it but, because it encompasses a wide variety of different provision, it is difficult to do that. To be frank, we would struggle to come up with definitions that would cover every circumstance without having long schedules that would look like statutory instruments or codes of practice.

The Convener: That concludes this morning's evidence taking. I thank George MacBride, Dave Watson and Stephen Smellie for their valuable evidence.

The committee will meet again at the same time and in the same place next week to take further evidence on the Protection of Vulnerable Groups (Scotland) Bill.

Meeting closed at 12:56.

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