

EDUCATION COMMITTEE

Wednesday 22 November 2006

Session 2

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CONTENTS

Wednesday 22 November 2006

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PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL: STAGE 13745

EDUCATION COMMITTEE 25th 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:

Andrea Batchelor (South Lanarkshire Council)
Kelly Donaldson (Voluntary Arts Scotland)
Jim Duffy (Scout Association Scottish Council)
Norman Dunning (Enable Scotland)
Heather Coady (Scottish Women's Aid)
Judith Gillespie (Scottish Parent Teacher Council)
Allan Gunning (NHS Ayrshire and Arran)
Dr Helen Hammond (NHS Lothian)
Michael Hankinson (Prince's Trust Scotland)
John Harris (Central Registered Body in Scotland)
David Little (Scottish Association of Local Sports Councils)
Donald MacKenzie (Dundee City Council)
Kathleen Marshall (Scotland's Commissioner for Children and Young People)
Maggie Mellon (Children 1st)
Joe McIvor (Youth Scotland)
Lucy McTernan (Scottish Council for Voluntary Organisations)
Jim Murray (Dundee City Council)
Dr Jonathan Sher (Children in Scotland)
George Thomson (Volunteer Development Scotland)
David Williams (Quarriers)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament

Education Committee

Wednesday 22 November 2006

[THE CONVENER *opened the meeting at 10:01*]

Protection of Vulnerable Groups (Scotland) Bill: Stage 1

The Convener (Iain Smith): Good morning ladies and gentlemen. Thank you for coming to the 25th meeting in 2006 of the Education Committee.

There is one item on today's agenda, but it is a long one. We will continue to take evidence on the Protection of Vulnerable Groups (Scotland) Bill. There are three panels this morning. We will have two conventional panels later, but the first one involves a slightly different format. This is the first occasion on which we have had a round-table session, at which representatives from a number of voluntary sector organisations will give us their views on the bill. To save time, I will not introduce everyone. I ask all members, in particular, but also other participants in the round-table discussion, to keep their comments as brief as possible so that we can get through as much as we can in the time available. We have about an hour and a quarter for the round-table session to give us time to take the other two panels this morning. We need to keep the discussion as tight as possible so that we can cover all the main issues.

I ask all members of the public and people round the committee table to ensure that they have their mobile phones switched off. Even if they are on silent mode, they can interfere with the sound systems.

I thank all the voluntary organisations for coming to the committee this morning and for their written submissions, which I found extremely interesting. They raised a number of important and valuable points.

I will get the discussion going by seeking thoughts on the general aims of the bill and the workability of the proposed vetting and barring scheme. For example, some written submissions from the voluntary sector suggest that the scheme is perhaps a distraction from what should be the main focus of policy in the child protection sector. Other witnesses have considered whether the bill is a proportionate response to the issue. Would a representative from a voluntary sector organisation like to start by commenting on the general aims and workability of the bill? I see that Judith Gillespie has her hand up—I thought that I could rely on her.

Judith Gillespie (Scottish Parent Teacher Council): The general aim of ensuring that youngsters are safe is clearly important. We all recognise that in certain situations people have an intimate and close one-to-one relationship with a child who is dependent on that particular adult. It is important to check the background and circumstances of that person carefully.

The focus of the legislation has become incredibly wide. The fact that it aims to have something like 25 per cent of the adult population and a third of the working population police checked is indicative of that width. It is driving people who would volunteer on a casual basis out of the system. It is putting a disproportionate amount of emphasis on and energy into one area of child risk even though the recent statistics show that the main risk to youngsters is from physical neglect, which is a rapidly growing area of problems and accounts for the increasing number of youngsters who are being referred.

The bill is disproportionate. Further, there needs to be a better definition of terms and a proper decision about the age limit between a child and an adult. As I said, not only is it bureaucratically cumbersome, it is positively damaging to the well-being of children.

Lucy McTernan (Scottish Council for Voluntary Organisations): Members of the committee will be aware that the Scottish Council for Voluntary Organisations has expressed the voluntary sector's significant concerns about the sheer scale of what is proposed in the bill and the likely impact on the activity of voluntary organisations. In our recent evidence to the Finance Committee, we made plain our views that the Scottish Executive, in its financial memorandum to the bill, had omitted to consider the expense and bureaucracy that the sector would have to bear under the proposals. Further, we think that insufficient thought has been given to the potential effects on volunteer involvement.

Today, I would go further and suggest that more time is seriously required than this committee has to consider the wide-ranging consequences of the size and nature of the proposed scheme. It was only in the past week, through an answer to a parliamentary question, that we learned that the number of people on which police record information is held—the vast majority of which is totally irrelevant to care positions—exceeds 1 million. We know that the number of people caught by the bill in the voluntary sector alone is likely to be 1 million and I would suggest that it takes only common sense, not statistics, to work out that it will have a significant and sweeping impact.

The bill has some positive points, including the welcome introduction of the passporting of disclosures, which would reduce bureaucracy.

However, we think that there are some serious and large holes in the funding arrangements of the bill and we would like the committee to give serious consideration to trimming down what is proposed by moving forward on the things on which there is consensus but not moving forward on the things that would impact widely on the voluntary sector and the community.

Mr Adam Ingram (South of Scotland) (SNP): Judith Gillespie talked about volunteers being driven out of the system. We heard similar evidence prior to the introduction of the Protection of Children (Scotland) Act 2003 but, last week, the Association of Chief Police Officers in Scotland and the Association of Directors of Social Work suggested that the number of people volunteering had not been affected by that act. Do you agree with that view? If not, could you outline how you think that the new legislation will impact on volunteering activity?

Judith Gillespie: I suspect that ACPOS is thinking about a more formal, registered level of volunteering whereas the kind of volunteering that we are involved in is the low-level volunteering that involves people giving, say, an hour of their time to support an activity at a school or at a sporting event in a supervisory role because, otherwise, there would not be enough adults to take care of the number of children involved. That kind of informal volunteering will be caught up in the proposed legislation, as it was caught up in the Protection of Children (Scotland) Act 2003, as a result of which people are just saying, "I haven't got the time or the energy," and are not volunteering. There has been a significant drop-off at that level of volunteering, but that is not registering in the statistics that you were given last week because it does not involve formal, appointed posts. However, volunteering at that level has a major impact on the ability of the more formal organisations to run their events because, unless they have an adequate adult child ratio, they cannot operate.

Norman Dunning (Enable Scotland): I echo what Judith Gillespie has said. Our organisation has more than 60 informal groups or branches throughout the country. Although they are registered charities, some of them are very small and operate highly informally, running social events and clubs. Of an evening, 70 or 80 people will come through the door to take part in their activities. On such occasions, it is not clear who might be a protected adult—people do not wear labels that say that—or who is a volunteer because, essentially, we are talking about self-help activities. A small group of three or four people will run things, but everyone else will work together. The people involved would not describe themselves as volunteers and would not be listed as such; they would call themselves friends.

How could we possibly apply the bill's provisions to such a scenario? Frankly, they would kill it dead. There is a great deal of concern among our members who are involved in such activities that that is exactly what will happen—people will not come forward. They are frightened that what is an informal but supportive atmosphere will become driven by a bureaucratic process that they cannot manage. We should remember that although such groups have a formal constitution, they are run from people's front rooms. They do not store records on people somewhere. That is not how things work—it is not a formal set-up.

Dr Elaine Murray (Dumfries) (Lab): I find it astonishing that the equivalent legislation south of the border went through the House of Lords and the House of Commons without anyone raising such concerns. Given that the population there is ten times the population in Scotland, if a million people in Scotland will be affected, 10 million people down south must be being affected.

My concern is that if the bill just does not work, it might do more harm than good. With the Child Support Agency, for example, we know that the technology has never been able to deal with the legislative change. Might the bill give people a false sense of security? Could a case be made for putting a stop to the bill's progress and considering the reform of POCSA, along with other, slightly longer-term changes? We do not want to reach a situation in which people think that everything is okay just because someone is in the scheme.

Judith Gillespie: The situation in England is interesting. The legislation in England is slightly behind that in Scotland and the extent of checking has not caught up with the position here; whereas the discussion there was about the fact that a million volunteers had been checked, the consultation document for the Protection of Vulnerable Groups (Scotland) Bill said that 500,000 people had been subject to disclosure in one year. It is partly because the legislation in England is slightly behind that there has not been the same level of awareness. However, it is not right to say that there has been no opposition in England because there has been and it is growing—people are beginning to realise what the consequences of the legislation will be.

Elaine Murray suggested that the present system might be overburdensome and that a review of POCSA might be necessary. That is absolutely where we are at. We have run with POCSA for long enough and its effects have made many groups, including the Scottish Parent Teacher Council, increasingly alarmed about the direction in which the process is going.

The Convener: I will allow Lucy McTernan to respond before we hear from George Thomson and Joe McIvor.

Lucy McTernan: The fact that the parallel legislation in England is more contained than the POCSA regime here in Scotland means that it has not had as broad an impact or affected the same number of formal and, indeed, informal organisations as has been the case in Scotland.

I remind people of what happened when part V of the Police Act 1997 came in. The voluntary sector in Scotland alerted the legislators that it would have a big impact on volunteering and, quite rightly, the Scottish Executive introduced proposals to provide free checking for volunteers. It was only after the fact that England caught up and the Home Office was persuaded to do likewise. As Judith Gillespie rightly says, we have been slightly ahead of the debate for a number of reasons. It is not a question of copying what is happening in England. We must set the standard of what is right, proportionate and appropriate for child and vulnerable adult protection here in Scotland.

Dr Murray: Are you advising us that the bill is not what is required? Would you go as far as to say that the bill should be rejected?

10:15

Lucy McTernan: We are saying that we would not start from here. The current POCSA regime is counterproductive in many ways, but it has not had the wide-ranging impact that it might have done if full retrospection had been introduced. The bill will introduce full retrospection and provisions that go wider and deeper. The potential impact of that is pretty enormous. We are saying that we would like the worst aspects of the current POCSA regime to be corrected and some of the bill's good proposals to be put into place. We would then like a pause for breath so that we can see whether we are travelling in the right direction.

George Thomson (Volunteer Development Scotland): Volunteer Development Scotland's evidence is that the information on what impact the bill will have is contentious and contradictory. Over the past 10 years, the trend in volunteering in Scotland has been pretty stable. No real detrimental effect from the current legislation can be seen in the overall figures. Our research suggests that 84 per cent of people in Scotland do not have an issue with being required to undertake a disclosure check when they believe that that is required for a volunteer placement.

I think that the argument or debate needs to be centred around balance and proportionality, as has been mentioned this morning. We need balance and proportionality in respect of the

organisations that are captured by the legislation. There is uncertainty about whether the bill should apply only to constituted groups in particular activities or to loosely formed groupings as well. If the bill captures loosely formed groupings, it will have an impact that will take us into unknown territory.

Another matrix of issues is who the bill will capture in the regulated workforce and which kinds of volunteer roles will be specifically required to be subject to a disclosure check. While ensuring that there continues to be credibility among the population at large about the good sense of undertaking proper scrutiny of people who will hold trusted positions with children, we will need to draw a line about what kinds of roles that will be applied to. If we get that wrong, the fears and concerns that have been expressed might appear.

Joe McIvor (Youth Scotland): I agree with colleagues around the table about the reduction in the number of volunteers over the past few years. Our evidence suggests that, with the onset of POCSA, we lost around 100 youth groups. That is a considerable number. Obviously, our worry is that the same might happen under the bill. We are only now beginning to get back on an even keel after the onset of POCSA, so we still feel that a lot of work remains to be done. Most of our emphasis has been on comprehensive recruitment, as opposed to simple checks. We feel that putting the emphasis purely on checks is a backward step.

David Little (Scottish Association of Local Sports Councils): I am national secretary of the Scottish Youth Football Association and I am representing the Scottish Association of Local Sports Councils.

I want to come at the issue from a slightly different angle by giving the coalface perspective. At the inaugural meeting of the lead child protection officers group for the Scottish governing bodies of sport, 65 out of 70 sports were represented. At the last meeting, only 12 were represented.

The first thought that I want to leave with the committee is about capacity. The volunteer sector in Scotland contributes more than 9 million hours each month, which equates to an annual contribution to the Scottish economy of £2.52 billion. On average, Scottish Youth FA volunteers spend 10 hours per week training, coaching, arranging matches and participating in matches. That equates to approximately 6 million hours per annum. There is no further capacity within the SYFA. We have amended constitutions to reflect POCSA.

On the issue of capability, only 44 of the 70 governing bodies of sport currently have child protection policies in place. The SYFA's

membership includes a large variety of clubs and SALSC's membership includes a large variety of sports councils, which cover the spectrum from enthusiastic volunteers to people who say, "Leave us alone to get on with our sport." That causes complications when an attempt is made to implement measures on protection. Everyone in sport is trying to protect children, but there should be an audit of POCSA before we go further. Change causes big problems for the volunteer sector in football and other sports. A new form will be produced within the next few months and if the bill is passed, a revised form will be needed, which will require a massive change.

The SYFA has carried out 6,000 disclosure checks and is one of the volunteer sector's main users of the excellent central registered body in Scotland. Only 10 Scottish volunteer groups carry out 1,000 or more checks. Should we simply comply with the law of the land, or should we get involved in the protection of children, as I believe that we should?

There should be a full education package, which should include information technology systems that will be needed to implement changes.

In 2005-06, the SYFA, which is a subscription-led organisation, spent £25,000 on administration and costs to do with protection. In 2006-07, I anticipate that spending on staff and so on will rise to £41,000. I have not mentioned training, but it will cost £18,000 to train 900 protection officers in our 3,400 clubs.

I want to make three final points. First, in POCSA a child is defined as a person who is under 18, but in the bill a person who is 16 is an adult, which would create a black hole in the SYFA. Currently in the SYFA, a young person who is wearing a strip and running about playing football in a public park is covered by child protection legislation. The vulnerable adults issue would cause us massive problems. Secondly, will representatives of grass-roots sports be more fully involved in consultation? Finally, if organisations such as the SYFA are struggling to cope with the added financial and resource problems associated with protection, how are local sports councils and small governing bodies in Scotland coping?

The Convener: Thank you. We will talk about the financial implications of the bill and training, but first I will bring in other panel members.

Jim Duffy (Scout Association Scottish Council): I echo some of what David Little said. It has been suggested that legislation has not had an impact on volunteering, which is not strictly true. Although the Scout Association has managed to retain the bulk of its volunteers who work directly with young people, the real impact of legislation has been on administrative support for

volunteers, which is a matter of increasing concern to us. We are restructuring our volunteer administration and management system throughout Scotland and a key driver for that was the increasing difficulty in recruiting volunteers to the administrative and training roles that are essential if we are to ensure that our vast volunteer workforce is properly supported.

The length of time that disclosure takes has had one of the biggest impacts on administration. We do not disagree with disclosure; we are very supportive of a system that is helping to increase the safety of the young people in our care. However, we must get the issue into perspective. Disclosure is only one of a range of processes that are involved in the vetting and recruitment of adults. Sometimes we get the matter out of proportion, to the point that the disclosure check becomes the most important element of vetting. It is important, but it is far more important for the protection of young people that we have people who understand what constitutes good practice and apply it, and who recognise and respond quickly to dangers. There is great concern in the youth work sector that we are getting to the point that someone is a paedophile until they can prove themselves not to be.

I and many others are staggered by the scale of the bill, which proposes to bring more than a million people in Scotland into the checking process. If the Executive wishes to do that successfully, an enormous amount of resources will be required to administer the system. The information that is before us is somewhat disingenuous, as it almost implies that the process is cost neutral for youth organisations such as ours. It is not. There is a cost for the Executive, because the more checks that are carried out on volunteers, the more the Executive will have to pay. It is not cost neutral for organisations such as ours, because the administrative costs in IT hardware, training staff and producing the support documentation that we need are enormous. We must take those costs into account.

I support moves to improve the POCSA regime. The voluntary sector worked hard with the Executive to get a sensible regime and we made a lot of progress. We can do more in that area. However, sometimes it is time to take stock—to step back and to ask what we are getting into and whether what we plan to do will hugely improve the safety that we offer to young people.

Mr Kenneth Macintosh (Eastwood) (Lab): A number of issues have been raised. Written evidence has been submitted on difficulties such as overlaps in age—when a person between 16 and 18 is to be regarded as an adult and when as a child—and the demand for notification of changes in address within three months of any

change. That evidence will be helpful, assuming that we proceed with the bill.

I return to an issue that was raised by Elaine Murray, Lucy McTernan, Judith Gillespie and others. I recognise fully that we do not want to create a system such as that which Jim Duffy has just described. We used to value all volunteers for their commitment, but now the first reaction to someone who volunteers to work with children is suspicion. That is an appalling situation. However, as Lucy McTernan said, we cannot rip up the system and start again. My understanding of the written evidence is that most groups welcome the bill as an improvement on the current situation. In other words, the bill will reduce bureaucracy and focus the number of checks that are carried out. A large number of people will be affected, but what is proposed will be far less onerous than the current system of disclosure. Am I right in thinking that the bill represents an improvement on that system?

Jim Duffy: The bill has the potential to improve the situation. However, the devil is in the detail, and much of the detail in the memoranda suggests that the improvements for which we were hoping are unlikely to come through.

Lucy McTernan: As I said in response to Elaine Murray, some aspects of the bill would improve the current situation, but a raft of other provisions could make the situation much worse. We welcome the proposed passporting regime and would like it to be implemented. The updating of disclosure records—the flagging process—is potentially useful. I am referring to the back end of the system—the measures that will match what is happening down south. We welcome the option of a disclosure that does not release vetting information—the statement of barred status—and a better, online, application process. We would also like to see a clearer definition in the bill of which organisations are caught. A couple of people mentioned informal associations.

There is a raft of things in the bill—basically, everything that I have left out—that we would not like to see introduced at this stage, because a lot more thought needs to go into them.

10:30

Mr Macintosh: The things that you highlighted as being an advantage cannot be introduced without the bill.

Lucy McTernan: They could be introduced through the bill or by amending the existing legislation.

Ms Rosemary Byrne (South of Scotland) (Sol): Thank you for your helpful written submissions. I want to pose the opposite question

to Ken Macintosh's. It is interesting that although all members of the committee have read the same submissions and have heard the same evidence, we are taking different things out of the discussion.

David Little said that an audit of POCSA is needed. Do the other witnesses share that view? George Thomson of Volunteer Development Scotland said that there should be research on its impact on volunteers. The flavour of what we are hearing is that we do not have full information on the matter and that we need to consider it further. Similar themes—age, for example—are picked up in many of the submissions. On protection of children, are there dangers, first, of complacency, given the amount of work that people will have to do and, secondly, that the bill will not hit the mark?

Ms Wendy Alexander (Paisley North) (Lab): I want to dwell on the issues that Elaine Murray, Ken Macintosh and Rosemary Byrne have raised. Given where we are in the legislative process, the committee has a choice to make about what to recommend—in fact, Scotland, collectively, has a choice to make. This is the third bill on child protection and how to deal with stranger danger that we have been asked to pass in less than five years. Either we say that we will try to get this third bill right, even though large parts of the provisions of POCSA—not least the retrospective provisions on volunteers—have not been properly commenced, or we say that the way to proceed is to commence fully the provisions of POCSA and use it to make the suggested improvements. The valuable insight from today's meeting is that we have to reflect on that issue.

If we try to scale back the bill so that we do not presume that everyone who offers to volunteer represents a danger to children, we might not pare it back sufficiently to deal with some of the anxieties that have been expressed. There would certainly be a new information and training regime on top of the two that are related to the Police Act 1997 and POCSA. Alternatively, we could start with POCSA and build on it.

Many people are more expert than I am on the subject. I simply want to clarification on the essence of the choice that the committee will have to make. I would welcome guidance on whether we should pare back the bill and do an audit of POCSA, thereby having a third bill in this area, or try to build on the POCSA regime. Many of us have an open mind on that and are interested in your views.

Kelly Donaldson (Voluntary Arts Scotland): I want to touch on the statistics that are coming out about volunteers and about the hidden statistics behind them. Reference has been made to the number of volunteers who work in small groups and are not mentioned. There are also the hidden victims whom we have found, through POCSA. A

huge amount of confusion reigns supreme out there. Those groups already find the wording of the legislation difficult and are getting not clarification but mixed messages from local authorities and, for example, from people from whom they try to hire halls. Everyone seems to have a different slant on the legislation. From our point of view, the existing legislation should be made more understandable, so that everyone can sing from the same hymn sheet.

It is not so much that volunteers are not coming forward—they still are—but that, because they are so confused, they are refusing to have children in their groups. They want to stick to training or sharing their craft with adults. If a child wants to join in, they see that as being too difficult for them so they do not let them into the group. It does not show up in the statistics that there is a 15-year-old who wants to learn macramé but no one will let her join a group because someone would have to get checked and that would be difficult. That is never going to show up in the statistics.

Judith Gillespie: I want to respond to Wendy Alexander's point. The beneficial aspect of the bill is that it will streamline the process by allowing multiple checks. However, having listened to a lot of the voluntary groups in consultation processes, I know that many have taken information from police checks and used it for other purposes. I am, therefore, not sure how effective the central barring system will be in reducing the number of times that people have to go through the evidence process.

On the overall question of what we should do, the real problem is schedule 2 of POCSA, which says what the act applies to. The fact that it is full of unhelpful vaguenesses has meant that the process has become extensive. The final paragraph of schedule 2, however, allows ministers to revise and review everything in the schedule except that last paragraph, so there is scope for ministers to revisit schedule 2 in order to tighten and improve the definitions in it. In many respects, the confusion comes directly from the wording of the schedule. Everybody agrees that there are aspects of the checking process that are good and helpful, but it has become so widespread and has infiltrated so far that there are difficulties with it and people interpret it differently because the definitions in schedule 2 are extremely vague. When we asked about it, we were told that it would have to be decided in a court of law: a parent who was volunteering to help at a school disco and who was told that they might end up as an interesting test case in a court would not bother turning up. The definitions in schedule 2 need to be seriously reviewed.

Fiona Hyslop (Lothians) (SNP): The committee has a fundamental decision to make concerning

what we will do with the bill, so we need a steer from those who have not contributed so far on what they want us to do. The committee has spent most of its time over the past four years dealing with child protection—it looks as though there will be more legislation next year under "Getting it Right for Every Child: Proposals for Action".

Multiple disclosures came up two years ago. If the message is that the Executive should go back and think again, the committee can recommend that. We can ask the Government to have another look at the bill and to pause. If matters in respect of multiple checks could be improved by a short amendment to POCSA, the committee could perhaps progress that.

The other issue is the new scheme. Many people agree that POCSA should be amended to enable retrospective checks; however, that would create records on a million people about whom the new scheme in the bill is meant to establish records. The question is whether it would be better to opt for the new scheme for those million people or to amend POCSA and have retrospective checks under that act. We are caught between the devil and the deep blue sea. In either case, the vast majority of the Scottish population would end up having to be checked. Would that protect us from the evil individuals whom the bill is meant to screen out?

There is a balance to be struck and we must consider how we can achieve it. This is a rare opportunity for the committee to get different perspectives from interest groups. If you want us to say no to the bill and to pause, we can do that, but we need to hear strong views on practical things that you think can and should be done. It may be that we can get away with doing some of those things quickly now, under POCSA. I would worry about a filleted bill that did some things but did not do everything being rushed through before dissolution and the May election. There are hard choices to be made—this is your opportunity to give us a strong steer as to what you want.

David Williams (Quarriers): We recognise and agree with much of the purpose behind the bill. We welcome especially the recognition that people who work with protected adults should be subject to the same scrutiny as those who work with children. Although the emphasis of the debate is on children—that is absolutely appropriate—the recognition regarding people who work with adults causes some conflicts and difficulties in the bill.

There has already been some debate about whether a person's status as an adult should start at 16 or 18, and about the list to which they could be referred. We also feel that there is potential for confusion between the responsible agencies in referring and making approaches to the lists. In our opinion, disclosure information that is given to

employers should indicate registration on either list. That is a challenge because the proposal is that a person will be referred to only one list, which is where the information will come from directly.

We also think that, in the process of the bill, the focus has been on speed rather than effectiveness. As has been mentioned, other bits and pieces of legislation are either in place or pending—I am thinking of the getting it right for every child bill—that may be more appropriate places in which to address sharing of information.

Norman Dunning: The bill is also about adults—we should remind ourselves of that fact—and it suffers from some of the difficulties that are evident in respect of the Adult (Support and Protection) (Scotland) Bill in respect of the definition of protected adults. How are we to draft a definition that makes sense? The definition in the bill, which relates only to the person who is receiving a service, will not be operable. Apart from anything else, in the informal voluntary groups to which I have referred, people would not necessarily know the definition. There is no clear way in which to pick out or label an adult as being in need of protection.

Added to that, given the nature of so many self-help groups, it is often not clear who is the volunteer or helper and who is the potential victim. People in such groups work together to achieve an end.

If, under the bill, someone was told that they could not work within such-and-such a group because they had such-and-such a conviction, that would kill a lot of the self-help groups in which people who have convictions are trying to move forward and bring other things into their lives. We will kill off that whole process if we are not careful. People with learning disabilities may also have perpetrated crimes, and the same might be true of other groups—in fact, even more so.

The Convener: Michael Hankinson of the Prince's Trust Scotland might want to comment on that. Your submission refers to rehabilitation of offenders and other issues of that nature.

Michael Hankinson (Prince's Trust Scotland): We refer specifically to rehabilitation of offenders. We are in the business of trying to help young people who have criminal records to correct the situation, so we are always concerned about legislation that might lead us to bar people unnecessarily or which might dissuade people from putting themselves forward to do things because they have a criminal record, although it might be entirely irrelevant to the reason for the check.

10:45

Two things interest me. We really do not know what effect the previous legislation has had on people's desire to volunteer. The Prince's Trust's experience is not altogether clear on that, but some people have certainly refused to undergo checks because they have been checked twice before. There is no doubt that the improvement that is on offer—to make disclosures transferable—would be greatly welcomed.

I say as a general comment that, in preparing for the meeting, I found it quite difficult to know what a lot of the proposals really mean. It seems that we are being asked to comment on a lot of unknown detail.

Mr Frank McAveety (Glasgow Shettleston) (Lab): The committee has to address two or three important issues. First, there needs to be further discussion about first principles and whether we are going in the right direction.

Secondly, it troubles me that most of the submissions say that people are worried about the proportionality of the bill in relation to what is meant to be the concern. However, I cannot really see where any of the submissions propose solutions other than to start again, which might be worth considering, or to make amendments to existing legislation. It would be helpful to explore either of those two options, given that we are going into the particularly intriguing final five months of this parliamentary session.

Thirdly, barely a week goes by in my area without a volunteer who has a colourful past popping up, but I do not think that that should impact on the concerns that we have about people who have committed much more serious crimes. My area will contain a number of people whose history would, under the bill, dissuade them from participating or volunteering as they have done in the past, which would be extremely regrettable, given that they are, as we speak, making positive contributions to their communities. We should try to address that.

The other issue that we do not have a lot of time for is the cost of the bill. The SCVO raised that point when the Finance Committee was discussing the financial memorandum to the bill. I know that we are going to move on to talk about that shortly, but I would like to hear views on possible cost impacts, particularly because various views have been presented about the impacts on smaller scale organisations.

Jim Duffy: I can give a quick response to that question. We estimate that the current cost to us in terms of staff time, IT support requirements and general administration would be between £40,000 and £50,000 per year. The financial memorandum does not show us the future impact of further

access to online checking and so on. It is difficult for us to assess, but our costs are unlikely to go down. Those costs have to be met primarily from our youth members and volunteers because, as David Little said, most of our income comes from membership subscriptions.

I have expressed concern about administration of the scheme. The bill could bring about lots of improvements, particularly on passporting and the possibility of online access to checking information, for which we have been asking for a considerable time. We want to discuss improvements that can be made to the existing system. As a simple example, we are told that Disclosure Scotland is going to introduce a new disclosure application form in a month. Although we are one of the largest volunteer-led youth organisations in the country, we have not been involved in that; in fact, we are not aware of any other major volunteer-led youth organisation that has had any input. I should also point out that the six largest volunteer-led youth organisations provide more than 50 per cent of Scotland's youth-work capacity.

It is one thing to improve a form that we have all agreed, but to alter a form to which we have had no input might cause us difficulties, the greatest of which will be our having to sell yet another change to our volunteers. All the processes and procedures that we have developed over the past four years will simply go out of the window at very short notice, without taking into account volunteer-led organisations' capacity to respond. If we make such a change quickly, the process will be discredited further. There might well be another set of changes 18 months down the line. I do not think that the people who will have to deliver the changes are being considered.

The assumption seems to be not only that the process will be cost-neutral but that it will all be supported by professional staff, but for the vast majority of organisations that will have to make the bill work, that is simply not the case. We need to reflect on whether we have the capacity to deliver the provisions. More important, we must also have a proper evaluation of risk, which has never been carried out.

The Convener: A number of people want to comment but, given that the written submissions have alerted the committee to the problem in respect of disclosure fees, it might save time if we do not discuss it now.

I wonder whether we can discuss issues such as the hidden training and administrative costs for organisations. In its submission, Enable makes interesting points about the level at which decisions to disclose information are taken and whether the people who make such judgments have the right training and background. Judith

Gillespie from the SPTC has also highlighted that issue.

David Little: Our answer to Frank McAveety's question is that the bill will cost £41,000. Fiona Hyslop will forgive my football analogy, but I have to say that, at this time, we do not need moveable goalposts. Instead, we need one piece of legislation that encapsulates everything.

Jim Duffy's comment about awareness was spot on. It takes a long time for voluntary organisations to make people around Scotland aware of changes to procedures and paperwork. As I said earlier, we have carried out 6,000 checks, but we have 16,000 people on the computer and retrospective checking increases our workload. Of those 6,000 people, we have excluded 19 which, if I can use another football analogy, means that the score is 19-nil—with the nil being for training.

Like Lucy McTernan, we welcome the passport proposals, but we want to be involved with and to assist in their practical preparation. For a start, unless passports are six feet high and carved from granite, many people will lose them, which will mean that we will have to recheck everything. If forms are passed on, identifications can certainly be recorded, but the groups will still need to carry out ID checks. If, for example, I were to show up saying that I was Wullie Smith, I would still have to prove that I was Wullie Smith. We need to consider the matter, especially the IT aspects, in respect of which we need to ensure that the MOT is still live.

Judith Gillespie: Parent-teacher associations are in a similar position to Enable Scotland in that voluntary groups operate from kitchens and are completely incapable of managing the process at all or of holding information and keeping it confidential.

I echo Jim Duffy's point: we have to look again at what the real risks to children are. A scatter-gun approach is being taken and it is spreading wider and wider. However, there has been no review or audit of how much risk or danger to children is being removed. There has been no starting point: when I asked the Scottish Executive what figures it was starting with, it said that it had not collected any. There is therefore no benchmark against which we can measure success.

The main risks to children fall outside the areas to which checks will apply. When we looked at the figures for referral, the information did not mention the main reason for referral, which is physical neglect. From talking to social workers, we understand that such neglect is a result of increasing drug abuse among adults. That needs urgent attention.

The bill fails to address the real problems for children, but it will also be positively damaging. A

huge level of anxiety is building up among adults about other adults, and among children about adults. The Institute for Public Policy Research has shown that adults in this country are the worst at relating to children. That, to some extent, is a by-product of what the institute describes as "paedophobia". There is a climate of distrust—many men feel completely incapable of offering a helping hand to a child in public in case they are characterised as having done it for the wrong reasons.

It is time to take stock and do an audit. We have to see where we are. If we want to make improvements, schedule 2 of POCSA can be changed simply by a ministerial decision. There is scope for a review, but we should halt at the moment before we charge on any further.

John Harris (Central Registered Body in Scotland): The problem is that, although we are presented in the bill with a model that might be consistent for professional, regulated and statutory bodies, the not-for-profit sector includes a diverse range of organisations with different aims, aspirations, scales, remits, methodologies and resources. As has been said this morning, questions arise about the point at which a body is sufficiently formed to fall within the legal provisions, and about the basic needs of individual volunteers who will be captured by the scheme.

The voluntary sector's turnover of members, leaders, management committees and paid staff should be an important factor in designing the legislation, to ensure that the bill's objectives are met. That opinion has been exemplified by much that has been said this morning. Our experience of dealing with part V of the Police Act 1997 and with the Protection of Children (Scotland) Act 2003 has been that organisations have considerable weaknesses at all levels in dealing appropriately with their requirements.

We agree that organisations will benefit from a reduction in bureaucracy, which the bill will bring about. For instance, disclosures will be portable and new information will be available to update assessments—information on barred status, for example. However, those advantages must be balanced against the additional responsibilities and pressures that will be imposed on organisations large and small.

We have heard from larger organisations about the impact on them that will result because large numbers of people work for them, but a word ought to be said for the smaller groups that do not benefit from paid staff, do not have their own premises and facilities, and do not have the support that large organisations, such as Jim Duffy's, do. His problems are size and scale; other organisations suffer from their absolute smallness.

11:00

On the basic level, organisations will need to ensure that they have adequate records systems to cope with transfer and movement of information between each other and the central barring unit, but it is by no means certain that they will be able to do that. Furthermore, the imposition of various penalties on volunteers and managers who fail to participate correctly in the scheme is a great danger.

We need to tailor the legislation to the specific needs and requirements of the sector so that it reflects needs and outcomes and takes account of many of the points that have been made. By the end of this financial year, the central registered body will have processed just under 200,000 disclosure applications since 29 April 2002. That figure is based on actual figures for the preceding years and an estimate for this year's outturn.

If the bill remains as it is, the capture of additional individuals will push that figure up, which raises questions about the scheme's ability to cope. Support will be needed, including accessible support for larger and smaller organisations and systems that will enable them to put the legislation into effect. We are talking about a structure that is not sufficiently finely tuned to current needs.

The Convener: For the record, when you refer to 200,000 disclosures, do you mean individuals or disclosure applications?

John Harris: Disclosures that have been performed on individual applicants.

The Convener: So that means 200,000 separate individuals.

John Harris: Yes.

Michael Hankinson: Those are the free checks.

John Harris: Yes.

Joe McIvor: I want to answer Frank McAveety's point about the overall costs. Youth Scotland made an investment of £100,000 over three years not only in the administration of disclosures but in the wider issues of recruitment, health and safety, risk assessment and child protection in general. We must now make strategic decisions about what to do next. Cost is a massive issue, in relation to not just administration but changing people's behaviour, which is difficult.

George Thomson: Frank McAveety was right to ask about the first principles on which we work. For me, the first principle is how children and adults are served by people in a regulated workforce. The context of the bill should be how we provide something of worth to our children and vulnerable adults and, in deciding how we apply ourselves to the regulated workforce, we have to

know about the risk. I agree with Judith Gillespie that there does not seem to have been much analysis of the risk that we are trying to deal with. To me, that would have been the first principle.

Then, in deciding how to minimise that risk, we need rational and thought-through approaches. It is salutary that evidence shows that two thirds of those who go through the disclosure process are women. Does that show that we are approaching the risk in the best way? I do not think that we are, especially if we are working without a definition of the risk. To my mind, it is a matter not so much of whether POCSA can be improved but of whether we can define who should be captured by the legislation. If we can do that, we can decide how to apply ourselves to the risk. Unless we have that definition and apply proportionality, the administrative and other aspects will not matter—we will miss the key point.

Lucy McTernan: I welcome the points that committee members have made, which allow us to get right down to the fundamentals of this whole business. In the past, the debate has been about how we will cope with the proposals, but we ought to welcome and take seriously the opportunity to look again at the fundamental risk and at the potentially counterproductive nature of the system, as Judith Gillespie said.

On behalf of voluntary organisations, the SCVO has been saying for a considerable time that voluntary organisations are largely at the front end of providing new and innovative services that benefit children and young people, and that overly bureaucratic systems provide no more than a distraction of effort, innovation, will and time from the development and delivery of services that benefit young people. If we want the ultimate outcome of the process to be a safe, happy and fulfilling childhood, perhaps we should start not by being overly attentive to risk and putting in place major bureaucratic systems. Colleagues from the voluntary sector tell me that we ought to look more broadly at the potential unintended consequences of the bill on voluntary organisations' practice on the ground, rather than simply asking whether organisations can deal with the cost.

On cost, in effect we are being asked to sign a blank cheque for fees and for the cost of a so-called self-financing system. Already, in the couple of years since POCSA has been on the go, there has been a 47 per cent increase in fees. If we go down the road that is proposed, unless there is a cap on fees, not just time and effort but cash resources will be expended on keeping the system going.

Ms Alexander: One of the justifications for the bill is that it is a copycat measure that we are obliged to take, following on from the Bichard recommendations. However, the crucial difference

is that in Scotland a voluntary scheme is proposed. Whether the scheme should be voluntary is disputed, but if we start with the fundamental issues that we have heard about—ensuring happy childhoods and accurately assessing sources of risk—the haystack that we are building to find the needles will not capture what goes on in the home.

Perhaps even more worryingly, because the scheme is voluntary, we must ask whether the legislation will capture those few evil individuals who we know will seek to evade the system and so will not apply but will still find locations and ways in which to groom and approach children. When we pursued that issue last week, the view of the police and other witnesses was not only that we should have 1 million people in the scheme, but that, if we found that a child had been groomed at other locations or on other occasions, it would be logical to extend the scheme to the relevant section of employees—for example, all bus drivers, all parkies and perhaps a vast number of other local authority workers. If everybody who ever helped out with a school disco was added in, that would quickly raise the number of people captured by the scheme not to 1 million but to 2 million.

At least three members of this committee also sit on the Finance Committee. What is worrying is that none of the estimates for IT costs even scopes out the possibility of bringing another 100,000 members of local authority staff into the system. If we are about giving children a happy childhood and protecting them from the few people who pose a real risk to them, I am also not sure that a voluntary scheme captures our objective. Further comment on that would be helpful.

I invite comments on the counterproductive aspect of the bill. I am greatly worried about resource diversion from other areas of child protection. The costs that are currently given for the IT systems associated with the scheme are £2.5 million. I cannot begin to understand why the comparable costs of new IT systems in the health service to service 1 million or 1.5 million people are tens of orders of magnitude larger than that; indeed, people around the table have suggested that the proposed IT system would be more complex than those to put together because the essence of its success will lie in sharing information across a vast range of professional organisations. Information will not simply be held in one system, as it is in the health service. Is £2 million for a system that will cover at least 1 million people in Scotland an underestimate of the costs that will be involved? The danger is that if we legislate, we will be compelled to support the IT system to deliver what has been proposed. History suggests that such a system will cost more than has been suggested. Where will tens of millions of

pounds come from? The POCSA systems do not have the required sophistication because they do not allow repeat checks and, so far, we have simply funkled the challenge of retrospection for all, so we will not build on a largely existing system. Given our objectives, does anyone have any observations to make on the costs and the wisdom of having a voluntary scheme in Scotland?

Jim Duffy: I am not an IT expert so I will not comment on the IT costs, but it is important to note that the small amount of money to cover IT costs to which Wendy Alexander referred is more than the total grant support that the Executive currently provides to national youth work organisations for their core activities.

I thought that we had put the matter of the scheme being voluntary to bed when we discussed POCSA. The scheme will not be voluntary. There will be a legal duty on trustees to ensure that they do not engage paid or volunteer staff who are on a banned list to work with children or vulnerable adults. At the moment, the only way of finding out such things is to do a disclosure check. If we do not take action, the scheme has the potential to criminalise volunteers and trustees accidentally. Accidental criminalisation is still criminalisation. Let us please not say that the scheme will be voluntary—it will not be.

Mr Macintosh: I want to return to the question that I asked earlier and to the question that Frank McAveety asked about alternative paths. Judith Gillespie talked about using POCSA—but to do what? I do not want to sound unsympathetic about the concerns that have been raised—indeed, I do not think that any committee member will be unsympathetic to them, particularly to the idea that a meaningless bureaucracy will be created that will not provide any security—but we should consider the point of the proposed legislation. The voluntary sector is caught up in the proposals, but the bill is not for it; it is for parents and families who are looking for security. Ultimately, we are trying to address the concerns of many people about how safe children or vulnerable adults in the community are with people who run facilities, services and so on. Volunteers supply services, but ultimately we are concerned about people who want security above everything else. The first question that parents always ask is how safe their children will be with someone who is looking after them and whether they can be trusted. The committee has a duty to ensure that we can at least provide some reassurance about that, which is why we are discussing what we are discussing.

It is all very well to say that things are getting out of hand and that the proposals are too unfocused. Perhaps something can be done to focus the bill, but I have not heard about an alternative direction of travel from anybody. What is the alternative

direction of travel? How can we refocus on the very small number of people who represent a serious danger? At least the proposed system would provide comfort to some people that we are taking their concerns seriously.

The Convener: The other side of the coin is the issue of back watching, to which one or two submissions refer. Organisations might become so concerned about protecting their own interests that they will forget that they should be protecting children. Perhaps people can also pick up on that issue.

11:15

Lord James Douglas-Hamilton (Lothians) (Con): There is no doubt that everyone here supports the protection of children and young adults. The premise of my question is the fact that we do not want something that is disproportionate and which has excessive costs. We do not want a rush job that will not stand the test of time. Judith Gillespie states in her submission:

“We think the costs and bureaucracy are facing in entirely the wrong direction. They are focused on the lowest areas of risk leaving children exposed in areas of much higher risk.”

To pick up Wendy Alexander’s point, we do not want to take out the haystack in order to find the needle.

Does the Scottish Parent Teacher Council recommend that the bill should not proceed? Should the Executive think again and come forward with a more professional job that is not disproportionate and does not have excessive costs?

Judith Gillespie: Absolutely. It is important to examine the risks, the things that children suffer and the occasions on which children suffer serious abuse and to recognise publicly that most of those happen in domestic situations, which the bill does not cover.

There have been a number of horrendous cases in which known paedophiles have attacked and abused or killed children, so there is perhaps a need to spend money, time and effort on putting in place better ways of monitoring people who are already known to the system. However, how often have children suffered any kind of abuse at a school disco, for example? Ken Macintosh made a good point about parents’ anxiety, but the IPPR research shows that that anxiety is being falsely fuelled. It is important that people who know and understand the risks put things back in proportion so that parents do not become excessively anxious.

The risk is not huge if a child takes part voluntarily in an essentially public activity with lots

of other people. We advise our PTAs that the most important thing is that the adults who are present operate a self-monitoring process against each other. In that way, the safety of the child comes out of the behaviour of the adults rather than from a bureaucratic check.

John Harris: On the driving force behind engagement with us, voluntary sector organisations do not operate in a vacuum. Often, the necessity for groups to become involved is driven by those who provide funds and accommodation or by the policies of local authorities, NHS Scotland and the care sector regulator. As a result of that, voluntary sector organisations often get confused about which guidance and rules they should follow. There is sometimes a lack of coherence between the demands of the local authority, the care sector and others, particularly funders.

Voluntary sector bodies need to be included in the discussions so that there is coherence in the requirements that are imposed and the persons who need to be involved. As Jim Duffy said, the scheme is not exactly mandatory, but it is not exactly non-mandatory either. There are indirect drivers in the system. We should not forget those who provide insurance, because they have a clear interest in what organisations do, who is insured and what level of risk they bear.

The Convener: The discussion could go on all morning, but unfortunately time does not allow for that. I will take any final points that members wish to make, then I will allow any witnesses who wish to make final comments to do so. However, all comments will have to be brief.

Dr Murray: Confusion is felt about whether participation in the scheme will be voluntary. It is not really the case that the scheme will be voluntary, but it will not be an offence not to participate in the scheme. That is deliberately different from the position south of the border, so that people who help casually, in a crèche or elsewhere, will not be criminalised for doing so. The only problem is that that allows a toehold for people who have evil intent, because somebody who has evil intent towards children or a record of abuse will probably not apply to join the scheme and will hope to have contact with children when people are not aware of the scheme. That is a danger in the bill.

As the Custodial Sentences and Weapons (Scotland) Bill raises issues of monitoring people in the community, does it offer possibilities for focusing on people who are known sex offenders and who have a record? Instead of assuming that the rest of us are pins and not hay, would such an approach find the pins?

Ms Byrne: My final question is whether it would be more appropriate to improve the existing system and to put financial resources into training and education to identify inappropriate behaviour and to enable groups to pass on that training as widely as possible. I mean also education to enable the vulnerable—children and vulnerable adults—to identify different behaviour by people who associate with them.

Fiona Hyslop: We have not touched on the part on information sharing, although the submissions contain comments on it. I ask for final views—as opposed to some of your concerns, of which we have a note in the submissions—about what, if we were to fillet, tailor or change the bill, or pause for a rethink, should be done with information sharing as a process.

Norman Dunning: I agree absolutely with Rosemary Byrne. What balance do we strike in best protecting people? Do we best protect them by putting them on a list or do we make it easier for them to recognise risk? Giving people information and knowledge about what constitutes risk and about how to recognise problems or difficulties in others' behaviour will make them more likely to recognise risk. Together with that, we need to make it easier for people to self-refer if they think that they have a problem. Abuse is most commonly detected not because somebody spots it or spots someone on a list but because somebody reports something as suspicious. Educating people is crucial.

I will return to the points about what we should do. As an organisation, we work with children and adults and with formal and informal services—today I have concentrated on informal services. We have POCSA, which could be reformed. We also have all the regulation that accompanies the Scottish Commission for the Regulation of Care and the Scottish Social Services Council, which regulates people who work with formal services. Those schemes are working and would be improved by better checking mechanisms, as proposed in the bill. There are ways to improve those systems.

The informal work with adults that I talked about involves a self-help element. We need to have a cool look at the risk that we are trying to prevent and what we are so worried about. My organisation has done what I described this morning for the past 50 years and I can say with absolute certainty that we have never killed anybody and I am not aware that any serious crime has been committed in any of our clubs. That is a bit like what Judith Gillespie said about playgroups. Given that, why is that activity to be put at risk by legislation whose need has not been established?

Jim Duffy: I do not want us to go away today thinking that the scheme is voluntary. I understand what Elaine Murray says—that an individual's decision whether to join the scheme is voluntary—but the people who run a crèche and recruit an individual will have a legal responsibility to check that individual and they will not be able to do that in any way other than by compelling that individual to become a member of the scheme. The scheme is not voluntary—please do not think otherwise.

George Thomson: I agree with Jim Duffy. I wonder whether the issue could be reframed. One way of looking at it is to ask what the consequences of non-compliance are. In England, the consequences of non-compliance are greater, because it is a criminal offence even if someone is not on the list. In Scotland, not complying has no consequences unless an organisation happens to take on someone who is on the list. Therein lies a real problem for us. One could argue that the current system is being supported by the lack of compliance. Currently, 11,000 organisations comply. The SCVO has said that there may be as many as 45,000 organisations that should be complying. One could make the case that as many as 30,000 organisations are not currently complying with the legislation. That takes us back to the issue of who needs to comply, and why. If we do not define that, everyone is in the frame.

David Little: I put on record again that the SYFA and SALSC are fully committed to the “2006 Accord for the Protection of Children in Scottish Sport”. The point that Rosemary Byrne made typifies the problems that we have. We need education and training. We know children, but we have huge difficulties with vulnerable adults. The vast majority of our problems come from verbal abuse. Some coaches get a wee bit excited. There are also neglect issues—sometimes we do not wrap kids up at the side of a football pitch. We need our people to have the education and training that will enable them to identify the people and scenarios that we have discussed.

The Convener: I thank everyone for coming along to the session, which members and I have found extremely valuable. We may consider taking a similar approach in future. I am sure that there are some issues that we have not covered and that you would have liked us to cover. We have not considered definitions of harm, for example, and people may wish to return to that issue. We have seen the written evidence that you have submitted and will take that into account, along with what we have heard today. If you have thoughts about alternative approaches that you think could achieve the aims of the bill or about ways in which the bill could be amended to deal with some of your concerns, please let the committee know, so that we can consider your

suggestions and raise them with the Executive. There will now be a short suspension.

11:27

Meeting suspended.

11:38

On resuming—

The Convener: We move on to our second panel of witnesses and a more conventional format. We will have to wait and see whether that is a good or a bad thing; if it is a bad thing, that will have nothing to do with the panel that is before us. I welcome our witnesses. Donald MacKenzie is lead child protection officer and Jim Murray is senior solicitor at Dundee City Council. Andrea Batchelor is head of service for inclusion at South Lanarkshire Council. Allan Gunning is chief operating executive for NHS Ayrshire and Arran—I do not know whether that means that he is a surgeon. Dr Helen Hammond is responsible for child health protection at NHS Lothian. Thank you for your written submissions. No one has indicated an immediate desire to make brief additional comments, so we will move straight to questions.

Mr McAveety: My question follows on from the previous evidence-taking session. A substantial number of concerns have been raised consistently about the proportionality and applicability of the bill. What impact do you think the bill as drafted will have? Should we revisit the central principle of whether it is the right thing to do?

Donald MacKenzie (Dundee City Council): The evidence that the committee heard last week and earlier today makes it clear that the bill is one piece of the jigsaw—it is part of a package of measures to protect children.

Any system for checking people to see whether they are unsuitable to work with children will, by its very nature, be robust and, some would say, intrusive. There has been discussion about looking at only those who have already been convicted. I am not sure how we could take a comprehensive look at everyone who wants to do regulated work without a system as robust as the one proposed in the bill. In order to identify the very few people who might pose a risk to children, we might need such a comprehensive system, even though it might seem like we are doing an awful lot to get to those few.

Mr McAveety: Would any of you have suggested this style of legislation to address those issues?

Dr Helen Hammond (NHS Lothian): NHS Lothian is a big statutory organisation. We know that there are cases in which children and

vulnerable adults have come to harm from our employees, so we need a vetting and barring scheme such as the proposed scheme. The issues that colleagues raised during the round-table discussion in relation to the voluntary sector are of great concern to us. The voluntary sector is a different setting and I echo the point that was made that many of our most vulnerable children and families receive a huge amount of innovative support from it. In a sense, there are two sides to the discussion. NHS Lothian thinks that the bill will simplify current arrangements and provide for the necessary vetting and barring of our employees.

Allan Gunning (NHS Ayrshire and Arran): The underlying objectives of the proposed new scheme are certainly welcome in the national health service. However, the arrangements will only be as strong as the weakest link, which is why the debate around the voluntary nature of the scheme is important. We in the health service do not work in isolation; we are dependent on arrangements with others in other organisations. I wonder about communication about and understanding of the bill, particularly among, for example, parents of learning-disabled children who are putting together care packages under their own steam without the involvement of statutory agencies. Would such parents understand the scheme? Would they know whether the person who they were considering employing to care for their child should be vetted under the scheme? There are issues about how the arrangements will work in practice. Our concerns are not so much from the NHS perspective, but relate to our interrelationships with other agencies.

Dr Murray: In the earlier evidence session, we heard that the vast majority of abuse that children suffer goes on in their own home, with informal contact, rather than at the hand of council or health service employees or those working in the voluntary sector. Given the complexity of the bill, is there a danger that in trying to protect children you will be forced to concentrate on systems of checks and balances, rather than on identifying children who are at risk, which is what your employees, or those in the voluntary sector who work with children, do? People will be watching their backs and concentrating on the structures and systems, rather than identifying children who are being abused or neglected. Everybody approves 100 per cent the aim of the bill, which is to protect children and vulnerable adults, but are we approaching the issue from the wrong direction?

11:45

Jim Murray (Dundee City Council): I do not think that it is an either/or situation. Some of the debate that we heard earlier this morning seemed to be moving towards the idea that, if we do not

have a vetting and barring scheme, we will simply have to approach things in a different way. Both approaches are being taken now: there is POCSA and there are the other forms of information sharing among councils that happen already. We should not be drawn into thinking that, if the proposed scheme is introduced, time and effort will not be expended in other ways. That will happen as well.

The proposed scheme is not to do with all aspects of child protection. A lot of other things are going on already. The proposal is about having a vetting and barring check—that is as much as we want it to be about. You mentioned what happens in the home. As I understand it, the bill as drafted does not seek to interfere with that side of things. Other things are already going on in that regard, and if you are suggesting that the bill does not have regard to things that go on in the home, you are right, as it was never intended to do so.

Andrea Batchelor (South Lanarkshire Council): I agree. It is a matter of moving forward on a number of different fronts, which is exactly what the child protection reform programme has done. It has raised the awareness of a whole range of people of needs that have been highlighted but which are not covered by the bill. I do not think that there is any reason to suppose that the bill will be a distraction from those efforts or that there is any need for reassurance on that score.

On the issue of proportionality, there is a risk in looking for the few people who might cause difficulty. We are talking about more than just the major incidents of harm and about more than sex offenders. The bill gives us additional assistance in looking for people whose conduct has not been appropriate, such as employees who have neglected their duties and put children at risk. The provisions will be very helpful to us.

There is a wide consensus that some of the bill's provisions will be helpful in reducing the difficulties that are associated with the present arrangements. It is really important that a big organisation such as South Lanarkshire Council has a robust recruitment process. The vetting process is only part of that process, but it gives us valuable information about people whom we would not wish to employ for work with children or protected adults. If the bill is not passed, those helpful improvements will be lost to us for the foreseeable future.

Dr Murray: The problem to which we were being alerted was the wide scope of the bill—the number of people who are encompassed by it—which would put considerable pressure on a number of sectors, and possibly on your organisations, too. It has been suggested that we might be able to amend existing legislation and

make changes to ministerial powers without producing new primary legislation. Do you think that there is an alternative way to achieve the bill's aims? Could we simply build on what we already have, rather than introduce new measures?

Andrea Batchelor: That was certainly suggested earlier this morning, but I do not think that any specific proposals have come forward. The idea of reviewing the Protection of Children (Scotland) Act 2003 should be examined. The Protection of Vulnerable Groups (Scotland) Bill will take a considerable time to implement. Many of the difficulties with it that have been raised are to do with implementation and the need to consult on the various codes of practice, for example. Any step to move on from the present position and to remove the current difficulties in the system will take time.

Donald MacKenzie: Another point that I want to make about the discussion earlier today and about the numbers of people who will be involved is that I have not heard any examination thus far of schedule 2 to the bill, especially parts 1 and 2 of that schedule. Perhaps we should examine the scope of the bill by looking at the definitions that are contained therein. For example, schedule 2 makes reference to the "normal duties" of a person's position and to whether those include

"Being in sole charge of children".

It also refers to

"Contact with children ... in the absence of ... a person carrying out an activity mentioned in paragraphs 2, 3 or 4."

We need to concentrate our minds on, and gain a proper understanding of, what is intended by schedule 2 to the bill. That point is up for discussion. I pose the question whether the bill will sweep as many people into the net as has been suggested.

Jim Murray: On the suggestion that we could simply amend POCSA, the definition of "child care position" in schedule 2 to that act can be amended by order, but such an order would not allow for the provision of a new scheme. The suggestion would take us so far, but it would not allow us to have a registered scheme. That requires separate legislation.

Even if such an amendment to POCSA provided quite a lot of scope in respect of the protection of children, the bill includes provisions that deal with protected adults as well. That is clearly something new and different. It would seem slightly incongruous to include provisions on protecting vulnerable adults in the Protection of Children (Scotland) Act 2003.

Allan Gunning: On whether people will end up watching their backs, a big issue for front-line staff will be the sharing of information, which is dealt

with in part 3 of the bill. If we can put in place effective information systems to make it easier for front-line staff to carry out their jobs in relation to the protection of children, that will be very much welcomed by front-line staff. That is probably where the emphasis should lie. There are many issues associated with part 3 of the bill that we might well come to, but the consistent message that I get in feedback from front-line staff—I should clarify that I am not a surgeon but a PhD and, as chief operating executive, I am in charge of the actual running of services—is that information systems are needed to make information sharing easier for people on the front line. If that direction of travel is supported by the bill, it will be very much welcomed within the NHS.

The Convener: I apologise for the rather bad joke that I made earlier.

Ms Byrne: Given that members of the previous panel considered that there should be an audit of the current legislation, research into its impact on the voluntary sector and a review of the systems that are in place already, do you think that the consultation on the bill was robust enough and thorough enough? Given the timescale for the bill, the bill's importance and the concerns that have been raised by members of the previous panel and others, do you think that we are considering the bill too hastily? Many of the issues that have been highlighted need further consideration and amendment. Do you think that the bill takes us to the nub of the issue—these questions were posed by a member of the previous panel—concerning the nature of the risk that we are trying to deal with, whether we are rushing through the bill too quickly, whether we have consulted enough and whether we should review and research some elements of the proposals before we go much further? I know that those are huge questions.

Andrea Batchelor: How could the risk be researched? Unfortunately, at the moment you are depending on impressions from a range of organisations. That is not a good position to be in. However, to design a research programme that would answer such broad questions would be very difficult indeed. Certainly, our experience is that there is a degree of risk associated with people working with children—it may well exist for people working with protected adults as well—that needs to be dealt with as robustly as possible.

You asked about the effectiveness of the consultation, which took place earlier this year. During the consultation, the point was raised that most of the problems associated with the bill are to do with its implementation—for example, specifying who will be covered by the bill, what the costs will be and how people will be supported in getting to know the new arrangements. Those

issues have been raised and they need to be dealt with.

Allan Gunning: There were opportunities for everyone to feed into the consultation on parts 1 and 2 of the bill. Part 3, on sharing information, is critical, but I understand that ministers intend to prepare a code of practice on which there will be further consultation. It is important that that consultation should be detailed because of the complexities of some of the issues to do with confidentiality, patient-doctor relationships and so on.

I agree with Andrea Batchelor's assessment that the problems are to do with implementation and the pace at which that happens, as well as with ensuring that we are geared up and have the capacity to implement the bill appropriately. That applies not only to the NHS and local authorities, but to other players such as Disclosure Scotland and sheriff courts, if they are to handle appeals. Everything has to be in place so that the considerable effort that has gone into the bill is not let down by credibility issues to do with turnaround times for checks and so on. We need to learn the lessons of our earlier experiences, but implementation will be key.

Jim Murray: I agree with Allan Gunning. One of our concerns is about the kind of legislation that is made—more and more primary legislation provides for codes of practice, regulations, orders and so forth to be made under secondary legislation. There is not enough wording on the face of the bill to allow organisations to comment.

The speed of delivery will be all right, provided that time for consultation is set aside to allow all the people who want to talk about it to contribute. There was no consultation on part 3 of the bill, although there was consultation on the other parts. We agree that the speed of delivery is not a concern, provided that there is back-up in secondary legislation before provisions are put into place and that there is meaningful consultation time.

The Convener: If we are talking about creating detailed guidance under secondary legislation that will go out to lengthy consultation, which will mean that the bill will not be implemented for some considerable time, does it make any sense to pass primary legislation before that consultation takes place? Would it not make more sense to have the consultation on all that detail and then pass primary legislation that fits with what comes out of the consultation?

Jim Murray: That might be a question for your draftspersons. However, it depends on the detail. As all the witnesses in previous evidence-giving sessions have said, the devil is in the detail, so we cannot comment yet. It is a question of how much

more should go into primary legislation. Regulations are bound to be required and guidance and codes of practice will follow in any event because the area is so complex—I cannot envisage how all the detail could be put into primary legislation without those back-ups.

Ms Alexander: We are the lead committee on the bill, and will say whether it is a good bill or a bad bill. We have a unicameral Parliament, with no upper house to revise bills, so there is an obligation on us to be clear about whether legislation will be good, in relation to its objectives and its detail. The witnesses are the only people who will speak for local government and the health service to the committee about whether they can make the bill work and whether the issues are only around implementation.

I want to ask a question based on a quotation from the submission from the Faculty of Advocates that we received today—we do not have time to hear from the faculty directly.

The top lawyers in the land say:

"The Faculty has attempted to provide as full an analysis as possible of the potential legal and practice issues which the Bill presents. However, the number and range of matters left to Ministers means that it is difficult to provide any conclusive advice as to whether or not the Bill will be effective ... The Bill is not easy to follow; even the opening section provides no definition as to the scope and purpose of the Lists. The lack of coherence in the manner in which the Bill is drafted, and the lack of clarity in definitions, will be an issue for larger groups"—

by implication, local government and the health service—

"who will have to utilise personnel and resources to help them understand and apply the Bill's provisions."

The faculty goes on to say:

"We also take the opportunity to make the general point that where there are criminal sanctions"—

which the bill will have—

"there must be clarity in respect of the action, or inaction, which may constitute a criminal offence."

The submission then refers to the lack of clarity in a number of sections.

The top lawyers in the land say that they cannot determine whether the bill will be effective, that it does not define what constitutes harm and that although there will be criminal sanctions, there is no clear explanation of what will constitute a criminal offence. If I was the head of a personnel and resources department at any health board or local authority in Scotland, those views would frighten the living daylights out of me. Is it just a question of implementation?

12:00

Jim Murray: The secondary legislation will have to be extremely robust. However, I have not read that submission.

Ms Alexander: Fair enough.

Jim Murray: To date, within the existing legislative framework, we have tried to provide constructive criticism, on the assumption that there will be a vetting and barring scheme.

In relation to criminal sanctions, it is true that there are difficulties to do with definition. The quote that you read out did not mention the fact that reasonableness arguments can be used as defences to criminal charges—in other words, the fact that it might not have been reasonable for someone to know that regulated work was being undertaken or that a protected adult was involved could be used as a defence. In some respects, I agree with the views that you quoted, but one could go further and say that the Crown Office might find it difficult even to raise a prosecution. Those issues need to be explored.

I do not want to reiterate everything that I have said, but I hope that if the Faculty of Advocates examines the situation at the end of the process once all the secondary legislation has been put in place, it will find the position far clearer. There are occasions on which it is not necessarily completely unambiguous whether a criminal offence has been committed. The submission from the Faculty of Advocates is not the first occasion on which lawyers have sat on the fence on that.

The Convener: If all legislation was crystal clear, there would be no need for lawyers.

Does Wendy Alexander have a follow-up question?

Ms Alexander: I want to ask about the lack of coherence in the drafting of the bill, its lack of clarity and the fact that the opening section provides no definition of the scope and purpose of the lists. Do the representatives of the health service or local government have anxieties about those issues?

Andrea Batchelor: Yes, and we have expressed our anxieties. We have stressed the requirement for clear guidance to be provided in secondary legislation, whether in codes of practice or in other forms. However, I repeat that the bill has its good points, in that it will help to improve the situation with respect to all the issues that have been raised today.

Ms Alexander: I have just one more question. It might be unfair to ask you, but would it be better to adopt the bill's approach or to amend POCSA? Which route would be preferable?

Andrea Batchelor: The limits on potential amendments to POCSA have already been mentioned. As has been said, the bill will be helpful in that it will provide greater protection for protected adults. It is difficult to see how that could be achieved without the bill.

There is no question but that the bill will present great difficulties for the voluntary sector. The issue is about who will be covered to work with protected adults. We have worked our way through the issues to do with volunteers working with children and I think that children are much better protected as a result of the legislation that has been passed in that regard. It would be good if the same were to happen for protected adults. In addition, the bill will enable us to improve the situation for volunteers as regards multiple checking. In our experience, multiple checking is often the straw that breaks the camel's back. There are a number of other examples of how the bill improves the present situation from the point of view of the bureaucracy that is involved.

Fiona Hyslop: The implementation of any legislation is vital. We know that the implementation of the Protection of Children (Scotland) Act 2003 was in danger of criminalising tens of thousands of voluntary organisations, and we should learn a lesson from that. Ministers had to come back and say, "Hang on. We are not going to proceed so quickly. We are going to change things." The lesson that we should learn from that is that implementation can fundamentally change the way in which a bill is put forward.

I want to pursue the issue of what the bill will mean in practice and what the good things in it are. We want to get the multiple checking issue sorted out, which is related to one of the other fundamental changes that the bill will bring in: the fact that any check must be contemporary. Perhaps Jim Murray can give us a legal point of view on this. We want the disclosure passports to contain information that is accurate today, rather than only when the disclosure application was made. Would it be possible, under the Protection of Children (Scotland) Act 2003, to have a system whereby the police could inform the local authority or the health board of any change in a person's criminal behaviour—a conviction, or whatever—without requiring the new scheme to be established?

Jim Murray: POCSA is really only about checking whether someone has been placed on a list by ministers or by a court decision. That is as much as POCSA does at the moment.

The bigger question, which was touched on earlier, is about the need for a culture change as well as a legislative change. A number of statistics were quoted earlier, one of which was the fact that 84 per cent of people would not have any problem

with being asked to undergo a check. That does not seem to be an issue, although there is an issue about the cost of the checks. That seems to be being addressed in the bill, under which the procedure will cost less because there will not be multiple checks. I know that I am not answering your question, but I think that this is all part of a bigger question.

The committee must decide whether you agree that you want to have a scheme of registration. As we ask in our written submission, if you do, is there any merit in the scheme being voluntary rather than mandatory? The organisations from which you have heard have all said that the scheme will really be mandatory as they will have to carry out checks; otherwise, they will be liable for people who have a criminal record. The person that we have not talked about is the non-organisational employer—the person who could be duped. It is important that, at some stage in the discussions, we address the question why the scheme should be mandatory from that person's perspective. If there were a mandatory scheme, the individual would not have to make decisions about a potential employee on the basis of their own judgment; the law would require that person to have been checked and to be part of a scheme. That is important.

I am not sure whether I have answered your question.

Fiona Hyslop: You think that the new scheme would be simpler for organisations to deal with.

Jim Murray: Yes, definitely.

Dr Hammond: The view of my organisation is that the new scheme would certainly be simpler. It is also important that there should be consistency in what happens north and south of the border, so that Scotland would not become a safe haven for people who might be picked up by checks south of the border. That has not been mentioned yet this morning.

Fiona Hyslop: The point was made last week that, if the scheme is meant to be consistent north and south of the border, and legislation was passed in England a couple of weeks ago, we could be stuck between a rock and a hard place.

Allan Gunning: That takes us back to a point that I tried to make earlier about the population of Scotland understanding what is intended. The debate in the earlier evidence session focused on whether the scheme should be voluntary. It seems to me that that would pose problems for people understanding what is involved. Making the scheme simpler and universal not only would help to close potential loopholes, but would make the Executive's and Parliament's intentions more understandable to the population at large.

Fiona Hyslop: I have a brief question about the voluntary sector. Increasingly, both health board and council children's services are provided by contracted voluntary organisations. Do you have any views on the implications of the bill for that?

Dr Hammond: That is absolutely right. We heard about that earlier. It is important that voluntary bodies that are contracted to deliver services alongside us, in health, come under the same legislation as our direct employees.

Donald MacKenzie: I echo that.

The Convener: I want to follow up on the issue of the loopholes that people could exploit, as I am confused about where they might occur. Dr Hammond mentioned the concern about people from south of the border migrating up here to get posts so that they can abuse children or adults. However, if they take up new posts, they will have to be checked under the Scottish system. How would a loophole occur?

Donald MacKenzie: There would be no loophole with an organisational employer, because the organisation would have to check the person. Our submission relates to the question whether the scheme should be mandatory or voluntary.

The policy memorandum gives the example of a piano tutor. A person who arrives here and sets himself or herself up as a piano tutor does not have to join any scheme. Nobody is obliged to ask them to demonstrate their suitability or their barred status. If the parents who want to have their child tutored happen to know about the legislation and ask the person to show them a certificate saying that they are not barred from tutoring children, then that is fine—they can exercise that choice. It is their right to have that choice. However, I am not sure why we should have a list of jobs that are regulated and then say that some of the people who do those jobs do not need to be checked against a scheme that we are setting up. That seems to be an anomaly.

As the ACPOS representatives told you last week, in some detail, the skill and ability of the person who wants to get access to children for the purpose of harming them know no bounds. Someone will see that loophole in the legislation and will attempt to drive their coach and horses through it.

Andrea Batchelor: There is also the position of the employee who perpetrates harm or intends harm but is not prosecuted because there is no corroborative evidence for prosecution; yet, that person may be known to organisations as somebody who moves from place to place. The bill will tighten up the legislation in such cases by enabling information of that kind to be shared. For example, when an employee resigns before they are disciplined, that information will be passed on.

At the moment, there are circumstances in which that could happen, but it is difficult to do and it takes a long time. The bill will provide additional protection in such situations. I presume that that is one of the loopholes arising from the different legislation in the north and the south.

Lord James Douglas-Hamilton: I have a couple of quick questions, the first of which is for Donald MacKenzie. It was suggested in earlier evidence that it would be rare for somebody to be suitable for working with children but not suitable for working with vulnerable adults, and vice versa. From your point of view, would it be simpler to have one list rather than two lists, if that could be arranged?

Donald MacKenzie: I listened to the evidence on that matter that was put to you last week. We cannot envisage a situation in which a person who was unsuitable to work with one group would not be considered unsuitable to work with the other. However, we do not believe that having two lists would present us with any administrative or additional financial obligations, so we do not have a particularly strong view on whether there should be one list or two.

12:15

Lord James Douglas-Hamilton: I have another question about potential loopholes. Do you have many employees who have come from overseas, perhaps temporarily? If a public perception were to develop that such persons were not being vetted as rigorously as others were, how could reassurance best be given?

Donald MacKenzie: The employment of any person, from overseas or not, must rely on robust recruitment and selection procedures. The vetting and barring scheme and the checks that it will provide are one aspect of that. With reference to the evidence that was presented to you last week, we acknowledge that some people who may seek employment will come from states in which the checking procedures are not as effective and efficient as those in the United Kingdom. Large employers have to accept the evidence that is available via the scheme and the checking system as the best evidence available at the time, but we must ensure that our recruitment and selection procedures are robust enough to carry any deficiency that might exist in information coming from abroad.

Allan Gunning: That is an important point. As far as employers are concerned, the scheme would assist in making informed decisions about suitability for employment, but it would not replace those robust recruitment procedures that have been mentioned as part of the wider picture. I think

that that is the reassurance that the public are looking for.

Mr Macintosh: Notwithstanding the concerns that were raised in the previous evidence session, it is quite clear from the evidence that we have heard today that the bill extends to vulnerable adults a level of protection that does not currently exist. It also provides a system for making the checks that need to be made in the statutory system in which you all work. In that respect, from what I can gather, the bill provides for an improvement on the current system.

I would like to go into that in a bit more detail, because we have not had many comments on the record. The new system takes a three-tiered approach, with the idea of people having barred status and so on. Is that the right approach? Does it offer the flexibility, security and reassurance that are needed?

Jim Murray: The approach is welcome, but there is some devil in the detail. When information comes to Disclosure Scotland but there is not to be a consideration for listing, the employer organisation is not told about that and the situation becomes apparent only when a short scheme record is sought. Of course, that will not actually say what the vetting information is; it will simply say that there is new vetting information. There are therefore some implementation problems.

With regard to primary and secondary legislation, some changes are needed in the wording about primary legislation; we make some suggestions in our written submission. Aside from those points, however, we think that the proposal is helpful. Anything that will allow us not to have to check and check again is good news. It has also been suggested that primary legislation could allow the use of electronic means. There has not been much discussion of that side of things in any of the evidence sessions so far, although organisations expect that there will be online checking.

Another observation—not a criticism—is that if information was to be made available to organisations, it might be easier simply to make the information accessible in a scheme record throughout the process. There would not be a short scheme record; one would simply go online, on a read-only basis, and look at the information that was there to date. Our submission highlights concerns that there could be a situation in which there is new information, or previous information, that the employer does not know about because it was not the employer at the start, when the scheme record first came out.

In general, the proposals are welcome, but some tweaking could be done and some changes could be made.

Dr Hammond: I will pick up on your last point. NHS Lothian raised the issue that perhaps every so often the organisation should be required to check whether there was any new information on a long-term employee.

Jim Murray: This brings us back to the purpose of the central barring unit and Disclosure Scotland. When any new vetting information comes up, whether or not it leads to consideration for listing, the way forward might be for the information to be passed on or flagged up; for example, a statement could suggest that certain employee records be checked because new information is available that might be interesting to the employer and might lead them to take action as they see fit. We are concentrating on having a lot of information, which will eventually be important as a result of the drip effect, but the employer does not necessarily know about it when it is initially added to the scheme record.

Allan Gunning: Continual update of the information is one of the key points. As employers, we must make best use of that provision.

Mr Macintosh: Those points were made last week, so it is good to get your views on the record too.

With regard to the overlap between the voluntary and the statutory sectors, Dundee City Council gave again the helpful example of employing a piano tutor. There is a distinction to be made in the approach that is taken by service users, parents and so on between the statutory sector and others. Factors such as the element of risk and who pays for the service can shift a lot of responsibility on to the provider. To my mind, there is a clear distinction between a state-employed teacher and a privately employed piano teacher in respect of the element of risk.

Many voluntary services are provided in partnership with the health board and the local authority. For example, we heard last week that when a bus driver drives a school bus that is on contract to the council, responsibility for vetting the driver should probably rest with the council, because the service is state run. The suggestion was that it should be made clear that the obligation is placed on the local authority. The same would apply in the health sector. Even under the direct payment scheme, the individual should probably choose from a list of approved providers. The money is being provided by the state, so whoever is selected by the individual should be vetted and approved by the state. Do you agree with that approach?

Allan Gunning: Clarity is needed about the arrangements under which the service is being provided. For example, when voluntary organisations provide services to NHS Ayrshire

and Arran, there is a clear contractual arrangement between the parties. The situation gets trickier around the edges when voluntary agencies or individuals are involved in aspects of care that do not come under the NHS umbrella, and that is where difficulties and uncertainties can arise. There is clarity about the requirements when the services that are being provided come under the NHS umbrella. Similarly, when contractors come into a paediatric ward in a hospital there are clear expectations on the contractors in respect of conducting checks on their staff. I do not know whether that answers your question, but I think that I am making a clear distinction.

Mr Macintosh: I think that it answers the question. It also shows that a lot of detail has to be worked out.

It comes back to balance and proportionality. For example, we should not prevent the self-help groups that Enable Scotland talked about from meeting. They might meet on NHS premises and although we would not want to stop them meeting, at the same time there should not necessarily be an obligation on the NHS to vet the group members. The NHS should not be saying, "We will not allow you to use our room unless you are vetted through us." That is the sort of area in which a line would be drawn, but ultimately that is a matter for the code of practice rather than for the bill. That is my view, but I want to hear your views.

Dr Hammond: There is a specific but related question about our general practitioner colleagues. They are independent contractors in the NHS, and the bill is not clear about where they sit. We would want them to be part of the scheme.

Jim Murray: Our perspective is that the employer has to do the work. If we contract someone to provide a service, they have to do the checks. An earlier example was about bus drivers. In that case, the company that employs the bus drivers would do the checks. We as a council would be keen that the checks were done and we might even assist the contractor to ensure that it does them, but the signatory is the contractor as the employer.

Mr Macintosh: So you would contract out the obligation—it would be part of the contract that you made.

Jim Murray: It is not our obligation. The bus company is the employer, so vetting is its obligation throughout. However, we would want to be clear that a bus driver was an appropriate person. Another example would be when a school hall is used for another activity. We would ask the organisation whether it had done the relevant checks. If it said yes, that would be sufficient, but in practice we would often want to find out more. That is not in the legislation; it is good practice.

Dr Murray: Andrea Batchelor mentioned the fact that the bill gives employers the capacity to pass on information if they feel that somebody might not be appropriate for working in a certain field. Dave Watson from Unison raised a concern about that last week, particularly in relation to the private sector. On occasions, employers who fall out with their employees maliciously pass on information that is incorrect. It can be difficult for the individual to prove their innocence, and they may be deprived of future employment. Do you have any views about how to approach that issue?

Andrea Batchelor: There is always a risk that people will act maliciously, but the bill provides for a central barring unit that will mean that decisions are taken consistently. That must be an advantage. Information will be carefully considered.

Currently, we do our best to consider information carefully, and sometimes it is not possible to establish the truth. In those circumstances, organisations have to rely on their experience, professionalism and judgment in taking cognisance of all the factors on the table, considering what is going on in an organisation and the community around it, and weighing up whether there is malicious intent. The instances of malicious intent may be low, and the advantages of a system that captures individuals who are intent on avoiding identification outweigh that difficulty.

Dr Murray: I referred last week to a constituent who had the offer of a job withdrawn because of an anonymous complaint to the police that she had been seen taking an illegal substance in a pub. It was never confirmed that she had done that, but because the police put it on her disclosure record, the offer of a job that involved working with children and young people was withdrawn. Would the central barring unit improve on that situation? Will the system be more structured, with a more consistent set of rules on the information that is and is not considered?

Andrea Batchelor: One would hope so, because otherwise there would be no point in introducing it. The three-tier system on the information that is released will also help, as such soft information will not be released in all circumstances.

Jim Murray: The new system will improve the situation because what is envisaged is a determination process, which we have currently under determination regulations. That means that a person who is potentially going to be listed will first have the opportunity to make their case not to be listed, giving any evidence to demonstrate that information about them has been made up.

That is different from information that comes on a scheme record, which is defined as vetting information and is seen by all organisations. I agree that, if someone got a warning that was recorded, it might lead to their not getting a job. That takes us back to the question of what Disclosure Scotland decides is appropriate vetting and general information to include on scheme records.

12:30

Fiona Hyslop: We have heard a spectrum of views on part 3 of the bill. Do the witnesses agree with South Lanarkshire Council that part 3 should be extended to cover vulnerable adults as well as child protection? Scotland's commissioner for children and young people and Children 1st believe that part 3 might lead to defensive practices that would result in the child protection system being flooded with information. That would create difficulties, because the important information would be overlooked.

Donald MacKenzie: I am aware of the written submissions from the next panel. The important thing is that we get information sharing right, whether it is included in the bill or whether the committee recommends that it is taken out and included in subsequent legislation. We have been working for so long to get information sharing right—one might say that we have been mucking about with it.

We have all read the inquiry reports on the disasters that have happened and the comments in those reports on difficulties with information sharing. Our plea is that, however information sharing is framed and whichever piece of legislation it is included in, the provisions that are included must be accepted by all and regarded as the primary commentary on the subject. The Parliament must ensure that they are seen in that way. Professional organisations or others must not set up professional guidance or other regulations, because that would create barriers to effective information sharing.

We have a chance to crack the problem properly, and the robustness of part 3 is crucial. I do not have a particular view on whether part 3 should be removed, but I am sure that you will hear evidence on that from the next panel. My view is that we must ensure that we get things right.

Fiona Hyslop: Could you cope with the amount of information that is likely to be shared?

Donald MacKenzie: Getting information sharing right involves being clear about which information must be shared. Concerns have been raised about social services being flooded with any and all information because people will have a defensive

attitude. Given those concerns, we need to be careful to get the things around the legislation right, such as the code of practice or guidance.

I acknowledge that there is potential for the bill to bog down front-line services, particularly at the front door, where the concerns come in. Such services are already stretched. However, in taking our time to get things right, we must not ignore the bill's aim to ensure that the information flow is maintained. We must ensure that, when social workers, doctors, health visitors and teachers are all involved and engaged with one another, they keep the information flowing.

Dr Hammond: We particularly welcome part 3. To return to the needle in a haystack analogy, we regard part 3 as the way to find the needles without having to go through the entire haystack. It offers a better way to identify the children whom we need to help earlier, before the major crises evolve. As my colleague said, all the inquiries and critical incident reviews have shown us that we need to get better at sharing information.

Fiona Hyslop: Parts 1 and 2 are about finding adults. Part 3 is about finding children.

Dr Hammond: Yes, but if we share information in the way that part 3 proposes, that will also help us to identify the adults who are a risk to children. Further, in many ways the intelligence that the police gather from inquiries and investigations into children's situations provides them with the ability to begin to identify those adults who are a danger to children in our communities. That goes back to that two-pronged approach to identifying people who are a danger.

You mentioned a loophole, and there are a couple of issues that we are concerned about in that regard. We were sorry to see that there was a duty on the organisation but just a power on the practitioner. I would much prefer there to be a duty at both ends, so that both the organisation and the professional have a duty to share information if they are concerned that a child might be at risk of harm. We were also concerned about paragraph 202 in the policy memorandum, which talks about the ability to override that duty if someone believes that another child might be at risk. We could not think of any situation in which it would be better not to share the information. The other child who would be at risk would, presumably, also have to be protected. We were very unclear about that and would be worried that that would allow colleagues who work with adults to say, "Well, we do not know whether there will be a risk to another child, so we are not going to share that information." That seemed to be a potential loophole. However, the overall thrust of part 3 is welcome.

Allan Gunning: Part 3 gives us the opportunity to address some of the clutter that has accrued in

this area. It is interesting to note that a lot of the effort that has gone into information sharing between local authorities and the health service has been to do with initiatives such as the single shared assessment. The area that we addressed first using that method concerned older people. We can use that experience to help inform the code of practice under part 3.

Ms Alexander: Some people have told us that, although information is often available and shared, there is a lack of action to protect children. I note that, in the recent case in the Western Isles, information was shared but was not acted on decisively. Further, in the case of Kennedy McFarlane's death in 1997, the inquiry found that even the social work department's own records showed that it should have been clear that action was necessary. Similarly, the Caleb Ness inquiry found that there had been enough information to correctly lead to the decision to place Caleb on the child protection register but that, because there was no detailed action plan, he was left at risk.

How do we ensure that the focus is right in terms of where the risk lies?

Dr Hammond: I was involved in the inquiries into the deaths of Kennedy McFarlane and Caleb Ness. Certainly, in the Caleb Ness case, you would have expected that a different judgment would have been made. That is about training. However, I should point out that there was a lot of information about the adults in the Caleb Ness case that was not shared when the decisions were made. In the case of Kennedy McFarlane, I accept that the individual agencies should have acted differently with the information that they had. However, the effect of putting together all the information from the various agencies was quite startling. It could be argued that a duty along those lines would have made a difference—probably in both those cases, but definitely in relation to Kennedy McFarlane's case.

Ms Alexander: The challenge for the committee comes back to the issue of the needles. We know who the needles are, but we are not putting energy and resources into that area. The anxiety is that, if we build a haystack, we will not concentrate resources on the needles. The point about those three high-profile and tragic cases is that, in all of them, the information was shared but not acted on. Do you have any observations on how we can focus on the needles?

Dr Hammond: I do not agree that the information was shared effectively in the cases concerning Caleb Ness and Kennedy McFarlane. The Western Isles case is different.

There is no substitute for people working well together. We have to work across the agencies to make effective plans to keep children safe. In

order to do that, we have to share information effectively. I do not think that this is an either/or situation.

Ms Alexander: No, the question is to do with where the work is best done.

Dr Hammond: It is to do with making best use of the information once it has been shared. That is to do with implementation, training and developing a culture in our organisations that will facilitate that.

Allan Gunning: Joint working and training will be at the heart of our philosophy and approach. In child protection, a huge effort has been made to improve training. The training has to be appropriate and, where possible, that has been done jointly across the different agencies in Ayrshire. There is a team approach and everybody is getting the same information. We have been getting services on to the front foot, and that will allow us to make progress.

Donald MacKenzie: Helen Hammond took my line when she said that it was not an either/or situation. In the jigsaw, the quality indicators framework and the standards framework are both emerging from the child protection reform programme, and there are multi-agency inspections by the services for children unit of Her Majesty's Inspectorate of Education. That work will have to be embedded within robust self-evaluation systems in local areas. The promotion of best practice must be one of our key responsibilities but, alongside that, some compulsion will be required to ensure that the information shared is appropriate. We have to be good at doing something with information once it has been shared.

Ms Byrne: We all know of the excellent improvements in courses to educate teachers about child protection. However, there is a huge grey area when it comes to identifying issues to do with drugs. Many teachers struggle to see the signs, and there is a lack of trust in schools about telling class teachers the things that they can look out for in individual children. We must protect the children but also ensure that teachers are aware of issues.

Are enough resources going into education and training? Does the financial memorandum for the bill suggest that enough resources will go into backing up the bill's provisions? Getting the education and training right will be key.

Andrea Batchelor: We endorse the need for proper education and training on the bill, but the bill will not make any difference to teachers' awareness of what to look out for in relation to drugs. However, child protection training for teachers already involves looking at such issues thoroughly and carefully. In the past five years, we

have taken enormous strides in considering the needs of children in whose families there is substance misuse. Those needs relate not only to the potential for children to gain access to drugs themselves, but to the fact that children in those circumstances can become young carers, which can affect their education. We are looking at such issues carefully and trying to raise awareness about them. However, that does not relate to the bill.

Ms Byrne: It is all part of protecting vulnerable young people. The committee wants to know whether the bill is hitting the right notes. Is the current work on education and training enough, and will a review that seeks to improve the existing legislation be enough? Do we need the new bill, or should we put our resources into firming up what we have already and into ensuring that awareness raising is part of the present training? That is the nub of the arguments that have come from our evidence sessions so far.

Andrea Batchelor: Again, it is not an either/or situation. The child protection reform programme has an unstoppable momentum; it will continue to improve child protection. This bill will give us an opportunity to address the difficulties in the present vetting and barring system.

12:45

Donald MacKenzie: Following on from the theme of the either/or situation, I would add that the answer to the original question is that there are not enough resources. That does not mean that we should not have this bill, along with all the demands on resources that its implementation will make; the bill is appropriate.

Although I am an employee of Dundee City Council, my responsibility is to try to join the dots across all agencies such as the police, the health services, social work and education, and the voluntary sector. There is evidence to support the belief that people need to train together in order to work well together, but it is difficult to get people together. When I make a call to Dundee's education department to say that I need X number of teachers to work with X number of social workers and health visitors, the first question is where the replacements will come from, because the children still need to be taught in school that day. I cannot take bus loads of teachers out of their jobs for a day. There are issues about getting people to learn together so that they can work better together, but that does not displace the need that arises from this bill for heavy resource input.

Dr Hammond: I echo that. The General Medical Council and the Nursing and Midwifery Council, for example, have given clear professional guidance

that we should share information when we think that a child might be at risk. We have done a lot of teaching and training on that during the past few years, and we have received helpful guidance from the chief medical officer. Despite all that, we still have some problems in getting information shared effectively and we need legislation to underpin that.

The Convener: I thank the witnesses for their evidence. We will have a short suspension while the panels change over.

12:47

Meeting suspended.

12:51

On resuming—

The Convener: We move to the third panel of witnesses. I apologise to them for keeping them waiting for so long. As most of them were in the public gallery for the previous evidence-taking session, they will know that it has been an interesting morning and that we are dealing with a complex bill. I apologise for the fact that one or two members have already had to leave and that others may have to drift off. We will try to get through the evidence as quickly as possible.

The final panel this afternoon consists of Professor Kathleen Marshall, who is Scotland's commissioner for children and young people; Maggie Mellon, the director of children and family services at Children 1st; Jonathan Sher, director of research policy and practice development at Children in Scotland; and Heather Coady, children's policy worker for Scottish Women's Aid.

Before I open the floor to questions, witnesses may make brief comments in addition to the written evidence that we have received. We intend to concentrate on part 3 of the bill, although there may be questions relating to the other parts. We have already picked up from other witnesses and from your written evidence many of the issues that you have raised in relation to parts 1 and 2.

Kathleen Marshall (Scotland's Commissioner for Children and Young People): I will start by explaining where I am coming from in my comments on the bill. My comments are based on what children and young people have told me. As many members will know, when I consulted children and young people on policy priorities—what they wanted me to do—16,000 of them throughout Scotland voted for accessible and affordable things to do, which often require the support of trusted adults to put them in place.

Children and young people do not talk about understanding the disclosure system, which is

dealt with in parts 1 and 2. All that they know is whether adults are available to interact with them in a healthy way. They have told us that they want to be part of our society and communities. They do not want to be pariahs, with everyone else too afraid to get close to them to give them the relationships that they need.

Children and young people want access to leisure and recreation facilities. This morning, we have heard a lot from many of the agencies that run such facilities about their fears about the current policy direction. At the moment, there is a huge emphasis on involving young people and getting them to participate in processes. Last week, a young man told me that his 14-year-old sister had been debarred from taking the minutes of a community council meeting because the council could not guarantee that there would be someone present in the room who had been disclosed. That comes from the culture that the policy direction has created. I am happy to talk about that. I welcome some of the positive measures in parts 1 and 2, but I have serious concerns about the overall direction.

Part 3 deals with information sharing. I appreciate the aim but, as some members have heard me say before, the response is disproportionate. The bill will not necessarily achieve the aims that it sets out to achieve, and it drives a coach and horses through young people's right to confidentiality. In that respect, it will not add to their protection but decrease it. Young people will not give us sensitive information if they think that it will be shared with a huge number of people on the ground of "harm", which is undefined and is a low threshold, and that those people will be required to share it with others.

Young people have told me that they were not consulted on the bill. I consulted my own reference group of 12 young people from throughout Scotland. In that context, I refer members to the children's charter that the Scottish Executive promulgated a couple of years ago. Then, children and young people gave the clear message that they have a right to be kept safe and that people should think carefully about how they use information about them.

I am happy to expand on any of my points.

Maggie Mellon (Children 1st): I will be brief. First, I will deal with a question that was raised in the two previous evidence sessions. We think that it would be wise to step back from the bill, because it raises more questions than answers. When serious questions were asked about proportionality and the bill's impact in those two sessions, it was said that everything would have to be worked out in guidance.

One issue that did not arise in those sessions was how effective checking against a list would be and how much useful information would be provided by doing so. Currently, few people would be on the lists. Determining who is dangerous for children to be in contact with and how to deal with them is a key matter, but we have not got that right. Not many people are prosecuted or sacked for being dangerous to children. Most of the incidents that we know about have taken place in domestic circumstances, and the bill would not deal with them.

Public confidence has been discussed. We would be concerned if the bill raised public confidence by implementing a system that took up a lot of resources and misled people into thinking that it was fine for their children to go to a certain club or to a piano tutor who produced a certificate for a check that had been carried out. The public need to know key things about how to protect their children and children need to know key things that will not be found out in a bureaucratic system of checks.

The opportunity costs of the bill should be considered. Professor Arthur Midwinter has talked about the lack of resources in children's services. Resources that are devoted to implementing the bill's provisions and developing the proposed system are resources that will be taken away from something else. We ask members to consider the issue of proportionality in protecting children and the opportunity costs that are involved.

Research has been mentioned. Considerable research has been carried out on where the dangers to children come from. The dangers in Scotland that result from poor nutrition, poor housing, threats from traffic, alcohol, illness and the effects of poverty are not being tackled. We must consider proportionality in that context and where the concern for children lies.

There is a case for calling the bill a bill to protect vulnerable organisations or employers, as it would allow employers to say that they had carried out appropriate checks. As Kathleen Marshall said, there has been an increasing focus on protecting adults from the risk of allegations or prosecutions as a result of who they allow to have contact with children, rather than a focus on child protection itself. We should step back from the proposals.

We have provided evidence on sharing information. We firmly believe that the proposals on that belong in different legislation, in line with the getting it right for every child agenda.

Dr Jonathan Sher (Children in Scotland): Removing part 3 and embedding it in the proposed getting it right for every child bill is not only a good idea but an essential idea for three reasons. First, much more serious and detailed consultation is

required to sort out the complexities that are involved. That consultation could take place alongside the process of developing a code of practice. Legislative proposals should be considered once all the relevant information has been received rather than in advance of consultation and receiving the information that is needed to inform legislation. Things have been done backwards.

Secondly, information sharing exists not in a vacuum but in a context, and that context is "Getting it Right for Every Child". Information sharing is directly tied to information use, which in turn is tied to training and education. Given that it is all of a piece, it is not sensible to solve just one piece of the puzzle when we know that a terrific piece of legislation based on "Getting it Right for Every Child" is on the horizon.

We are not opposed to information sharing. Indeed, quite the opposite—the issue is so important that we urge you to separate it out and ensure that it is done right, not quickly.

13:00

Heather Coady (Scottish Women's Aid): Scottish Women's Aid represents women, children and young people who experience domestic abuse. As we believe that the bill might have quite serious unintended consequences for many people who are in what is supposed to be a protected group, I must agree with my colleagues that part 3 should be deleted and its provisions subject to further consultation. We are concerned that, if that does not happen, much of the Executive's work on tackling domestic abuse might be undermined.

Dr Murray: Maggie Mellon has already responded in part to my first question. Everyone from whom we have heard is signed up to the importance of protecting children and vulnerable adults. However, this morning, representatives from the voluntary and statutory sectors put forward conflicting views on whether the bill—not only part 3, but parts 1 and 2, which set out the vetting and barring system—is the best way of achieving the aim of protecting children and young people. Does it represent the best approach? If not, can you propose a better alternative? After all, some of the evidence that we have received suggests that the issue is more to do with risk management than risk assessment.

Kathleen Marshall: I have worked in child protection for many years and, like everyone else in the room, I am completely on board with the child protection agenda. This is not a red-corner-blue-corner issue. We all want to ensure that our children have the best protection possible. However, we need to have a cost benefit analysis

of the matter. Children have a right to protection, but they also have a right to develop, to access leisure and recreation and to form relationships. As you have pointed out, this is a question of risk management and proportionality.

There is some merit in doing what we can to put barriers in the way of people who have been convicted of serious offences against children or who might pose a serious risk to them. If we can find simple and proportionate ways of doing that, we should consider them. That said, we must focus on the real risks and the contexts in which such people operate. For example, I do not see why someone who takes minutes at a community council meeting must be surrounded by people who have been disclosure checked. At events that I held for young people when I was formulating my own child protection guidance, it was suggested that the parent carers who looked after their own disabled children should have to fill in a six-page form on their suitability for such a role. I replied that, as the people who organised the event, we should be responsible for being vigilant.

I agree that we need to focus on this matter. That said, I do not know whether people simply do not understand or are confused about the law or whether it is the law itself, but something has fed a very unhealthy culture in which people have withdrawn from interacting with children and young people. Some have talked about cotton-wool kids. I think that the term should be barbed-wire kids because, in the current culture, it is as if they have signs that say "Keep out", "Don't touch" or "We're dangerous". We have to roll back and focus on the real problems and risks.

As someone said this morning, given where we are starting from, there are some good things in the bill, such as provisions on avoiding repeat disclosures, on personal employers and on updating records. Perhaps we ought to take stock, given how much has been left open. We are going to have to wait anyway for the kind of detail that will make it possible to implement the bill. Why do we not take that time to reflect on whether it is really the way that we want to go and take a broader look at the whole child protection, child welfare, safe, active, happy agenda, for which we are aiming?

Dr Murray: Would you advise the committee to recommend to Parliament that the bill should not progress?

Kathleen Marshall: Yes.

Maggie Mellon: That is the view of Children 1st. We advise the committee to step back. Children 1st is formally called the Royal Scottish Society for the Prevention of Cruelty to Children, so it is clear that our mission is child protection. As Kathleen Marshall said, there is a danger in distinguishing

between the professionals and the voluntary sector, because there are professionals in the voluntary sector.

Children 1st checks rigorously its employees who have contact with children, not just through the disclosures that we have to do—on which we do not rely too much, because we know that the list of people who are unsuitable is tiny and they are not likely to have criminal records—but by relying on other things. We are not against checking, but we think that it is much more dangerous to have a climate in which people do not want to have anything to do with children in case they are accused of having malicious intent. Somebody said earlier that now you have to prove that you are not a paedophile. For my children and all the other children in Scotland, I would far rather have a situation where caring adults—99.5 per cent of us—would stop a child running on to the street or spot a lost child and help them. Most men in Scotland today would probably say that they would not do that.

The checks and disclosure requirements are fine for us, because we are professionals who are working with children and we already vet our people carefully. If half the population of Scotland and their relatives and associates have to be checked, we will be putting all the sand on the beach through one tiny sieve in order to find the boulder, which we always knew was there anyway.

Dr Murray: So your advice is that the bill should not proceed.

Maggie Mellon: Yes, and that we should put child protection back in the context of child welfare. Child protection on its own is just a system that we have instead of a system for ensuring child welfare. It has to be embedded firmly in a child welfare approach that encourages adults to love and nurture children.

Dr Sher: The position of Children in Scotland is that we should step back from the bill. It is meant to address the important but limited problem of stranger danger. It consumes much of the oxygen of child protection and child safety, when the unquestionable fact is that the fundamental danger to our children is not stranger danger but harmful homes. By pulling all the attention and resources towards stranger danger, it is inevitable that we will neglect a much more serious problem in society. Vetting and barring is important, and we should absolutely have a system for it, but even at its best it does only two things: it identifies those who are known to have harmed children or to be a clear and present danger to them and provides a way of accessing information that is knowable. The problem is that it seems to make a promise that, down the road, it will not be able to keep.

A vetting and barring system does not guarantee that a person whom it clears will never harm children. I will use the example that Maggie Mellon gave. Unfortunately, if a piano tutor holds out a certificate and says, "I have never been convicted of a crime against a child and there's no reason for you to suspect me," that does not mean in our unpredictable world that they will not harm a child.

We should absolutely have a vetting and barring system. We should do it and do it right, although deciding whether to do so by separate legislation that separates children's issues from those of vulnerable adults, by changing POCSA or by another method I leave to wiser minds. Yes, vetting and barring need to happen, but we need to take steps that protect children for real, not steps that create the illusion of safety but provide only the reality of fear. Our concern is that we need to take steps that matter.

It is worth pointing out that Children in Scotland stands at an interesting crossroads in the debate. Our 300-plus member organisations, which represent tens of thousands of professionals who work with children, include all the professional associations that deal with children, most voluntary sector organisations that deal with children and 80 per cent of local authorities. However, I am not here today to represent the views and best interests of professionals, organisations or agencies. The reason why they are members of Children in Scotland is that our job is to speak up for what is in children's best interests, which is to take steps that genuinely protect them and do not give just the illusion of safety.

Heather Coady: We echo all that has been said. It is important to consider how best to protect children. As has been said, many dangers exist in the home. That is certainly the case with domestic abuse. Much work still needs to be done on how best to protect children and on taking a consistent approach to child protection, which we do not have—anxiety is felt about that. We want people to put their energy into and give their attention to that rather than part 3, which will place a duty on people to share information. That is a great concern to us.

Dr Murray: What is your advice to the committee? Should the bill progress beyond stage 1 to be amended or should it be withdrawn?

Heather Coady: The bill certainly should not progress as it stands. Part 3 is our big concern.

Dr Murray: So you are less concerned about parts 1 and 2.

Heather Coady: We have some of the same concerns that our colleagues have, but we do not take the same strong position.

Lord James Douglas-Hamilton: I notice that Scotland's commissioner for children and young people, Professor Kathleen Marshall, wrote in her conclusion:

"Given ... the lack of consultation on these information sharing provisions, the Committee may wish to consider asking the Executive to withdraw Part 3 of the Bill. Revised information sharing provisions could be included (as originally intended) in the Bill that will come out of the Getting it Right for Every Child process, which is expected next year. This will allow time for reflection, research and consultation. In particular, it would allow for a more careful integration in the Bill of respect for the views of children in line with Article 12 of the UNCRC."

Do all the witnesses recommend withdrawal of part 3 and bringing it back in another bill later?

Dr Sher: That is Children in Scotland's recommendation.

Maggie Mellon: That is Children 1st's recommendation, too.

Lord James Douglas-Hamilton: You all speak with one voice on the issue.

Heather Coady: If the provisions were brought back later, we would still have concerns about the duties, but that would be for later. At this stage, we recommend removal of part 3.

Maggie Mellon: I should clarify that we would want the provisions to be changed if they return in the getting it right for every child bill, because getting it right for every child means making individual decisions about information sharing for every child.

Lord James Douglas-Hamilton: It is a fact that children and young people have not been consulted on part 3 and that you hope for full-scale consultation.

13:15

Maggie Mellon: Yes, and with others involved in protecting children.

Kathleen Marshall: Consultation should be done with other agencies as well. One of my other concerns is that the bill does not seem to be tied in to other child protection systems and reporting mechanisms. There are a lot of different thresholds. The bill presents a very low threshold. Some people, such as the police, would be subject to dual reporting systems.

Perhaps part 3 was drafted in a bit of a hurry, because it was brought forward. It is interesting that it seems to have been considered in the context of information sharing, whereas it really verges on mandatory reporting, on which a lot of research is being done worldwide, and from which we can learn. Consultation should focus a lot more on the actual problem. I described the bill at a cross-party group event as potentially a

sledgehammer to crack a small but hard nut. On which issue do we wish to focus? The accompanying documents say that mostly the system is working, but it needs to be tidied up a bit to address a particular issue. However, we do not need a huge sledgehammer to do that. The whole concept has to be reconsidered.

Lord James Douglas-Hamilton: A more measured approach would mean a much better chance of getting it right.

I have two more questions, the first of which is for the children's commissioner. We heard from the Scottish Council for Voluntary Organisations, which proposes to give small voluntary organisations the option of applying for a barred status check. That is a somewhat detailed point. How do you feel about it?

Kathleen Marshall: A barred status check. Do you mean—

Lord James Douglas-Hamilton: They would ask for a lesser check.

Kathleen Marshall: That could happen. This morning's discussions have shown that we can talk about the detail, which contains some good points, but we are basically shuffling things around. The strong message coming through is that we should reconsider the whole issue of how we view childhood and how children relate to adults. We could take a brave decision today to do that—to ask what we are talking about and what is the best way of ensuring children's safety.

I would prefer to think more about your point. If the SCVO has said that, I take it seriously, but it is only a nibble at the edges of a huge debate.

Lord James Douglas-Hamilton: My second question is for Heather Coady. It has been made absolutely clear this morning that we are interested in the protection of children and vulnerable adults. Is it not equally important that we should be concerned about the protection of young mothers who might have been subjected to considerable violence and who have had to leave the matrimonial home and seek refuge? Confidentiality for women who have been subjected to great violence is every bit as important as the protection of children and vulnerable adults, and we need the bill to bear that in mind.

Heather Coady: Absolutely. We have been concerned about that throughout the discussions. Scottish Women's Aid effectively offers a confidential service, but there are limits to it in relation to children being at risk. We all understand that and we all want to ensure that children are safe. It is very difficult to—I am sorry, but I have forgotten what I was going to say.

If the bill is passed as it stands, we would no longer be able to offer a confidential service to women, children and young people who are experiencing domestic abuse.

Lord James Douglas-Hamilton: Is it, therefore, your evidence that there is considerable danger that women will be placed at risk if the bill is passed in its present form?

Heather Coady: Yes.

Lord James Douglas-Hamilton: If it was properly consulted on and dealt with as suggested in the proposed getting it right for every child bill, there would be a much better chance of getting it right.

Heather Coady: Yes, there would be a much greater chance of that. We are really concerned that women will not come forward.

Lord James Douglas-Hamilton: And would getting it right remove women from the possibility of recriminatory action?

Heather Coady: Yes. As things stand, women are terrified to access services, which is often why they come to us. They can be very concerned about their children being removed. As the bill stands, if someone accesses our services we will bear some responsibility for notifying the council. That is certainly not the way that we work just now.

The Convener: Although the bill as it stands gives ministers powers to vary the list of people and organisations that have a duty to share information, it does not include organisations such as Scottish Women's Aid. Are you seeking clarification that the duty to share information will not be extended to voluntary groups such as your own?

Heather Coady: As far as we understand it, that duty currently includes Scottish Women's Aid. We provide a service—a housing service. We are a care provider, and we are regulated by the Scottish Commission for the Regulation of Care. As far as we understand it, we would have a duty to comply.

The Convener: That is not our understanding, but we can clarify that with the minister. If there was clarification that the duty would not extend to you, would that remove some of your concerns about part 3?

Heather Coady: We spoke with the bill team at length, and our understanding was that it would extend to us. If we did not come under that category, however, that would change things considerably. We would be quite relieved, in fact. It is not that we are against sharing information—that is absolutely important—but it is a different matter to have a duty to share information placed

on us. The onus is on councils to say that they would like information about a certain family. It would be difficult for local Women's Aid groups to say that, in the interests of confidentiality and safety, they do not feel that they can share the information. There is tension already, and the potential exists for it to get worse.

Dr Sher: The Scottish Executive has proved time and again to be good at consultation. One of the advantages of stepping back is that it will give the Executive the opportunity to do one of the things that it does exceedingly well—taking a measured view of all the different opinions on a given subject. We do not have all the answers on all the details today, but that is the point. The subject is much too complex for us to know everything about it now. We advise the committee to allow the Executive to carry out the consultation process and take the time and space to develop a proper code of practice instead of creating a system that would simply be the latest manifestation of the unfortunate maxim that when we act in haste, we repent at leisure.

Fiona Hyslop: My question is to Kathleen Marshall. Were part 3 to be removed from the bill, would you still object to the first two parts progressing?

Kathleen Marshall: There would be losses in that case, given the status that we have now and given that we have a system of disclosure. Some things, such as multiple applications, are not helpful. However, we have to weigh that in the balance. I have been told that the bill has been very closely crafted and that, if we started taking certain bits of it out, we would probably end up with something very confusing.

I would prefer it if we stepped back now and considered possible ways of addressing the good bits of the bill in a more focused way while holding a debate on the broader issues of what we are doing, what we are trying to achieve, whether we are succeeding and whether unintended consequences are arising that could have a huge impact both on children and young people and on the health of society.

Fiona Hyslop: I have a general question to everybody. The bill is a result of the Bichard inquiry into the Soham murders, and the equivalent legislation has already been passed in England. You no doubt have connections and communications with sister bodies in England. Should we decide, enough, no further, how should Scotland respond to concerns that our bill will not be compatible with the law down south? Can you share with us some of the concerns that commissioners in Wales and England or organisations there connected with child protection have expressed about whether the Safeguarding

Vulnerable Groups Act 2006 marks the way forward for anybody?

Maggie Mellon: The bill is indeed based on the Bichard proposals. Ironically, those proposals and the way in which they are being developed would not have dealt with the threat that Ian Huntley posed to those two girls. Ian Huntley was not police checked, although he should have been for the job that he did. The girls came to visit Maxine Carr, his partner, who probably had been police checked and who was working in their school.

The Bichard proposals, which included the recommendation that those working in a child care position or in a voluntary organisation should be police checked, did not cover members of the household, married couples and neighbours. Ian Huntley could have been working in Tesco rather than as a school janitor; those two little girls would still have gone to his door.

We are not suggesting for a minute that all the people I mentioned should be police checked if children might come into contact with them, because that would include every adult in Scotland. However, the proposals do not address the risk that was identified.

The bill is the third attempt in five years to address the issue, and in some ways it is barking up the wrong tree. Every time that there is another child death or tragedy, somebody realises that there is a loophole in the system and says that we should check another group of people—neighbours, husbands or brothers-in-law who may visit once a week. We will all end up being checked against what is a small list. What are we checking for? We are checking against a negative.

Fiona Hyslop: Jonathan, can you reflect on any experience from down south?

Dr Sher: As the committee may already know, the information-sharing provisions in the Safeguarding Vulnerable Groups Act 2006 were the subject of an investigation that took nearly two years. It was not a quick and easy decision-making process. We can learn from what has happened in England, and we certainly ought to, but ultimately the alternatives are not either to pass the bill unchanged or to do nothing. Our recommendation is that we get part 3 of the bill right. If that takes a few months more, it will be inconsequential compared with the positive effect that getting it right will have.

As a matter of personal observation, I moved a couple of years ago to Scotland instead of England in large measure because I thought that Scotland was the place in the UK that had the greatest potential for getting the legislation right. The fact that England has done something already ought not to goad us into being hasty. In fact, it ought to redouble our commitment to showing

what is distinctive about Scotland by taking the same broad goal and tackling the issue even better than down south.

Mr Macintosh: All the witnesses have made their views known forcefully today, and I am sure that they will resonate with the committee members who have some anxieties about the bill. However, I would like to act as devil's advocate in making a few points.

Jonathan Sher spoke earlier about the culture of fear that we may be creating. The bill has not been passed yet, so we cannot say that it has created a culture of fear. An anxiety exists in our community about the danger posed by adults to children. That was not created by the Government or the bill; indeed, the bill is designed to address it. We obviously want to ensure that we do not have the counter-effect of creating more anxiety in the process of addressing fear. It would be wrong to suggest that the bill does anything other than try to address an anxiety that exists among parents, families and people who look after vulnerable adults about the nature of our society.

Maggie Mellon started off by saying that we could rename it the protection of vulnerable organisations bill, and there is a grain of truth in that. Let us concentrate on the professionals in the statutory sector rather than voluntary workers. Surely the point of the bill is to create better practice and get everybody who deals with children to behave in a manner that we as parents or other members of society would expect. Nobody is pretending that the bill is the answer to the Soham murders, although its provisions would have meant that Ian Huntley would not have been employed as a school janitor, so it is wrong to say that it would not have affected that case in some way.

The bill will not stop brutal murders happening or prevent child abuse from taking place, but it will address people's concern about how the state looks after our children. When we hand over our children to the care of organisations or schools or societies, we want to know that they are looked after and that due care, attention and precautions have been taken to ensure that the background of those who work with our children has been looked into. A lot of the information that is currently held about people will say whether a person is potentially dangerous. Given that the information exists and that the majority of people are absolutely fine to work with children, the logic for having a system such as that which is proposed under the bill is quite strong.

13:30

Having said all that, I am not saying that I am unsympathetic to what has been said today.

However, is there not at least an argument that the bill will undoubtedly improve on the current disclosure system with its multiple checks? Whatever concerns people might have about the proposals, the bill will improve on the current system, which does not offer any of the protections that were mentioned.

In addition, the bill will create a culture in the statutory sector—how far that should extend to the voluntary sector is a detail that we can consider—of ensuring that any staff who are employed are checked thoroughly. The bill will also provide a mechanism for carrying out those checks. All those organisations are already required to carry out checks on the staff that they employ. The bill will make that easier and provide a better way for them to do that. On top of that, the bill will create a culture in which organisations seek to look after the best interests of children in all their practices.

For example, everybody seems to agree that there needs to be information sharing. As I understand it, the bill will impose a duty on organisations to share information and the details of that will be worked out in a code of practice. There is a big difference between working out the details in a code of practice and, by abandoning the bill, saying to organisations that they can just continue, as at present, not to share information. We should not simply say, "It is too difficult to work out how to share information so we will just defer the bill altogether rather than work out how to do that." In part, I am playing devil's advocate, but those are serious points that need to be addressed.

Finally, although members of the panel have said that the bill should not proceed, I have not heard anyone—either on this panel or on the voluntary sector panel—suggest an alternative. It is all very well to say that the bill takes us in the wrong direction of travel and that we should focus on a few other areas as well, but it is not true to say that other measures are not being taken to address child poverty, child abuse, poor housing and the rehabilitation of known sex offenders in the community. An awful lot of other legislation is addressing those issues. However, on top of that, parents want the security of knowing that the state in particular looks after the children who are in its care. I would like to hear what the alternative is. Before we abandon the bill, I would like to know in which direction we should head off.

The Convener: I appreciate that there are quite a number of questions but, as we are now running up against a fairly tight time barrier, I ask people to answer as briefly as they can.

Kathleen Marshall: We take on board some of the points that Kenneth Macintosh has made. Of course some checks need to be put in place and they need to be more focused than they are now.

We want time to reflect on where the line should be drawn and how we can create a culture in which people are aware of the real risks rather than have the false sense of security that people can get from thinking that someone has been checked.

Another issue is the unintended consequences of the legislation. People are afraid to work with children because they feel that, if even a suspicion comes out on the disclosure check, no employer will employ them even though they are not barred. For example, one teacher who wrote to me provided me with all the details of an investigation into an allegation against her that was shown to be completely unfounded. However, her disclosure certificate stated simply that an allegation had been investigated and was found to be unfounded. She pointed out to me, "If I go for a job and there is another candidate who has a clean certificate, who will take the risk of choosing me?" That is bad for children. On this issue, the rights and interests of children and adults come together. It is not in the interests of children for adults to feel that they will be disadvantaged by an allegation that is not proven.

The proposed system raises serious questions on which we need to reflect. That is not to say that we should do nothing. We should think about the issue and focus on and define where the kind of approach that is proposed would be most effective. Let us create a culture in which people are aware of risks and in which people are available who will support children and young people and their parents, rather than frighten them off.

Maggie Mellon: We started off saying that the bill throws up more questions than it answers. I think that Kenneth Macintosh raised those very questions in his remarks.

We are looking for time. I understand that the bill is expected to complete stage 3 in February. That does not give us time to answer some of the very serious questions that have been raised. We have been told that the bill does nothing without the guidance and the criteria, which will be developed to address who is unsuitable to work with children, who can, and whether the certificates should reflect that. None of those issues have been dealt with. We have solutions for child protection and child welfare in Scotland, and we are more than happy to put them before the Parliament; however, we cannot do that in 10 minutes and before February 2007.

Dr Sher: Please understand that neither we nor our colleagues are suggesting that the vetting and barring system should be dismantled. We are strong supporters of the system, which needs to be strong and to do what it does well. That is a given. Nobody is in opposition here, and I cannot

imagine that there is anyone in the Parliament, in the Executive or among the organisations that have given evidence today who does not have the same goal: to protect children, to reassure parents and to provide what other benefits are possible. There are good things in the bill. Our suggestion is simply that, instead of getting a couple of things partially right, let us get the whole thing right and be done with it.

Our fear in political terms is that, if a bill is passed that is not completely right, the political scorecard will still read that the box has been ticked and the issue has been dealt with. The Parliament will then move on to the other 45 important issues that Scotland faces. Before the box is ticked and the Parliament moves on to other issues, we want it to know that it has done the best possible job on behalf of children. We are your allies in that process.

The Convener: I have a final question on part 3 of the bill. One of the issues that has been raised by Scottish Women's Aid and other organisations is the fact that people will not come forward for services because of a fear that their information will be shared willy-nilly across different sectors. I accept that that is partly related to how harm and risk are defined in the bill. Have your organisations done any research into whether young people would be frightened to come forward for, for example, sexual health information or drugs information and advice because they believed that that information might be passed on to the police or other organisations and might end up on a vetting and barring record—as one of the submissions that we received today suggested—so that, at some future date, when they applied for a job, something that they did as a 15-year-old would count against them? Do you have any evidence of that? The submission that the committee has received from LGBT Youth Scotland expresses concerns about people from that group not coming forward because they fear disclosure of personal information. What evidence do you have to back up such concerns?

Kathleen Marshall: We all have some evidence of that. The people who work on the front line with children and young people often tell us of that fear, based on their own research. I hark back to the Executive's children's charter, which was developed with children and young people. The clear message was given that we should respect their privacy and think carefully about how information should be shared. Our reference group was very clear about that and was concerned that young people will no longer talk to adults when they should. We also know from the experience of ChildLine that, when children talk about sensitive issues, confidentiality is the first thing that they talk about. Some more specific research has been

done on the issue, which Maggie Mellon might want to address.

Maggie Mellon: There is some specific research based on the views of children who phone ChildLine. As Kathleen Marshall said, many of them want a guarantee of confidentiality before they will begin to share their concerns.

Our concern about information sharing is that it is often about adults watching their backs. If they have received some information and feel almost a duty to report something, that information will be passed on. Children 1st and a number of other organisations are concerned about the perception that we protect children by quickly passing on information. For example, someone might think that, because a child has told them that their father hit them last night, they must immediately go and do X, Y and Z. However, what children tell ChildLine and us is that they will not tell us about something unless they know that the matter will be handled very sensitively. Therefore, information sharing has to be carried out in an informed way.

As Jonathan Sher said, we absolutely support the sharing of information in order to protect children from harm and on the basis of good child welfare. All parents would support that—in fact, parents probably want more information to be shared than is currently shared in order to protect their children. However, we should not think that information sharing is an end in itself. Children—and the parents and carers who look after them—should not be scared to talk over their anxieties and report them. We do not want neighbours to think, “I can’t say that I think that these children are being left alone or hurt because there will be blue lights outside the door. It might not be helpful because the children will be taken into care.” People need to know that information about children will be dealt with carefully.

Heather Coady: There is plenty of literature on domestic abuse and child protection and the difficulties of dealing with that thorny issue.

The Convener: I am concerned not just about abuse, but about cases where children risk harming themselves through their behaviour, such as experimenting with drugs or sex. In those situations, they need good advice to reduce the risks but they might be frightened to come forward in case information is passed on to other agencies. Do you have evidence that 14 to 16-year-olds do not come to get advice because they are frightened that information will be passed on to the police or others?

Kathleen Marshall: That is a difficult question, because those are the people who have not shared their concerns. However, young people who do come forward sometimes talk about the

barriers and the reasons why they have not talked about things before.

There are already thresholds for information sharing. The Children (Scotland) Act 1995 places an obligation on local authorities if the case falls within certain levels of risk. However, we are talking about a more generalised duty at a vaguer, lower level of harm. The problem is that there might be knee-jerk reactions if people pass on information. The sharing of such information will not do anything to protect children; it will not be an additional safeguard and it will put them off coming for help in the first place. It is the generalised nature of what is proposed that is significant.

I have written child protection guidelines and taught people that we do not give children a promise of absolute confidentiality if we cannot keep it. Instead, we try to discuss with them the thresholds of information sharing, but sometimes they will not talk even then. The only resort, which is a complete cop-out, is to say, “Well, you can phone ChildLine,” but if ChildLine is feeling threatened by the proposals as well, we will give the children nothing. We are taking away all the resources that children have.

If you want some more focused information on that, we will need more time and space to reflect and focus on the real problem. Most people are sharing information and the system is working. The bill aims to underpin good practice, but we need to ask: what is the scale of the problem? What do we need to do to share information effectively?

The Convener: I think that the committee is exhausted, and has exhausted its questions.

I thank the panel members for their powerful evidence. I am sure that the committee will reflect on it carefully. We look forward to discussing the matter with the minister next week in our third and final oral evidence session on the bill.

Meeting closed at 13:43.

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