EDUCATION COMMITTEE

Wednesday 29 November 2006

Session 2

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EDUCATION COMMITTEE
26th Meeting 2006, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Ms Rosemary Byrne (South of Scotland) (Sol)
*Fiona Hyslop (Lothians) (SNP)
*Mr Adam Ingram (South of Scotland) (SNP)
*Marilyn Livingstone (Kirkcaldy) (Lab)
*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:

Robert Brown (Deputy Minister for Education and Young People)
Brian Gorman (Disclosure Scotland)
Katy Macfarlane (Scottish Child Law Centre)
Dr Claire Monaghan (Scottish Executive Education Department)
Andrew Mott (Scottish Executive Education Department)
Alison Reid (Scottish Child Law Centre)
Liz Sadler (Scottish Executive Justice Department)
Maggie Tierney (Scottish Executive Education Department)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education Committee

Wednesday 29 November 2006

[THE CONVENER *opened the meeting at 09:51*]

Interests

The Convener (Iain Smith): Good morning and welcome to the 26th meeting in 2006 of the Education Committee. I understand that one or two of our colleagues are delayed this morning because of ScotRail problems. I see that Ken Macintosh and Frank McAveety have decided to swap personalities—or at least name-plates—this morning, which might cause some confusion.

Mr Frank McAveety (Glasgow Shettleston) (Lab): We both look fabulous, though.

The Convener: As members will be aware, Wendy Alexander has left the committee and has gone on to greater things as convener of the Finance Committee. I am sure that we wish to place on record our appreciation for Wendy's contribution to this committee over the years.

We now welcome our new member, Marilyn Livingstone, and the first item on the agenda is to ask her to formally declare any interests that are relevant to the committee.

Marilyn Livingstone (Kirkcaldy) (Lab): I declare that I am a member of the Educational Institute of Scotland and of Fife lifelong learning partnership, and that I chair the cross-party group on survivors of childhood sexual abuse.

The Convener: Thank you, Marilyn. I hope that you will enjoy what is going to be a relatively brief sojourn on the committee.

Protection of Vulnerable Groups (Scotland) Bill: Stage 1

09:53

The Convener: The second item on the agenda is the final day of oral evidence on the Protection of Vulnerable Groups (Scotland) Bill. We have three panels of witnesses today. On the first panel are Alison Reid, principal solicitor, and Katy Macfarlane, solicitor and policy and education officer, at the Scottish Child Law Centre. The committee has already received your written evidence. If you would like to make any additional comments, you may do so before I open the meeting to questions from members.

Katy Macfarlane (Scottish Child Law Centre): Alison Reid and I are both solicitors, as you said. We would like to make brief opening statements. We welcome the opportunity to give evidence to the Education Committee on the Protection of Vulnerable Groups (Scotland) Bill. I have to say at the outset that we come very much from a child's rights perspective. The Scottish Child Law Centre deals specifically with the rights of children and young people in Scotland, so that is where we are coming from.

As we see it, the bill covers two distinct areas: parts 1 and 2 relate to vetting and barring procedures, and part 3 relates to sharing child protection information. We are keen for the committee to deal with the bill in those two distinct areas. I shall lead on part 3 and Alison Reid will lead on parts 1 and 2, although I am sure that we will interject on each other throughout the session.

As regards part 3, I stress that the Scottish Child Law Centre very much agrees with the proposition that the sharing of child protection information is required and is essential for child protection purposes. However, as will emerge from our evidence, we remain unconvinced that part 3, in its current form, is the best way to do that. Whatever system is adopted, it must achieve set policy aims and have built-in flexibility and longevity to enable it to work effectively for the foreseeable future.

I have a few further points about part 3, on which I am happy to be questioned. Crucial elements are missing from the policy aims as set out in the policy memorandum. I am happy to go over that point. The lack of reasonable consultation was brought up in the previous two evidence-taking sessions, and I am also happy to say more about that. The Executive has its own children's charter, but that seems not to have been taken into consideration for the purposes of the bill. Other issues that we are keen to discuss include proportionality in relation to the European

convention on human rights and the principles of the Data Protection Act 1998.

We do not feel that the case for part 3 has been made convincingly. We are concerned that its wording is confusing and difficult to understand, and that it fails to meet the widely accepted criteria for good law. Leaving the detail not just of part 3 but of the entire bill to delegated legislation is not a good idea. As we have heard, and as has been said time and again, the devil is in the detail as far as the bill is concerned. The overall effect of part 3, if it proceeds in its current form, will be to cause widespread confusion and to overburden what is already a highly burdened system.

I am happy to go over all those points in response to questions, but now my colleague Alison Reid will make her opening statement.

Alison Reid (Scottish Child Law Centre): Good morning. I am Alison Reid, principal solicitor at the Scottish Child Law Centre. We are supportive of the bill's aim in parts 1 and 2, which is to ensure that unsuitable people do not gain access to children or protected adults through work. We welcome the simpler mechanics of obtaining scheme records, which should reduce the need for multiple checks. However, because there has been no audit of the current system of child protection as introduced by the Protection of Children (Scotland) Act 2003 and the Police Act 1997, as amended, we do not know the effect of the current legislation. That leads us to conclude that such an evaluation of the system requires to be carried out, following which amendments to the current child protection legislation could be made.

As a result, we are concerned about the following matters, on which we will be happy to expand. First is the balance between the protection of children from potentially dangerous adults and the encouragement of positive relationships between adults and children, both of which are necessary for a child's health, development and welfare. Second is the development of a culture of reliance solely on the basis of vetting and barring information, particularly in the light of provisions for workers from overseas. Third is the approach of taking an English problem and translating the solution to it into Scots law. Fourth is the complexity of the bill and the extent of the use of secondary legislation. Fifth is the lack of focus and definition in the bill, which leads to several further issues, on which I am happy to expand. They include the provisions on consideration for listing and the decision to list; the bill's compatibility with articles 6 and 8 of the ECHR; the lack of sufficient appeal procedures in relation to part 2, which could lead to challenges under article 6 of the ECHR; and, finally, some of the bill's wording leads to questions about legal certainty and potential challenges under article 8 of the ECHR.

Dr Elaine Murray (Dumfries) (Lab): We have had diverging evidence from different sectors about parts 1 and 2. Generally speaking, the statutory sector is very much in favour of the bill, while the voluntary sector is pretty concerned about the potential financial and time effects on its operations. You reflected some of those concerns in the evidence that you just gave. Can the bill be amended to keep the good bits, or should the proposals be reconsidered altogether?

10:00

Alison Reid: There are some good bits in the bill, and if there was a way of taking them forward, that would be great. They include the reduction in multiple checks, which are a real downside to the current system. It would be great to keep that measure. I am not sure that we could address that issue in isolation, however. There is a much bigger picture here than just that issue. We concluded that we need to look at the bigger picture, rather than focusing on just some details.

We have been at the committee meetings for the past two Wednesdays and have listened to the evidence that has been given. Because there has been no official audit of the effects of the current legislation, we have had to pick up clues as to what has been going on. We heard from the voluntary sector that there has been an effect on informal volunteering—it is not necessarily reflected in the statistics, but there has been an effect—and we heard Unison's concerns about unsubstantiated allegations. We also heard last week about the concern that people are starting to presume that an adult who works with children has to prove that they are not a paedophile. We are in danger of crossing the line on that. This week, I read in the newspaper about the tragic deaths of two students in a mountaineering accident and about the mountaineering club's response that it is now reluctant to accept members under the age of 18 due to the fear of litigation and the paedophilia angle. We have to think about the balance of what we are doing in the bill.

Katy Macfarlane: I agree with Alison Reid. The evidence has given us cause for concern over the past two weeks.

Dr Murray: So your advice would be to pause and take stock rather than progress and try to amend the bill.

It has been argued that, as comparable legislation has already been passed in England and Wales, certain bits of important information about people whose actions could be harmful to children may somehow be lost at the border if

Scotland does not pass the bill. How do you respond to that?

Alison Reid: We need to reflect on how we have got to where we are today. We all know about the Bichard inquiry and recommendation 19 of the Bichard report, which is what we are particularly focusing on. When the report was published in June 2004, the most recent relevant legislation in England was the Protection of Children Act 1999, but in Scotland we had already passed the Protection of Children (Scotland) Act 2003, which was just about to come into force. Scotland and England were at different points, so I am concerned that we are trying to solve the problem in Scotland by examining where England was when the Bichard report was published. We should take stock—to use your phrase—and think about where we are now. We have the 2003 act, so we should build that into the picture and take time to analyse the whole picture rather than just jumping in and following on from England.

Katy Macfarlane: That is absolutely right. It is better that we do not take off-the-peg legislation but tailor the bill for Scotland, because Scotland and England come from different starting points. The Scottish Child Law Centre is not saying that the whole bill should be scrapped, because we are in favour of protecting children, but it needs to be tailor-made for the system that already exists in Scotland. It is not enough to cut and paste the English system into ours. Let us get the bill right now, so that we do not have to amend it in two or three years. It might take a wee bit more time, but it is certainly worth it.

Mr Kenneth Macintosh (Eastwood) (Lab): I will ask about two matters. The first is the overlap between the definitions of child and protected adult. The definition of a child in most legislation is somebody who is under 16, but in the bill it is somebody who is under 18. You alluded to that issue in the example that you gave of the mountaineers. How would you resolve that? Should we just make the age in the bill 16 and, as has been suggested, use the definition of work or services as the way to access the protection of the vetting and barring scheme?

Alison Reid: It took me a bit to understand the different definitions in the bill, because the construction is quite complicated. It makes sense to define a protected adult as being 16 years old and above. That definition should definitely go down to age 16. The question then is whether a child should be defined as someone who is under the age of 18. I have not reached a conclusion on the matter, but we must think carefully about it, especially in relation to part 3. We have discussed sharing information about people up to the age of 18, when they could be married.

Katy Macfarlane: I agree that there is confusion about the 16 to 18-year-old age group. If an adult is defined as someone who is over 16 and a child is defined as someone who is under 18, people who are aged 16 to 18 will be doubly protected, which is not a bad thing. We discussed that at work the other day. However, the matter needs to be decided on one way or the other. I do not know whether the overlap in ages is good, because it will lead to interpretation problems. In short, we do not have a conclusive answer—the issue is another thing about the bill that we have found confusing.

Mr Macintosh: Other people who wish to extend protection have alerted us to their concern about the confusion that exists about when someone becomes an adult.

I have a question about part 3. A legislative duty to share information will be placed on professionals, which is obviously a step forward. Currently, such arrangements are covered by guidance, but they are surely not working. All professionals who work in the area have a professional and ethical obligation to share information in order to protect the welfare of children, but they are not doing so, which is why the Executive has proposed that there should be a duty to do so. It is normal practice to include duties in bills and the practicalities of how to fulfil those duties in subordinate legislation, guidance and good practice information. If the bill is passed, it will impose a duty to share information, but arrangements will not be implemented until guidance has been produced, consulted on and so forth. Should any parts of the guidance be included in the bill?

Katy Macfarlane: With the greatest respect, you said that people are not sharing information, but the Scottish Executive has said that 95 per cent of professionals are sharing information. There is no doubt that information is being shared, but more detailed guidance is needed to give professionals the confidence to share information.

The process in which we are involved was kick-started by cases such as the Caleb Ness case and the Western Isles case. I do not want to take up too much time by reading out quotes, but Councillor Eric Jackson said of the report on the Western Isles case:

> "Anyone who reads this report will be horrified. It is unacceptable that despite having and sharing the information early intervention did not take place."

A couple of other quotes that I have back up what he said. Information was shared, but no action was taken as a result of that information sharing.

The same applied in the Caleb Ness case, although not to the same extent. Information was

shared as much as it could be, but the inquiry report stated:

"Most GPs and Health Visitors in Lothian are linked up by a computer software system, known as 'G-Pass', whereby information can be shared. However, the software does not allow for a page relating to Child Protection, so the Health Visitors' careful 'Cause for Concern' records cannot be accessed through it."

The report recommended

"that the Trust carefully reviews its record keeping systems to facilitate … sharing of information."

It did not say that people must start to share information; it said that information was being shared, but the "effective sharing of information" had to be facilitated and protocols and guidance had be put in place to ensure that that happened, people received information and action was taken on the basis of that information.

The Scottish Executive has said that 95 per cent of professionals are sharing information. I wonder whether it is a bit naive to think that any legislation—whether on this issue, crime or anything else—will capture 100 per cent of the population. That is an unrealistic proposition. We must think of other ways of getting the remaining 5 per cent of people whom we want to capture. We cannot say that the bill completely covers every professional who works with children.

Mr Macintosh: I accept your view on the matter, although it is interesting to note that last week the opposite view was put to us by Dr Helen Hammond from NHS Lothian, who stated specifically that in the case in Edinburgh information was not shared.

We are talking about a small number of cases for which the current systems do not work. You take the view that we could deal with those cases by facilitating matters and improving the current situation rather than by imposing an obligation or duty, as the bill does.

I go back to the original question. Assuming that we take forward the bill as drafted, should particular obligations to share information be in the bill rather than deferred to subordinate legislation at a later date? Your view is that there should be no duty, but if we go down that road, as is currently proposed, should we include particular protections in the bill, instead of leaving them to subordinate legislation?

Katy Macfarlane: There should be a duty, but it should not be enshrined in legislation: it should be a professional duty. In our written evidence, we identify provisions that should be changed, should part 3 of the bill be kept. However, I stress that we do not think that part 3 should be kept. We should stand back and look at part 3, like parts 1 and 2. We can then decide whether to reintroduce it in a different form, as part of the bill arising from the getting it right for every child agenda. I am talking not about putting it to one side and reintroducing the same provisions after a time delay, but about consulting children and professionals between now and the introduction of the GIRFEC legislation to ensure that any statutory duty that we introduce is right. If we decide not to introduce a statutory duty, there should be consultation on non-statutory guidance.

There are probably too many issues to be addressed. In our view, part 3 is just not right. We are very keen on the sharing of child protection information, but part 3 as it stands is not workable and will not lead to better relationships between children and adults. In fact, the exact opposite will be the case—part 3 will diminish the relationship between children and adults that currently exists. Children will just back off and will not tell adults anything.

I do not know whether the committee planned to question me on this point, but I have downloaded a massive consultation that the Children's Rights Alliance for England and Triangle conducted before the non-statutory guidance on information sharing was produced down south. It is an English document, but children are children. It is full of comments from children that the Scottish Executive did not take into consideration before drafting part 3. I cite one comment by a 17-year-old girl—bearing in mind that people up to the age of 18 are regarded as children down south. She said:

"I think the people who are passing information need to consider the consequences of what will happen if they disrespect the child's wishes … like the child's not going to confide in them anymore or trust them. Obviously that's going to be bad if they're in a situation where they're in danger or they're self harming … and then they've got no one to turn to because they don't trust anyone".

Those are the issues that have not been taken into consideration. When we spoke to the Scottish Executive, it was clear that it had not consulted and had not carried out a children's rights impact assessment. Those are fundamental things that we must do before passing a law. If we do not proceed on the basis of full information and knowledge, we will end up with bad law that does not work and which we will have to amend. We do not want to be in that position.

10:15

Alison Reid: We may have fallen into the trap of looking at one policy issue in isolation. We should really take three issues into account. The first is the issue with which we are dealing—information sharing. The second is what we do with the information once we have it. Katy Macfarlane's point about codes of practice relates to that. The third is confidentiality and privacy, which is a

complicated area of law. There are many different confidential relationships, for example between doctors and patients and between solicitors and clients. In 1984, the Scottish Law Commission wrote a big paper on the issue, which is extremely complex, especially if we take into consideration article 8 of the ECHR. We need to consider confidentiality alongside the other two issues that I have highlighted, and to come up with a complete package for dealing with them.

Ms Rosemary Byrne (South of Scotland) (SoI): Katy Macfarlane has answered the question that I was going to ask. However, I also want to ask about awareness raising, education and training. In your written submission, you mention an issue that has cropped up at the committee over the past few weeks—the complacency that could develop if it is believed that everyone has been checked against the list and the vetting and barring have worked. We know that certain groups will not come forward to be checked against the list. What is your view on that and on the wider issue of educating and training people, including our children and young people, to recognise signs of risk?

Katy Macfarlane: You are absolutely right. I will comment only briefly, because Alison Reid is leading on this part of the bill. We are conscious of the false confidence that will result from people assuming that they have information that a person is above suspicion. That is not the way in which we should proceed in society.

As professionals, parents and carers of children, we must equip our children for adulthood, which means a number of things. It may mean leaving them in the house on their own for 20 minutes when they are 14 or 15, to give them an idea of what that is like. It means ensuring that they start to have a say in decisions that affect them. That should be built up from a low level, so that when they reach adulthood they can make decisions, with the support of their parents and others.

We are not equipping children for adulthood if we smother them and say, "You cannot speak to anyone. Every adult is a paedophile until it is proved that they are not. Don't let anyone touch you. If your teacher touches you, come straight home and tell me, and they will be suspended." We live in a clinical, sterile society. I do not want my children to grow up in such a society, but the attitudes that I have described are gradually creeping in. We need to stop that development in its tracks and re-educate adults and children to assess risk, so that children can take risks knowing that they are protected and their parents know where they are. The only way of equipping our children—who are the adults of the future—for adulthood is to allow them to come across and to deal with risks. The problem could become generational. If current children grow up to be terrified adults, they will bring terrified children into the world and we will never get out of the cycle. I do not know whether I have stolen Alison Reid's thunder.

Alison Reid: Not at all. I want to focus specifically on the reliance on scheme records and concerns about complacency in relation to employment. I draw members' attention to the issue of overseas workers. The Bichard report's recommendation 30 was:

> "Proposals should be brought forward as soon as possible to improve the checking of people from overseas who want to work with children and vulnerable adults."

The Bichard inquiry heard evidence that

> "in future years, potentially 40 per cent or more of the teaching workforce could come from overseas."

Whether or not that is right, that is the evidence that Bichard was given. I am less concerned about overseas teachers, because they are regulated by professional bodies abroad, but it is difficult to put checks in place for other groups, such as play leaders in nurseries. That is where the false confidence comes back into the system, because we are unable to check a large proportion of workers. We really need to address that, although there are difficulties with doing so.

We should also be aware of the scheme's limitations. We are not dealing with stranger danger. The scheme is about work, and we are not able to cover stranger danger in that context. False confidence is a worry, and we must ensure that we educate employers who will have to make decisions about employing people with vetting information in front of them. How they are supposed to do that is another issue.

Marilyn Livingstone: You heard in my declaration of interests that I chair the cross-party group on survivors of childhood sexual abuse, which I have been doing for five years. Through Malcolm Chisholm, we have an expert working group that was set up by the Scottish Executive, which has taken evidence. The group has a good geographical spread and includes representatives from voluntary organisations such as Children 1st.

My concern is about the balance between sharing information and protecting the child's confidentiality. I have had constituency experience of the non-sharing of information resulting in an horrendous situation, but I have also heard from young people that they will not come forward without confidentiality. If they do not come forward, abuse can happen to other children, and we know the ramifications of that. What would be the best way to get the right balance between ensuring that information is passed on and maintaining the child's confidentiality and feeling of safety? It

would be helpful if you could explain how that could be done.

Katy Macfarlane: You are absolutely right and we agree with you about the need for a balance. We do not pretend to have fairy dust to sprinkle over the situation to make it all better. There is and will remain a conflict between sharing information and protecting confidentiality.

It is not right to completely overrule a child's right to any confidentiality. The Scottish Child Law Centre does a lot of training for professionals on confidentiality and the sharing of child protection information. Our view is that the child owns the problem and, if a child discloses something to an adult that the adult thinks is a child protection issue, it is a question not so much of the law but of good practice. That is why we stress that good practice is everything. In our view and experience, if the adult shares with the child what they are going to do, asks the child's opinion and gets them on board, the child is much more likely to agree to do it. There are distinct people whom the child simply does not want to know things; they are generally parents. Sometimes, if the child can be assured that the parent will not know about their problem but help will still be sought and the problem will be addressed, they are much more willing to come forward, accept help and allow confidential information to be disclosed to others who can help.

Part 3 of the bill appears to rule out any right of a child to confidentiality. The word "consent" does not appear in part 3 so, as far as we are concerned, it means that adults can go ahead with or without the child's consent and disclose the information to child protection services, the health service, police or social work services. That is what grates with us. Children have rights—you guys have given them rights in legislation, as has the United Kingdom Parliament, yet it is as if we are running roughshod over those rights by saying that children will not even get to give their consent. They will not even have to be asked; there will just be a duty on professionals to go ahead and disclose the information. If an element of consent were built into part 3, we might be starting to get the mould right.

We are completely bypassing children's rights—we have not even consulted them. If we did, they would say, "Ask for our consent and consult us when you are going to pass on information. We might just startle you and agree that it is okay." Children come back time and again to the point that nobody ever speaks to them or asks them what they want. That needs to be built into the bill. I used the find function on my computer to look for the word "consent" in part 3, but it simply is not there. That is an indictment of our supposedly child-friendly society.

Alison Reid: The professionals forever want an answer, but there must be a judgment call as to whether they share information. We must get the balance right, as Marilyn Livingstone said. The problem is that, under the bill as drafted, professionals will share information and pass it on. The balance is out of kilter. Professionals look for a straightforward answer, but such matters always come down to a judgment call.

Katy Macfarlane: Under part 3, the professionals will not have a judgment call—they will just go for it. Discretion has gone to the wind and nobody will have a judgment call.

Lord James Douglas-Hamilton (Lothians) (Con): I have two questions, the first of which is on proportionality. We have heard that a small minority of people who harm children do so in the course of their employment—there are possibly only a few cases annually. Does the bill achieve the right balance between vetting the many and monitoring the few whom we know pose a real threat?

Alison Reid: That is a good question, but I do not know whether we know the answer. That is the problem and that is why we said earlier that we need to investigate the effect of the current legislation to find out whether the net is too wide or too narrow and what we are achieving in return for the potential damage that we are doing to children by restricting them and perhaps overprotecting them. That is the big debate and the big question.

Lord James Douglas-Hamilton: My second question is about the proposal in your written submission for a specific provision on considering the child's views, as in the Children (Scotland) Act 1995. I should mention an interest, in that I took the bill that became that act through the House of Commons. How should we ensure that people strike the right balance between the child's views and other factors in deciding how to share information?

Katy Macfarlane: Ultimately, the professional is in the driving seat. The bill will almost give professionals a tick-list that says, "Have you spoken to the child about disclosing their information to people?" However, the child might not have said yes. As part of good practice, we must ensure that adult carers and professionals who work with children ensure that they talk to children and listen to their views about how to proceed when there are child protection issues. However, putting a provision on that in legislation will not mean that it will happen. I said that 95 per cent of people in the sector share information anyway, but I wonder whether that is with or without the child's consent—I do not know, but I hope that it is with consent. I do not think that putting a provision in legislation will increase the

95 per cent to 96 per cent or 97 per cent. I think that 95 per cent is a pretty good figure.

10:30

Alison Reid: We mention in our written evidence the way in which section 11(7)(b) of the 1995 act introduced the views of the child into the legislation. I am supportive of the approach taken in that section, which imposes a duty to consider a child's views

"taking account of the child's age and maturity".

That is a good formulation.

Lord James Douglas-Hamilton: If Alison Reid has any views on an amendment that could improve the bill in this regard, could she kindly send a draft amendment to the committee clerk?

Alison Reid: Yes.

Fiona Hyslop (Lothians) (SNP): Do you agree that there should be a vetting and barring system?

Katy Macfarlane: I think that we do. As Alison Reid said, in its current form the proposal is not as good as it can be. Our job, and your job as MSPs, is to make it as good as it can be. We must vet people who work with children. That is fundamental, especially in today's society. However, as Alison Reid said, we must conduct an audit of what is happening, consider where the danger is coming from and pinpoint the areas on which we need to concentrate, rather than taking a blanket approach that stipulates that everyone will be vetted and everyone will be either a member of the scheme or barred.

Wendy Alexander said at the previous committee meeting that there are a million children in Scotland and that there are probably about 2 million people who work with children. We could get to the point at which everyone is vetted. That is not realistic. We are in favour of having legislation in place to ensure that children are protected as far as they can be from people who work with them, but it must be tailor-made to meet our needs here in Scotland. We are in favour of the bill; we do not think that it should be scrapped wholesale.

Fiona Hyslop: The committee must come to a conclusion on these issues. I think that you are saying that you are comfortable with the vetting system that is currently operated by Disclosure Scotland, but the nub of the issue is how we introduce barring, as recommended by Bichard. Is that where the difficulty lies?

Katy Macfarlane: For us, the difficulty lies in the wording in many places in the bill. We have read through the bill. As solicitors, we—not only the two of us but the rest of our colleagues at the Scottish Child Law Centre—have pored over the bill and thought, "What does this section mean?" We are solicitors with a fair bit of experience, but we cannot decide what the bill means. How will it work in practice if solicitors cannot make head or tail of it?

Fiona Hyslop: The bill creates a negative scheme. A million or more people might go into it just to prove that there is no information about them. The alternative is a positive scheme, which would be a central listing scheme. The concern has been raised with us that we cannot have a positive scheme because of ECHR issues. From a solicitor's perspective, is that the central reason why the Executive has proposed this huge scheme, instead of saying, "Look, we recognise that there will be individuals on whom we have information and we must find a mechanism for barring those few individuals, rather than vetting the whole of Scotland"?

Katy Macfarlane: We have not considered that issue in detail. I do not have a view on whether we should take a blanket approach that means that everyone is vetted and, if their certificate is blank, they are okay to work with children, or whether we should pinpoint people who should not work with children.

Alison Reid: It comes back to the fundamental issue that we do not know where the problem lies. Until we know where the problem lies, we cannot address it. If we can find a way to establish where the problem lies, we might be in a better position to come up with a solution.

Katy Macfarlane: It is necessary to conduct an audit that investigates where the dangers come from. Many of the dangers come from stranger danger. The bill will not touch that issue—it will not deal with the guy who hangs around outside schools. A couple of weeks ago, a representative of the Association of Chief Police Officers in Scotland told the committee that other provisions are in place to track down such people and to ensure that they are caught. However, this is not the right way of dealing with the matter. We must stand back and carry out an audit. We must ask where the danger is coming from and what poses the greatest risk to our children, and attempt to address those issues through legislation.

I do not know whether the bill breaches our privacy under article 8 of the ECHR. As a professional who works in child law, I would be happy for my record to be downloaded by someone else, but that is because I have nothing to hide. As was mentioned earlier, there are people who have a wee thing on their record that they do not want the world to know about, but the world will know about it. That will cause a few problems. I am sorry, but I do not know the answer to Fiona Hyslop's question.

Mr McAveety: We have been told that we need to get the balance right. Bluntly put, the views that the voluntary sector has expressed in its submissions on the relevance and practicality of, and the need for, part 3 are substantially different from those of the statutory sector. Why are their views so divergent?

Katy Macfarlane: They are divergent because the statutory sector is coming from an adult's perspective and the bulk of the voluntary sector—Children 1st, Children in Scotland and the Scottish Child Law Centre—is coming from a child's rights perspective.

Mr McAveety: Last week, councils and health boards were strongly of the view that, despite potential problems, part 3 is still the right thing to do. The voluntary sector took a much more sceptical view. The committee and I are trying to get a sense of how we can navigate between those two positions. Can you help us to do that?

Katy Macfarlane: You make a good point. COSLA and some local authorities are very much in favour of part 3, but their concern is the protection of adults. Last week, Maggie Mellon said that this is almost a protection of vulnerable organisations bill, but it is supposed to about protection of vulnerable adults and children. That is the issue on which we must focus. Of course adults in jobs that involve working with children will want to share information, because the consequences for them if they do not are possible suspension, disciplinary procedures and having to appear in front of a tribunal. We are losing sight of the welfare of the child. Under the 1995 act, the welfare of the child is paramount. That is also the primary consideration under the United Nations Convention on the Rights of the Child. We must bear that in mind when passing on information. It is not about the protection of adults, although that is a factor, but essentially about the protection of children.

The reason why there is such a discrepancy between the views of the statutory bodies and those of the voluntary bodies is that they are coming at the issue from different angles. There needs to be a compromise—we need to meet in the middle. However, that is where the devil is. Consultation will help us to get together. However, consultation on part 3 was very limited and was by invitation only. We did not come along and no children were invited. I am not surprised that the bill does not accord with anyone's point of view, because no one's point of view was considered at consultation stage. We must get round a table and try to reach a compromise—that is the only way. We cannot go down the line of just protecting adults or of doing everything that children say. We must find agreement in the middle. We can do that only by sitting round a table with representatives of all those with an interest. That is why we must stand back and take our time over the issue. The bill in its current form will not work.

Dr Murray: You talked about stranger danger a few minutes ago, but is it not the case that 80 per cent of the danger that children face occurs in their own home, either in the form of abuse or neglect, given the unfortunate increase in substance abuse and drug addiction in particular? Are you concerned that by concentrating on stranger danger we might be taking effort away from identifying youngsters who are in danger at home? Should we concentrate on training professionals to recognise when the children in their care are in danger at home, rather than their having to hope that the children are okay and ticking a box to say so?

Alison Reid: Yes. It is well known that the main dangers to children are within families or circles of friends. I hope that professionals would be able to consider that aspect, as well as what they can do at work. We need to encourage people to recognise the signs of danger to children in their home. I hope that what you suggested would not happen and that one aspect would not detract from the other.

Katy Macfarlane: I agree absolutely. We hoped that the bill would do the work that training should be doing, but it will not. We need to get out there and speak to people, run workshops with them and carry out role-play with them. Legislation does not train; it sets out the framework for people to decide whether they want to go ahead with it. We need to devote a lot of resources to training people and telling them what it is okay to do. So many professionals are terrified and do not know what to do, because they do not have leadership or people telling them that it is okay not to disclose at the first instance but to work with the child to get their confidence before disclosing, as long as they are kept involved in the process. Training is hugely important.

The Convener: You said in your opening statement that you were concerned that provisions in part 2 of the bill in relation to vetting might fall foul of article 6 of the ECHR, given the lack of an appeals process. Will you expand on that?

Alison Reid: Yes. There are two aspects to that. The first relates to the consideration for listing and the decision to list. There is a lack of clarity in the bill. In relation to consideration for listing, the definition states:

"'conduct' includes neglect and other failures to act".

The bill states that individuals will be considered for listing

"Where Ministers are satisfied that the information indicates that it may be appropriate for the individual to be included".

Given the vagueness of the language used, it is unclear what conduct would leave it open to ministers to list an individual. That could be a subjective decision, given the definition of harm, which we mentioned in our submission. We are concerned about that. The fact that someone might not know that they had done something wrong raises concerns in relation to article 7 of the ECHR, which is about whether offences are foreseeable.

Articles 6 and 8 of the ECHR are also relevant. Some of you might be aware of last month's case of R v Secretary of State for Health, which was based on part VII of the Care Standards Act 2000 and considered the provisional listing system in England in relation to the protection of vulnerable adults. The case went to judicial review. The provisional listing system for vulnerable adults is slightly different in that people cannot work while they are provisionally listed. The same wording is used in the act in that it states that "it may be appropriate" to list people. That is the test that is used.

10:45

In that case, it was held that the law was incompatible with articles 6 and 8 of the ECHR. The situation with regard to article 6 was slightly different because, once the person had been provisionally listed, they lost their job. However, under the bill as drafted, it will be left to ministers to provide guidance on what should happen when someone is considered for inclusion on the list. The content of any such guidance will require careful consideration to ensure that the procedure remains compliant with article 6.

However, in R v Secretary of State for Health, the law also fell foul of article 8 of the ECHR. As the suspicion of misconduct was serious enough for the individual to be felt to constitute a risk to vulnerable persons, it was also calculated that it would interfere with his personal relationship with colleagues, the vulnerable persons with whom he had worked and others. The same applies to the bill. The policy memorandum suggests that if an employee is being considered for listing, the employer might increase the level of their supervision. However, if that happens to someone in a small business, it will be obvious to all their colleagues that something has happened. In the case that I cited, article 8 was invoked because the person in question was being treated differently as a result of being provisionally listed.

Under the bill, once a person has been listed, they have recourse to a rather limited appeals procedure. For example, under section 17(4), they cannot question or dispute the tribunal's findings of fact. However, as the Faculty of Advocates points out, an individual might not have been able to express certain views at their tribunal hearing. We are also concerned that, once a person has been listed, they cannot apply to the court for an interim suspension of their barred status.

Decisions on automatic listing have also been left to ministers, which I think is an inappropriate use of secondary legislation. If they are able to decide to list someone automatically, that provision should be made clear in the bill.

The Convener: With regard to vetting information, you mentioned the very specific issue of listing. Actually, there are four criteria for vetting information, two of which relate to straight factual matters such as convictions. The other two criteria set out in section 46 are

"information which the chief officer of a relevant police force thinks might be relevant … and … such other information as may be prescribed"—

again, I presume, by regulation. It seems that, under the bill, people are not allowed to challenge those two criteria, even though ministers will be required to correct a scheme record that proves to be inaccurate. Can a person challenge those grounds? If not, is that provision ECHR compliant?

Alison Reid: That was the other point that I wanted to make.

If there is non-conviction information on a job applicant that a chief constable thinks might be relevant, it will be included on the certificate that goes to the prospective employer, who will have to decide whether it is true. The mechanism for verifying such information is a problem in itself. Moreover, if the person does not get the job for whatever reason—perhaps because another applicant had a clear certificate—what do they do then? Their certificate now contains certain information that they might well not agree with because, for example, it was provided by someone who was unhappy with them in their previous job.

The only recourse open to those people can be found in section 48, which allows a person to challenge a scheme record's accuracy. However, ministers will correct inaccuracies only if they are satisfied that the information is inaccurate. With the presumption that the information on a certificate is true, the burden of proof immediately shifts and, unless ministers are satisfied otherwise, the information remains on that certificate. There is certainly no mechanism for discussing the standard of proof used to reach such a decision and, beyond the provision in section 48, people have no other way of clearing their name. In my opinion, that is incompatible with article 6(1) of ECHR.

The Convener: As there are no other questions, I thank the witnesses for giving evidence and

providing us with further food for thought on this bill.

10:51

Meeting suspended.

10:58

On resuming—

The Convener: We move on to our second witness—I was going to call him a panel, but that is probably an exaggeration—Brian Gorman, who is the manager of Disclosure Scotland. Do you wish to make an opening statement?

Brian Gorman (Disclosure Scotland): Yes. Thank you for inviting me to give evidence on the Protection of Vulnerable Groups (Scotland) Bill. For the past four and a half years, I have been responsible as head of Disclosure Scotland for the day-to-day management and delivery of the Scottish ministers' functions under part V of the Police Act 1997. The proposals in the bill will affect the 1997 act and, therefore, Disclosure Scotland's work.

Disclosure Scotland will be part of a new executive agency that ministers are establishing to deliver their functions under the bill and the 1997 act. It will continue to provide basic, standard and enhanced disclosures under the 1997 act and will also carry out some similar functions and tasks under the bill. Disclosure Scotland will be responsible for application handling, gathering criminal record information, collating such information, passing it to the new central barring unit, maintaining the list of scheme members and ensuring that any information about a scheme member that subsequently comes to light is brought to the central barring unit's attention. We handle applications and gather information now, so our tasks will be similar. At the moment, any information that is gathered is sent to the applicant and the employer but, in future, we will pass the information to the central barring unit for consideration.

11:00

The introduction of retrospective checks for people who are already working with children and protected adults could mean that as many as 350,000 checks will need to be carried out annually for the first three years of the scheme's operation. Those will be in addition to checks for people who join the regulated workforces for the first time and our on-going work under part V of the 1997 act. Disclosure Scotland will aim to carry out all that work within agreed service levels.

The other big change for Disclosure Scotland will be its move from the Scottish Criminal Record Office to the Scottish Executive. Almost all staff have attended a presentation about the proposals in the bill that affect Disclosure Scotland. The Scottish Executive is working with us to involve staff in and inform them of the significant changes that lie ahead.

I am confident that, with what is being done and what is planned for the future, my colleagues and I will rise to any challenge that the bill has for us.

Dr Murray: As you know, equivalent legislation has been passed in England and Wales but, in Scotland, the statutory sector's views on the bill diverge from those of the voluntary sector. If we were to take the voluntary sector's advice and not progress with the bill, what would be the consequences for information sharing with England and Wales?

Brian Gorman: It could present difficulties if we were to work to different pieces of legislation. At the moment, the whole UK works to the Police Act 1997, and moving away from what the rest of the UK is doing could have consequences for the sharing of information across borders if different determinations were being made as to whether a person should work in a prescribed workforce. There could be challenges under the current arrangements if we were not to move forward at the same time as England and Wales and Northern Ireland.

Dr Murray: Disclosure Scotland experienced difficulties not just with the implementation of POCSA but with various other things that were going on at the same time. You said that the retrospective element of the bill would mean an additional 350,000 checks in Scotland. England and Wales have not had any system and will have to introduce the whole process. They have 10 times the population of Scotland, so will they be able to cope? If problems of the sort that occurred here occur there, could there be dangers in relation to the information that we receive?

Brian Gorman: You are right, in that England and Wales have considerably more retrospective checking to do—I believe that a figure of something in the region of 9 million checks has been quoted. However, consideration is being given to the best way of introducing retrospective checking and I am sure that, when that plan is produced, it will allow for the proper checking of the workforce in England and Wales within a reasonable timescale.

The 350,000 retrospective checks a year that Disclosure Scotland expects to have to undertake will include a number of checks that we already do, so I do not envisage an additional 350,000 checks. We reckon that about one million people in the workforce will need to be rechecked. However, because a large number of the checks

that we do every year are repeat or retrospective checks, we reckon that probably only 200,000 to 250,000 additional checks a year will be required. We are in discussions with the Scottish Executive on the timescale for the introduction of retrospective checks, the period over which they should be carried out and the staffing levels required to undertake such an increase.

It is worth pointing out that when Disclosure Scotland first started up four and a half years ago, we did about 140,000 checks a year, but this year we expect to do 600,000 checks. Our turnaround time currently averages four days if Disclosure Scotland can supply the disclosure without going elsewhere. We have shown that we can cope with increased volume and, working together with the Scottish Executive, which funds the Disclosure Scotland service, we can plan to ensure that there are no delays involved in additional checking if that results from the bill.

Dr Murray: Is it proportionate for an adult who works in the statutory sector and who has daily contact with children to be checked in the same way as a volunteer parent who occasionally helps out at a school disco?

Brian Gorman: The short answer is yes—it is proportionate. Anyone who works with children or protected adults should undergo the same level of check, whether their position is voluntary or paid. We do not want to create a system in which volunteers are not checked at the same level as paid workers, as those seeking access to children or protected adults for the wrong reasons would see voluntary work as the easiest route to that access and would therefore go for voluntary rather than paid work.

The Convener: I seek clarification of your answer to Elaine Murray's first question on information sharing among Scotland, England and Wales and Northern Ireland. Your answer implied that there may be difficulties because there would be different procedures for barring. If different bodies treat information differently, does that create a problem when they share that information?

Brian Gorman: We currently have agreements with the Department for Education and Skills to access the barred list in England and Wales. We are seeking access to the Northern Ireland list, although because Northern Ireland shares its children's list with the DFES, we get the information via checks with England and Wales.

We get a daily update from England and Wales on the current listings of people on the vulnerable adults' list and the children's lists, and that will continue—we will still get that information. However, there would be difficulties if we had different means of deciding why people go on the lists. Someone who was barred from working with children in England and Wales might not be barred in Scotland unless we extend the scheme to ensure that, irrespective of whether the bar is applied in Scotland, England and Wales, or Northern Ireland, it is effective throughout the UK. We are currently examining how we can ensure, under the legislation, that we catch everyone who appears on any list throughout the UK.

The Convener: I am still not clear about the information. Presumably, if someone from England came to work—

Brian Gorman: We would check the barred list in England and Wales.

The Convener: I was thinking about vetting information, on which decisions are based to include someone on the barred list or perhaps not to employ them even if they are not barred. Does the bill resolve any issues to do with access to vetting information, or are there no such issues?

Brian Gorman: Part V of the Police Act 1997 adequately covers the need to obtain information from police forces in England and Wales and Northern Ireland. That will not change. There might be an issue with additional information for prescribed purposes, if the purposes were prescribed elsewhere but not in Scotland. However, we will still get the vetting information from police forces in England and Wales and Northern Ireland.

Mr Macintosh: I want to ask about the figures on the types of people who are being checked. I appreciate that you may not have all the information to hand, but you could perhaps give us a guide.

You said that you started checking people at a rate of 140,000 checks a year and that the rate is now 600,000 a year. The total for the first four years is 1.5 million. Is that correct?

Brian Gorman: Yes.

Mr Macintosh: This is of particular relevance to the Finance Committee's report, in which serious concerns were raised about the cost and impact of the bill. How many of the 1.5 million checks were individual checks and how many were repeat checks?

Brian Gorman: The people who are affected by the bill are those who have had checks at enhanced level and some who have had checks at standard level. Of the 1.5 million checks, just over 900,000 were at enhanced or standard level. We cannot get exact figures, but we estimate that one third, or 300,000, of the 900,000 are repeat checks.

Mr Macintosh: How many times are checks repeated? I take it that your current systems do

not allow you to keep individuals' names and addresses, and so you cannot give a total number for individuals who have been checked. You run a check and that is it.

Brian Gorman: Yes.

Mr Macintosh: If your estimate is that one third are repeat checks, could that third be responsible for all 900,000 checks?

Brian Gorman: Yes.

Mr Macintosh: In other words, if a third of the checks are repeat checks, the total number of individuals who have been checked could be 300,000. It could be that 300,000 people have had repeat checks, plus an additional 50,000, 100,000 or 200,000 people who have had one-off checks, but we do not know that for sure.

Brian Gorman: We cannot say. We have tried to interrogate the system using postcodes and address information to try to identify whether checks for the same address have been made. That is where we got the figure of one third from.

Mr Macintosh: Did that interrogation give you any idea about how many repeat checks people had? What was the variation? Did some people have five checks, or did everyone have two or three?

Brian Gorman: The information that we have received from individuals is that some people have had more than one repeat check. A number of individuals have written to us to say, "This is the sixth check that I have had to undergo as a volunteer—surely something can be done about that." Some people undergo a number of checks through different employers for different reasons. However, without the name of the individual, we cannot search the system to find out whether they have had, say, seven checks.

Mr Macintosh: We are all aware that multiple checks are a problem that the bill is designed to address. I am just trying to understand the figures. Apart from anything else, people who volunteer in one area often volunteer in other areas.

One of the major concerns about the bill is the underlying concern that a system that is clearly needed and wanted by the statutory sector, to which it would apply, is seen as both a blessing and a curse by the voluntary sector. The voluntary sector includes people whose full-time, paid employment is very similar to jobs in the statutory sector, as well as the parent helper at the school disco. Can you break down your figures on applications for disclosures? Even if we do not take into account repeat applications and consider only individual applications, how many are for posts within the statutory sector and how many are for volunteer posts?

Brian Gorman: Checks for volunteer posts are applied for via the central registered body in Scotland. Once the check comes to us from that body, we do not know whether it is for a voluntary post. The check is processed and the umbrella body—the CRBS—is invoiced. The CRBS certifies that the check was for a voluntary post and the invoice is then sent to the Scottish Executive for payment.

11:15

Mr Macintosh: How many requests for checks do you get from the CRBS?

Brian Gorman: We get approximately 1,100 per week. In the past 12 months, we have had about 68,000 applications from the CRBS. Some of the larger voluntary organisations are registered with us and come to us direct. They are mainly organisations that have paid employees even though they are voluntary organisations. When we undertake checks for them, they have to pay for them. Most voluntary organisations—in fact, 99 per cent of them—go through the CRBS because, in that way, they do not have to pay for the checks on their volunteers.

Mr Macintosh: I can understand that incentive.

How many people get checks in relation to full-time posts and how many are checks for people who help out with school runs and discos or one-off events? It is perhaps the checks on the latter group that cause the greatest concern.

Brian Gorman: In broad terms, the CRBS sends us 60,000 to 70,000 requests for checks per year, and those are for people who are volunteering to do that type of work.

Fiona Hyslop: I take it that you have read the Finance Committee's report on the bill, which contains some stark comments. It notes:

"In supplementary evidence, the Executive stated that the current disclosure system costs £100m over ten years and 'this scheme is estimated to be less expensive through increased efficiency.'"

Given that Disclosure Scotland will have to operate the new system, do you agree with that?

Brian Gorman: The biggest project that will need to be undertaken in relation to the new system is the development of an information technology solution to handle the information and automate as much of the process as possible, although there will still need to be human intervention. If we introduce online applications at all levels, paper applications can be done away with. If applications are made online, they will go directly into the system and there will be no need for them to be input by employees.

Separately from the bill, we are also developing a new system that will allow information to be screen scraped as it enters the system. Information will be taken away behind the scenes and searches will be carried out on the criminal history system in the police national computer and on the lists that we hold, which, as I said earlier, include the English list and the Scottish list. When Disclosure Scotland staff look at the check, the possible hits will be displayed. The human time and effort that are spent in searching the system will be reduced, but there will still be a human element of decision making on whether a record applies to the applicant.

The new system will certainly reduce our overheads. As we know, the biggest cost to any employer is the cost of staff, which accounts for 80 per cent of overheads. However, I am not saying that we will have a paperless, workerless office. We will have to ensure that the information that the computers provide to the operators is quality checked, and we are satisfied that that will happen.

Those are the major things that we are doing to try to reduce the cost of running the service. We are trying to automate as much as possible both the user side and the Disclosure Scotland side.

Fiona Hyslop: So you think that the new system will be more efficient and cost less than the current system in the long term.

Brian Gorman: Yes—once we get the IT developments in place.

Fiona Hyslop: Is the budget of £2 million enough for you to do your job?

Brian Gorman: I am not an IT expert so I do not really know whether £2 million is realistic, to be honest. I do not have an in-depth knowledge of IT systems.

Fiona Hyslop: The crux of the issue is that you are managing an IT-dependent system. It would be helpful if you would write to the committee if there is further information on that. The committee is pressed for time to produce its report, so it would be helpful if you did so promptly.

Paragraph 6 of your written submission goes through your current numbers. You expect about 1 million Scots to be captured by the system, a lot of whom would have been checked anyway—the extra checks amount to between 200,000 and 250,000 per year. Do those figures cover just the set period in which you will go through the existing workforce? Will the savings in relation to number of checks come in because the system will be a contemporary one, which means that the information will be current on any given day as opposed to just when the disclosure was issued?

Brian Gorman: The advantage of the proposed system is that the continuous updating will, we hope, reduce the number of repeat checks that will be required. The information will be fed from the systems that we will check into the central barring unit so that it can make barring decisions. The proposals for short scheme checks mean that we anticipate a vast reduction in the number of enhanced disclosure checks—new and repeat—that will be requested. Therefore, as well as making savings because of IT, we expect that there will be a reduction in the number of enhanced checks that Disclosure Scotland will have to deal with. Once everyone is in the scheme, given the constant updating that will take place, there will be no need for people to apply for disclosure checks as often as they do at present.

Fiona Hyslop: To follow up on that, I will ask you the same question that I asked ACPOS. If something happens that causes a member of the scheme working with or volunteering for a small voluntary organisation to have a record that is fed into your system, how will you ensure that when the new information comes in from the police or wherever, you will be able to reach the organisation and tell them that the person is no longer suitable?

Brian Gorman: There are two issues: will the new information result in the person being barred, or will it not affect their barred status?

The constant updating that we have been speaking about will be provided to the central barring unit and not to the employer. If the employer wishes to find out the current status of an individual under the new scheme that is proposed in the bill, they will need to do a short scheme record check, either by computer or by making a phone call; I think that that is what is being proposed.

If the central barring unit bars an individual from working in a particular workforce because of new information that the police have supplied, there will be an obligation on the central barring unit to inform the individual that he is barred and to obtain details of who he went through the scheme with. The central barring unit will then contact that group, perhaps through the CRBS, to inform it that the individual is now barred. Remember that, under the bill, a barred person will commit an offence if he continues to work within the scheme.

Therefore, we will notify a newly barred individual that he is now barred and is under an obligation not to work within the scheme. We will then trace through the individual the voluntary organisation that the individual was working for and inform it that the individual is now barred.

Fiona Hyslop: All that would depend on the co-operation of an individual who might be an evil

person who wants to harm children—in fact, they have probably done so already; that is why they will have a record—to say which organisation they were currently volunteering for and had access to.

Brian Gorman: Obviously, we will have recorded the organisation that applied for the check when the person entered the scheme, if the person came through that system.

Fiona Hyslop: If part of the benefit of the scheme is that it is a passporting scheme—once you have gone through the process, you do not have to go through it again—how do you keep track of any other organisations that have access—

Brian Gorman: An organisation that takes a person on board has to record an interest in him. Before they can even make the short scheme check, the organisation needs an access code. We will record that information and will be able to say who asked for a short scheme check on an individual.

Fiona Hyslop: Will the central barring unit be able to access that information?

Brian Gorman: Yes. The central barring unit will be able to say who was the last person to run a short scheme check on an individual.

Fiona Hyslop: Therefore, the unit should be able to trace the organisation that the applicant was working with without having to get in touch with the applicant.

Brian Gorman: Yes. However, under the bill, we will need to tell the applicant that they are barred, because if they continue to work in the workforce, they will be committing an offence.

Fiona Hyslop: The passporting element is welcome. Several years ago, we took evidence from you about your concerns. The new scheme involves having an up-to-date system. Is it possible to establish such a system under the existing POCSA legislation?

Brian Gorman: Anything is possible. However, for a start, the POCSA legislation covers only children, not protected adults. Given that it would need to be significantly extended to deal with the situation that we are discussing, which could lead to the process becoming cumbersome, I feel that new legislation would be the best way of covering children and protected adults. The bill is trying to achieve such a system as well as meeting Bichard's recommendation that there be a scheme that enables a trace to be kept on people who work with children and protected adults.

Fiona Hyslop: If we were dealing only with children, and not vulnerable adults, do you think that it would be easier to establish such a system under POCSA?

Brian Gorman: It would certainly be easier, as you would not have the protected adults element to incorporate. That would have to be dealt with in new legislation, as POCSA relates only to children.

Mr Adam Ingram (South of Scotland) (SNP): The welcome feature of the bill is that repeat checks and multiple disclosures will no longer be required. Instead, there will be a constant updating process. I want to explore how that system will work. I get the impression that you will be interrogating police computers for the information and then transferring it to your own records. Could you tell us a little bit about how that will work?

Brian Gorman: Currently, when we do a check, we transfer information that we find to a document that is known as the disclosure certificate. That is as far as it goes, although it is also held on our internal workflow system. In the future, when we get information from police sources, as well as recording that information on our system we will pass it to the central barring unit, which will make a barring decision based on that information. If a barring decision is made, a disclosure certificate will not be issued and the person will not be entered into the scheme. If the information suggests that the person should not be barred, the disclosure certificate will be issued and information will be held by the central barring unit. The continual updating of the information is the new feature. Obviously, it is a bit more problematic, as we have to devise a way of ensuring that the central barring unit receives information when it changes on the police system.

11:30

Scotland has a central intelligence database that is known as SID—the Scottish intelligence database—and a central criminal history system that holds all of the information that we need to carry out the checking of sources. People's names are flagged on that system, which tells us that a police force holds information on them. We need to adapt the system to enable us to get updated information from the police immediately. We are working on that at the moment. Just as important, we need to find out when information is deleted from the police systems, because we will want to tell the central barring unit that a certain piece of intelligence is no longer held by the police, which means that the central barring unit should not hold it either. At the moment, we are examining how we can update the system, which we do not think will be too difficult or expensive, and also how we can get information off the system.

Another issue concerns proscribed information, which could come from a local authority. Again, it is envisaged that we will have a single point of contact in the local authority. The local authority

will set up a central unit that will pass information to the central barring unit.

Mr Ingram: Forgive me for saying so, but that sounds like an extremely complex and bureaucratic system. It seems to be entirely dependent on your IT systems. What assurances can you give us that the quality of the information will not suffer as it transfers through those various routes?

Brian Gorman: At the moment, as ACPOS might have told you, the police have methods of evaluating the information. Obviously, conviction information is updated directly by the courts—the courts put the information on to the criminal history system on the day on which the person is convicted. The police input the pending prosecution when the person is charged and the procurator fiscal updates other information that directly feeds into the criminal history system. When new intelligence is placed on the intelligence system, that is flagged up in the criminal history system.

On the intelligence side, the police have a 5x5x5 evaluation rule to ensure that the information is valid and relevant. That offers a degree of assurance as to the quality of the information.

The information is transferred to us exactly as it is held on the systems. It is not as if someone is inputting the information to transfer it; it is downloaded automatically. The information on the police systems, the criminal history system and the central intelligence system is moved by the IT system. There is no human intervention beyond the pressing of a button to allow that to happen, which means that the quality of the information will not diminish.

The new part of the system relates to the work of local authorities. Obviously, a lot of discussion needs to be undertaken on how that information will be validated and on the quality of that information.

Mr Ingram: I still think that we need to be concerned about this. For example, with the best will in the world, human error will creep in from time to time and mistakes will be made. If some piece of non-conviction information appears on someone's record and they want to challenge it because it will blight their career and their future employment prospects, how will they go about doing that?

Brian Gorman: Currently, there is a disputes procedure under part V of the Police Act 1997, which allows any person to dispute any of the information with ministers. If the issue is about what we call other relevant information, or non-conviction information, the dispute is generally passed to the police force that gave the information to us and they reconsider whether the information is relevant.

In general, the disputes that we deal with are not so much about inaccurate or incorrect information as about information that people do not think is relevant. If an incident happened five years ago and the person was not charged, they wonder why the police are disclosing it. Under part V of the Police Act 1997 and under the bill, the decision on relevance lies with the chief officer of the police force. If the chief officer continues to believe that the information is relevant for a particular post, in the case of part V, or a particular workforce, in the case of the bill, he will stand by his guns. The only recourse that is open to the individual is to take the chief officer to court through civil proceedings.

Mr Ingram: I want to go back to the financial memorandum. I understand that Disclosure Scotland is looking to move to new premises, but that is not included in the financial memorandum. You will also have staff recruitment, retention and training costs, but those do not appear in the financial memorandum. When we add those costs to the IT costs, we may be looking at a much bigger bill than is anticipated. Will you comment on that?

Brian Gorman: Disclosure Scotland is currently looking not for alternative premises but for secondary premises. Because of the volume of work, we have no room in our current accommodation to expand any further. Should the bill be passed and the new central barring unit be established, we will have no room to accommodate that in our current accommodation. Several options are being considered and costed, but no final decision has been taken. Obviously, whichever option is chosen, it will be the most efficient one, with regard to Disclosure Scotland's operational costs and those of the proposed new central barring unit. No site has yet been identified. Discussions are on-going with the Scottish Executive on where the premises might be.

The only issue that staff have concerns about is that, because a new executive agency is in the offing, where it operates will be up to ministers. If we move from the greater Glasgow area because ministers want to locate us somewhere else in Scotland, that will have a massive cost. The existing staff probably would not want to work in Inverness, Aberdeen or Dundee so, if we were to move out of the greater Glasgow area, we would start off by looking for replacements for the 200 existing staff as well as for any additional staff.

Lord James Douglas-Hamilton: You mentioned that you are in discussions on timescales. What are your views on the length of the phasing-in period?

Brian Gorman: I assume that by phasing in you mean the retrospection period for bringing people into the scheme. We envisage a three-year period, hence our estimate of 300,000 or so extra checks per year over three years. A timescale of three to five years was first envisaged, but it is now thought preferable to bring people into the scheme as soon as possible.

Lord James Douglas-Hamilton: I have a question about employees from overseas. If an employer asks you for information about somebody who has spent time overseas or who has just come from overseas, it may not be easy for you to access all the relevant information. How can you be better supported in that?

Brian Gorman: Recommendation 31 of the Bichard report is that we should get more information from foreign countries. People in the European Union are working on how we can gain information from EU countries. At present, there is an exchange of information for policing purposes. When a foreign national—let us say someone from Poland—is convicted in this country, the central UK notification unit notifies the Polish authorities. Vice versa, if a Scot or UK resident offends abroad, we are notified. That scheme is to be extended to include intelligence and then to include employment disclosure. We are working with the EU.

The Home Office has arranged for the Criminal Records Bureau, our sister organisation in England and Wales, to carry out inquiries with other countries. The CRB has identified the countries from outwith the EU from which people most commonly seek employment. It has found that we get a lot of people from Australia, the Philippines and certain other countries, and it has negotiated with the authorities in those countries to try to get access to conviction information for disclosure purposes.

Lord James Douglas-Hamilton: You may not be able to answer my next question, as the matter may not be within your knowledge. We have heard a certain amount of evidence about costs to the voluntary sector, some of which is to the effect that the Executive may have underestimated the actual costs. Do you have any views on that? Are the problems insurmountable?

Brian Gorman: If there is a will, there is a way. I do not know the current cost of disclosure to the Executive arising from the voluntary sector or the cost to the voluntary organisations. However—it is easy for me to say this—it would not be right to exclude the voluntary sector just because there may be additional costs to the Executive, as that would encourage the paedophile element to try to get into the voluntary sector.

Lord James Douglas-Hamilton: My final question is about the efficiency of operations. A paedophile on your list might happen to have the same name as two dozen other people.

The Convener: For example, Smith.

Lord James Douglas-Hamilton: Are you confident that there has never been a misidentification or mix-up of names? Is there a checking system to ensure that the right person goes on the list and not somebody else who is unlucky enough to have the same name?

Brian Gorman: Obviously, quality is built into our processes. If we hit a record that may be a case such as you describe, we give that hit to our exceptions handling people, who make further inquiries by contacting the Scottish Executive or the holders of the list, in the case of the DFES, and the individuals concerned. We verify everything as much as possible. At the end of the day, if the worst comes to the worst, we ask for fingerprints to compare.

The Convener: As members have no more questions, I thank Brian Gorman for the evidence that he has given on behalf of Disclosure Scotland.

We will have a short suspension while the minister and his team make their way into the room.

11:43

Meeting suspended.

11:47

On resuming—

The Convener: We move on to our final witness session. Last but not least, I welcome Robert Brown, the Deputy Minister for Children and Young People, back to his familiar place. The Executive officials from the Education Department who are with him today are Claire Monaghan, head of the children and families division; Andrew Mott, bill team leader; and Maggie Tierney, head of protection and regulation branch. The star from the Justice Department today is Liz Sadler from the police division. They are here to give evidence on the bill. Once the minister has made any opening remarks, I will open up the session to questions.

The Deputy Minister for Education and Young People (Robert Brown): Liz Sadler is here to keep us all in order, as a guest from another department.

This is an important bill that raises a number of complex issues with which I know the committee has been grappling. I look forward to reading the

stage 1 report in due course. The committee is aware that a lot of time and effort has gone into child protection, for the good reason that a number of high-profile and tragic cases have occurred, which have rightly raised public concern. Some of those cases have involved sexual or physical abuse in the home. The biggest proportion of child abuse occurs at the hands of a parent, a partner or a close relative. The central public issue is to ensure that public agencies and professionals are in contact with the family and are equipped and trained to act properly to reduce the risk to the young person. That was the purpose of the children's charter and the extensive programme of improvements to child protection arrangements, which were based on taking responsibility and sharing information, on which the committee receives reports from time to time.

However, some tragedies occur, because people in professional or other positions of trust betray that trust and harm children and young people. The central purpose of the bill is to build on the experience of the current regime—part V of the Police Act 1997 and the Protection of Children (Scotland) Act 2003—to streamline it, to reduce the bureaucracy, to eliminate the gaps in current protection and to extend protection to vulnerable adults, which is a new area for the Education Department and for the committee.

The majority of people who work and volunteer with children and protected adults do so entirely with the safety and welfare of those children and protected adults at heart. Many of them provide all sorts of life-enriching experiences for young people. However, there are some people who would harm them and who use the workplace as a means of gaining access to them. The vetting and barring provisions in the bill will provide greater protection for children and protected adults and will prevent unsuitable individuals from entering employment or voluntary work with them. The bill will also deliver the means to remove them if they become unsuitable. Furthermore, it will provide an additional tool for employers to use alongside safer recruitment and protection procedures when determining the suitability of a person to work or volunteer with their client groups.

The bill's proposals follow the tragic murders at Soham and derive from the principle recommendations of the Bichard inquiry. It is important to stress that early on, because it is the background to a lot of what the bill is trying to achieve. The recommendations called for a system of registering those people who work with children or protected adults. It is fair to say that the vetting and barring provisions have been warmly welcomed by almost all of our stakeholders, although there are issues on the detail. I am aware that a number of issues have been raised in evidence to the committee and in the Finance Committee's report. Some of those are matters of detail, but there have been concerns relating to the fundamental purposes of the bill and the perceived proportionality of the scheme. A view that seems to swirl around this issue is that children are overprotected to the extent that they lose the innocence of childhood and that people, particularly men, are discouraged from entering certain jobs or from volunteering. I take those concerns seriously, but I want to put them in context.

It is important to remind ourselves of the central purpose of the bill—indeed, of the existing legislation—which is to protect children and vulnerable people from the attentions of some really nasty individuals who can cause them serious harm. There could be up to 10,000 individuals in Scotland who should either not be allowed to work with children or vulnerable adults or about whom there is information that should at least be considered by potential employers within the statutory, voluntary or private sectors. There is little argument about any of that, and there is a high level of agreement on the need for a system to keep many such people out of the workforce that deals with vulnerable people.

The bill provides a scheme for those working with vulnerable groups and will make it an offence for a person to enter the relevant workforce if they are barred from so doing. Importantly, it will streamline and improve the current separate and, to some extent, cumbersome arrangements—particularly at the user end—for protecting children. The bill builds on the existing system by integrating disclosure and vetting arrangements and introducing continuous online updating of records. For the first time, it will introduce a list of individuals who are disqualified from working with protected adults. It will ensure cross-border integration and complement the legislation that has just been passed in England and Wales. It will ensure that the Scottish ministers are accountable for our systems north of the border. A lot of what the bill means in practical terms has been worked through, but along with our stakeholders we will continue to shape the provisions.

The bill will reduce bureaucracy and on-going costs, because there will no longer be a need for repeat disclosure checks once a person is registered. I want to be clear that checks will remain free for people who work in the voluntary sector, who will benefit from a quicker and simpler system for repeat checks. There is little argument that such a scheme is necessary for those who work in the professional sector as teachers, social workers, youth workers, and in paid child care positions and so on. The situation in the voluntary sector is more complex, because the sector is itself complex. For example, it includes large organisations, such as the uniformed

organisations—the committee has heard evidence from the Scout Association. Regardless of the legislation, they often have a central infrastructure to help them to deal with recruiting leaders and so on. The voluntary sector also includes smaller groups, such as small football clubs and parent-teacher associations, that have little or no infrastructure. Some of their volunteers work much more incidentally with children. That area has caused many of the concerns about the bill.

Apart from streamlining the arrangements, the bill will give comfort and reassurance to volunteers, voluntary groups and parents that unsuitable people can be identified and rejected. The bill will support proper recruitment practices to ensure that only suitable people are involved with children. That aspect was called for previously by the voluntary sector and by the Education, Culture and Sport Committee in the previous session, during the deliberations on the Protection of Children (Scotland) Bill.

Part 3 of the Protection of Vulnerable Groups (Scotland) Bill, about which there have been some issues, deals with the separate but important issue of information sharing to prevent children from coming to serious harm, or indeed dying, because professionals are uncertain about when, with whom and to what extent information should be shared. I know that the committee has had concerns about the consultation arrangements but, as you are aware, the bill has been the subject of a number of stakeholder events, and the code of practice will be available—at least, in advance form—before stage 2. The code will be fully consulted on with stakeholders and the Education Committee.

Important issues have been raised about children's rights, regarding confidentiality and health information in particular. I understand that you have heard about that this morning. Those are not new issues. They have been around for a bit, and we have a working group that is considering them in detail. They arise under current practice, and there should be ample scope to explore them fully in the context of the code of practice. They are at the heart of several incidents in which things have gone wrong through a failure to share information, and it is undoubtedly necessary to focus effectively on that area.

I conclude my remarks by returning to the main vetting and barring part of the bill. The message that I want to give to the committee is that most stakeholders are signed up to the aims of the bill and to the shape of the arrangements relating to the workforce. There are concerns about how the bill will apply to the wider voluntary sector, especially to smaller bodies and those that are more on the edge. We want to continue to engage with those groups and to satisfy their concerns.

We will continue to work out the detail with all the stakeholders, large and small, in the voluntary and statutory sectors. As we have said from the beginning, we will consult on secondary legislation covering a number of topics. The consultation topics will include fees, about which you have taken evidence; thresholds for barring; the phasing-in process—the retrospective issue—of the checks on the current workforce; information sharing; and guidance on the various aspects of the bill. We have always said that there will be consultation on those matters, and I state clearly that there will be full and effective consultation. We have an entirely open mind on the problems, issues and concerns that might be raised.

There is a need to ensure that the smaller groups, in particular, are able to access speedily commonsense and practical guidance about what they need to do. The central registered body already has a role in that, which we can consider in detail. People need to know what to do about parents who go on school trips or day trips, about people who help at school discos and about the myriad different situations that can arise. Some of the scenarios that have been mentioned in evidence clearly do not have implications under the bill or its predecessor legislation and would not require the sort of checks that we are talking about. The scenario of legislation whose implementation is carefully considered and carried forward by subordinate legislation or by guidance is a familiar and proper one in the Parliament. Committees are rather good at dealing with it and with all the implications.

I make no apology for returning to the point that the bill is all about further protecting Scotland's children and vulnerable people. It is also about ensuring that the vetting and barring and information-sharing systems are efficient, robust, sustainable and a considerable improvement on the current arrangements. I hope that the committee will come to the view that I have expressed and conclude that failure to pass the bill would leave us with an inferior framework that has several clear and identified disadvantages. I suggest to the committee that that overarching scenario is part of how we will examine the more detailed concerns, which I hope we can deal with—as we always do—at stages 2 and 3.

I am sorry to have gone on a bit, convener, but I wanted to make many points in my introduction. I am afraid that I took advantage of your good will in doing so.

The Convener: Thank you, minister. As this is a complex bill, there will be a lot of questions. However, we have only a fairly limited amount of time, therefore I suggest to colleagues that we first ask questions on the overall principles of parts 1 and 2, concerning the vetting and barring scheme.

After that, we can ask questions on the detailed issues that come out of parts 1 and 2, and then look at part 3 separately. Otherwise, we may jump backwards and forwards in a way that would not allow us to have a coherent discussion.

Several people from the voluntary sector who have given evidence have stated that POCSA and part V of the Police Act 1997 have been operating for only a relatively short time and there has not been an audit of how effective they are. What we are doing, therefore, is building on existing legislation that has not been audited to see whether it is working effectively. Why has there been no such audit? Would it not be better to have that audit before we introduce new legislation?

12:00

Robert Brown: There has been a developing picture. We have had disclosure for some time, although the POCSA regime was established more recently. When I was the convener of the committee, we addressed the issue of the retrospective check problems. Many of the issues have been in the public domain for quite a long time.

The bill was instigated by the events in Soham and by the gaps and potential problems that were identified in that case, some of which exist in Scotland and some of which do not exist in quite the same way as they existed in England. The opportunity was taken to look afresh at the framework of the legislation to deal with what had been identified right from the beginning as a number of deficiencies in the way in which it operated.

There may well be a case for an audit and review—post-legislative scrutiny or whatever—of the bill in the future, but the argument at present is that we either have the current arrangements, which everybody acknowledges contain deficiencies in practice, or we proceed with substantial and major improvements in the legislative framework. Those improvements will not produce a new system per se—they will build on the existing system—but they will deal with identified problems and produce a situation that is significantly better in key respects than what we have at the moment. That is the central point that we must keep our eye on.

It is always open to the committee to engage in post-legislative scrutiny. That has been done for other bills. We acknowledge that the implementation of complex arrangements will in itself contain complexities, but we must deal with the situation that exists just now.

Mr Macintosh: I welcome the minister's opening remarks, which, although lengthy, addressed many of the concerns that exist. It is clear that he has been listening to the concerns that have been expressed to the committee so far.

I would like to explore a broad concern first. The bill will not be responsible for creating anxiety about the willingness of volunteers to come forward or the role of men in society, but there is concern that it will compound existing anxieties about those areas. The bill responds to what happened in Dunblane and, more recently, in Soham. However, there is a feeling that we need to assess whether, rather than addressing those concerns and anxieties, we are compounding them.

I will give an example that was raised this week, which highlights a specific issue in the bill. Cameron McNeish, the outdoorsman, climber, explorer and rambler, has suggested that, since the advent of the POCSA regime, climbing clubs are less likely to take young people out on the mountains because they are concerned about their liability, their legal exposure and—in his words—the implications of being on the receiving end of accusations of paedophilia or whatever. If young people are not being given such experience, there is a strong argument for saying that they are being overprotected. They should learn what it is like to be out on the mountains at a young age rather than wait until they are 18. Ramifications also arise from the fact that the bill treats everybody who is over 16 as an adult, whereas the POCSA regime treats everybody who is under 18 as a child.

Perhaps the minister would like to comment on the idea that legislation has had, and could have, unintended consequences.

Robert Brown: Yes. I take that concern seriously. Aspects of the youth work strategy, once the consultation on it has ended, will be entirely relevant to your point. However, I refute the suggestion that the bill—or, indeed, the POCSA regime generally—has much to do with the question of outdoor activities for children. There are different issues—important and valid issues—about insurance, expertise and safety, but they arise in a different context. I do not think that they relate directly or indirectly to the bill or to the arrangements that have been set up already.

I repeat what I have said before. If people have confidence in the system, at least in terms of engagement with public bodies—I include in that context the voluntary sector organisations that handle and deal with children in various ways—that will go a long way towards creating confidence generally in the way in which the important issue of the welfare of children is dealt with.

There is work to be done on how we move towards setting challenges for young people. We

must ensure that they are able to take part in outdoor education activities—rock climbing, white-water rafting and all the other things that they want to do—and that schools are able to have confidence in the arrangements for such activities. However, that issue is different from the one that emerges from the bill. It has a lot more to do with having in place expertise, appropriate insurance and training for people in how to conduct such activities satisfactorily. There also needs to be expertise on hand at the other end—people who know about mountaineering, white-water rafting and so on—to complement the expertise of youth organisations and schools. That is a much broader issue that, in the context that you mentioned, has relatively little to do with the bill.

Mr Macintosh: I will give a slightly different example to illustrate a related issue. You made the point that there is a general concern about our having a risk-averse culture. Regardless of whether the bill is directly related to the example that I gave, there is a concern that it is part of the general creep towards a risk-averse culture and that, slowly but surely, we are adding to that problem rather than addressing it. What can we do to help people get a better understanding of risk?

The committee will know that I often cite examples from East Renfrewshire, although I am not sure whether they show the area in a good light. Our school is having a Christmas fair a week on Saturday. We got someone to volunteer to play Santa at the fair, mainly because he has a Santa suit. As members can imagine, there is not a huge number of volunteers to play Santa at such fairs. The volunteer works at the Variety Club and has had a disclosure check in Glasgow, where he lives. He is now required to undergo another disclosure check. His response has been say, "I'm scunnered. I do not want to go to the council offices with my passport and the form."

Mr McAveety: His passport says that he is from Greenland.

Mr Macintosh: I must declare an interest: I have had a disclosure check and so I have been asked to play Santa in his absence.

Mr McAveety: You will be a caring Santa.

Mr Macintosh: The voluntary sector covers a range of people, from those who work full time as carers, for example, right through to those who want to help out of generosity and the goodness of their heart. We should embrace and welcome those people and try to make things easier for them.

Much as I dislike the current situation, I understand that the bill will improve matters. The man in my example has had a disclosure check, so his case could be resolved by a quick phone call or computer check. Would the minister like to comment in general on the situation in which we have landed ourselves and its effects on kind-hearted people who, unlike me, have the figure to play Santa?

Robert Brown: Without question, the bill will improve the arrangements for dealing with the sort of situation that you describe. There are issues on the edge. We must consider whether people need to be checked in the first place, if their contact with children is incidental and not unsupervised. That is one reason why we need to look much more closely at the advice that is available to people. When we discussed the issue previously, the Executive was prone to say, "There's the law. We have passed it and cannot give opinions on it—it is a matter for the courts." However, we set up the central registered body in Scotland, whose role is to provide advice much more satisfactorily. The advice is on tap in larger organisations, and the body's services need to be advertised more widely—its relevance is highlighted in all the leaflets—as it can give quick, consistent advice to small organisations on what they should think of doing in particular situations. I hope that it will be able to put to rest many of the fears that exist.

I agree entirely with your central point, which is that we should expose young people to challenges in all sorts of ways to enrich their life experience. I do not think that the bill acts against that, although it has got caught up in the argument.

You are right that there is a risk-averse culture. The Education Committee has often talked about the walking bus idea and the fact that parents are often unwilling to entrust their children to any arrangement for travel to school other than travel by car. That is another aspect of the matter. We need to send out strong signals that we are talking about risk minimisation and risk management rather than the elimination of risk, which is not possible either for children or for adults.

However, people are entitled to have confidence in and be comfortable with their dealings with professional organisations and voluntary sector organisations that look after their children. The bill is designed to increase that confidence but it does so in a way that is compatible with the normal recruitment procedures used by the scouts, the Boys Brigade, youth clubs and other organisations. The bill is an extra weapon that will make things work more satisfactorily. I hope that the committee agrees that that is what the bill is about.

Dr Murray: You said in your introduction that, if we do not pass the bill, inferior legislation would be in force in Scotland compared with south of the border.

Robert Brown: No. With respect, I said that the legislation that we have at the moment is inferior

to what we would have if we pass the bill.

Dr Murray: But an equivalent bill was passed south of the border—I think that it received royal assent recently. Everybody accepts that some provisions in the Protection of Vulnerable Groups (Scotland) Bill represent improvements—for example, it will do away with the need for multiple checks—but the voluntary sector is concerned about other provisions. If we removed some of those provisions, such that the bill was not identical to the legislation in England and Wales, would you still feel that the bill was inferior to what they have down south?

Robert Brown: First, I did not say that I was concerned about whether the bill was inferior to the legislation in England. I said that, if we do not pass the bill, the current provisions in Scotland, which are inferior to the provisions in the bill, will continue. Liaison with England is an issue that we need to be careful about because a lot of people move around and there are organisations that operate on both sides of the border.

The bill is different in a number of material respects from the arrangements in England. That is not a problem in itself, but we have to make sure that the two systems are compatible and that we do not accidentally introduce oddities or create a situation in which people on the two sides of the border do not have confidence in each other's systems. We should not have to recheck people and make them go through the whole system again; we do not want the situation in which somebody is validated in England but not in Scotland, with all the incidental problems that that might cause. That is why we need to be cautious.

Officials are in close touch with the officials who are handling the implementation of the legislation down south, including the definitional issues and the things that will come out in subordinate legislation. Indeed, the fact that issues might arise during such discussions is one reason why some aspects in the bill can be developed by subordinate legislation.

Dr Murray: What information would not be shared across the border if we do not pass the bill?

Robert Brown: It is not a matter of information sharing across the border. At the moment, the arrangements are such that, if somebody is barred in Scotland, they are also barred in England. There is a consistent approach. It might be helpful if Claire Monaghan expands on that.

12:15

Dr Claire Monaghan (Scottish Executive Education Department): At present, if somebody is barred in one jurisdiction, they are barred in the other. However, we have the opportunity for scheme membership to travel across the border, rather than have to conduct point-in-time checks and deal with the consequences that arise from those. If the two jurisdictions had different thresholds for barring, it would be more difficult for them to accept each other's decisions.

If, for example, the threshold for barring in England was lower than that in Scotland, what would that imply for Scotland if an individual who was barred down south were to apply for a job here? We need to tweak the details so that they are as close as possible, while maintaining the integrity of the Scottish system. It was decided to have a separate Scottish system to reflect both the need for the Scottish ministers to be accountable for this important area of policy and the distinctive Scottish legal system. The change comes primarily from the fact that the bill introduces scheme membership, and we want that to be able to travel across the border because, for example, some people work in both jurisdictions or live in the Borders and work in one jurisdiction but volunteer in the other.

Dr Murray: It is intrinsic to those cross-border arrangements that we have confidence in each other's systems. In Scotland, having introduced POCSA, we have experience and have worked through some of the teething troubles of operating those provisions. That has not happened in England, which has come from having very little to having a system that is probably more onerous than the one that the bill proposes, as far as its restrictions on volunteers are concerned. Can we have confidence that the English will be able to work their system? If their system runs into the sorts of problems that we ran into with the length of time that it took to get a disclosure check, will that not put a spanner in the works anyway, because we will not be able to have confidence in the information that they send us?

Robert Brown: It is not so much a matter of confidence if there are time delays. I appreciate that bureaucracies can produce such issues and, if there was incompatibility between the systems, it would compound that problem. We are not able to solve any problems in England, which either will or—I hope—will not emerge over the course of time, but Scotland and England are able to learn from each other's experience.

The point remains that many people move between England and Scotland. From your constituency experience of a number of other issues, you are well aware of the ways in which people's lifestyles cause cross-border flows. It is important that the systems in England and Scotland are compatible. We are not saying that there is anything in the bill that is likely to cause a major problem in that regard.

The most important decision is probably the level at which the bar is set for inclusion on the list. If that was substantially different between the two jurisdictions—there is no obvious reason why it should be if we are dealing with the same issues in the same circumstances—that would cause us problems with an incompatibility that we would have to deal with. Therefore, it is important not only that we liaise with our colleagues on the other side of the border but that we are able effectively to engage in that liaison and influence events there, in the same way as our colleagues will influence events on our side of the border.

It is important to point out that the matter will be under the Scottish ministers' jurisdiction. We are not setting up a UK scheme under which we would be surrendering our rights to some Westminster body. We are keeping the matter under our control so that we are accountable to the Scottish Parliament and the Education Committee for the way in which the system works.

Dr Monaghan: Down south, there is already a list of people who are disqualified from working with vulnerable adults. Such a list is one of the main provisions that the bill introduces; at present, Scotland has only a list of people who are disqualified from working with children. We will be able to draw and build on the experience in England—in particular, in relation to the issues connected with people who should be on both lists.

Lord James Douglas-Hamilton: I have a question about proportionality. The financial memorandum estimates that the number of people who will be covered by the vetting and barring scheme will be about 1 million. The Scottish Council for Voluntary Organisations estimates that the number in the voluntary sector alone is 956,000, so could not the scale of the vetting be very large indeed and extremely cumbersome?

Robert Brown: I will probably ask Andrew Mott to deal with the detail of the figures but, broadly speaking, the number of people who will be affected by the new scheme will be similar to the number of those who are affected by the old one. A large number of people have now gone through more general disclosure, which covers other purposes as well as child protection. Quite a lot of the volunteers to whom you refer are also members of professional workforces, so they will already have been dealt with, and they will be dealt with professionally under the new arrangements.

Therefore, we can knock down those figures by about half or two thirds. The big issue in respect of the numbers involved is that of retrospective checks, which existed under the old scheme and which will exist under the new arrangements. We all broadly accept that, when people come into the workforce, change their job or whatever, the matter must be dealt with. However, some people have been in voluntary organisations, or have been teachers, for 20 years, so there will be a bit of a tailback. The approach will, to an extent, depend on post-legislative scrutiny and consultation. Although the policy memorandum states that the timescale within which checks are to be carried out on such people is three to five years, we do not have a closed mind to the issue. The approach is designed to fit in with what the voluntary sector and the professional bodies would be doing in any event, and the process will be carried out in a way that is manageable for Disclosure Scotland or, more precisely, the proposed new agency. It is not a new issue. Essentially, the longer the timescale for the conducting of retrospective checks, the less of an issue it becomes.

For new entrants to the scheme, the situation will be similar to the existing situation. Obviously, the vulnerable adults aspect has been added to the regime, but otherwise the schemes are similar. I do not know whether you want us to go into that in more detail. Andrew Mott could probably give more detailed information about the precise figures on which we have based the calculations.

Lord James Douglas-Hamilton: I will ask about costs. Do you have further plans to provide assistance, particularly to voluntary organisations, in the expensive start-up period? Obviously, it is welcome that the Executive will pay the cost of vetting voluntary staff, but costs will also be incurred for checks on paid staff and for training and administration.

Robert Brown: Again, the position is similar to that which exists under the current legislation. As you rightly say, we agreed at an early stage to pay the costs for checks on volunteers in the voluntary sector. That has been widely welcomed and is a useful addition to the system.

Leaving aside the retrospective aspect for now, what will happen for the new workforce is similar to what happens now, in that new people will be checked. The number of checks will be similar to the number that the voluntary sector copes with now and has coped with for the past few years. An additional administrative cost is not imposed by the bill in that regard.

The big worry has been that the requirement to conduct retrospective checks will mean that both the agency and individual groups will be faced all of a sudden with a huge surge in the number of checks. That will obviously depend to some extent on the group in question, but it will also depend on the period of time over which the scheme is phased in. The numbers will go down in proportion to the length of the timescale for carrying out retrospective checks, whether it is three, four or

five years. There is no suggestion that we will introduce the scheme with a big bang—just like that—in one year and that a huge number of checks will suddenly land in the system. We do not envisage that the scheme will cause the voluntary sector or other people major administrative headaches beyond what is entailed in the current system.

Lord James Douglas-Hamilton: Might a longer phasing-in period assist in containing costs?

Robert Brown: Undoubtedly it would. In a broad sense, the number of people who come through each year on top of the new entrants is a consideration when we look at the length of the period over which we will phase in the scheme. If the timescale is to be 50 years, it is obvious that far few numbers will be involved, but if we phase in the scheme over the period that we have suggested, some extra numbers will come through, although they will be manageable. The issue is to manage the transition phase carefully in a way that works with the grain of what the voluntary sector wants to do.

Many bodies—both professional bodies and major voluntary sector bodies—review the training, qualifications and so on of their leaders and other volunteers periodically, perhaps every three, four or five years. The scheme will fit easily into those arrangements, which organisations have already put in place for the valid purpose of securing themselves against problems—for example, if volunteers have gone off message or whatever.

Lord James Douglas-Hamilton: The minister will be aware that the Scottish Council for Voluntary Organisations has recommended capping fees. Is there any impediment to doing that?

Robert Brown: We are more than happy to discuss the matter with the voluntary sector. However, our calculations are based on the idea that there will be a greater cost—albeit of a relatively marginal kind in the overall scheme of things—in carrying out the checks at the point of initial entrance to the scheme, but a significantly reduced cost in doing the follow-up checks, which are often the cause of concern. Across the board, the total cost should be similar or, with any luck, a bit lower than it is at the moment.

Lord James Douglas-Hamilton: You refused to support an amendment that I lodged on the ground that there had been no consultation on it. How do you answer the voluntary organisations' complaint that there has been inadequate consultation on significant parts of the bill?

Robert Brown: There has been the normal consultation on the vetting and barring aspects, so I think that you are referring to the information sharing provisions in part 3. They are important provisions, on which we accept that there has not been the usual form of consultation. However, there has been considerable engagement with stakeholders about the detail. As I said before, we will engage with stakeholders and the committee on the code of practice, which will be available soon. Since before the provisions became a live issue for the bill, there has been a working group, which Maggie Tierney has been involved in, on the sexual health of young people. That on-going issue cuts across a number of departments and interests. A lot of work has been done with stakeholders, notwithstanding the admitted lack of formal consultation that we normally expect with major aspects of a bill.

Dr Monaghan: It is also worth registering the intention to consult fully on all aspects of the secondary legislation on the vetting and barring scheme, which we hope will allay any fears that the committee has. That exercise will fully engage with the voluntary sector and all the organisations affected by the legislation.

The Convener: I want to follow up on that point. A number of submissions from the voluntary sector and organisations such as the Faculty of Advocates raised the concern that much of the bill relies on secondary legislation, which makes it harder to get a clear picture of whether it is ECHR compliant and proportionate and whether it provides value for money. Without the secondary legislation, we cannot get a clear picture.

One example is the level at which the bar will be set for automatically listing people, and there are also issues with prescribed information. Many aspects of the bill will be determined by secondary legislation, which makes it difficult for us to decide whether the proposals are reasonable. Would it not have been better to publish the full scheme, including the secondary legislation, and then to consult on it fully to ensure that the primary legislation fitted in with the consultation? Have you not tied your hands behind your back by determining the primary legislation and then publishing the secondary legislation in line with it? You might discover from the consultation on the secondary legislation that you have made mistakes with the primary legislation.

Robert Brown: I take the point as far as it goes, but it is not an uncommon practice to have primary legislation—

The Convener: It does not matter whether the practice is uncommon; it matters whether it is right or not for this particular legislation.

Robert Brown: It has not been an uncommon practice, both before and since devolution, to use secondary legislation to flesh out the detail of the implementation of bills. I am aware that committees are often keen to have advance

copies of the documentation on key parts of bills before they deal with amendments to them, and that is sometimes entirely relevant. However, fees and costs are a normal matter that has no conceivable relevance to the bill's principles. The matter is detailed and technical; in any event, we are going to consult on it.

On the bar for listing and ECHR compliance, there are provisions in the bill that relate to appeals and core procedures to give people reassurance. We have already said that we are going to consult on the detail.

The Convener: I am sorry to interrupt you, but if ministers determine through secondary legislation the level at which the bar will be set, the appeal system will not matter—it will determine only whether someone has reached that level. It deals with a matter of fact and, if ministers set the bar too low, ECHR issues will arise.

12:30

Robert Brown: There are two issues with that. First, we will consult on the secondary legislation that deals with the setting of the bar. Although secondary legislation cannot be amended, we will be happy to share a draft of the proposals with the Education Committee and stakeholders in advance of formally laying it. The procedure is there to allow perfectly valid and full parliamentary scrutiny of the precise details.

Secondly, individuals will not be able to appeal the level at which the bar is set. We expect aspects of the decision-making process to be appealable, as appropriate to the circumstances of individual cases. That has been provided for in the bill and will not be affected by whatever level the bar is set at. People will have the right to take up the matter with an external judicial authority if they have concerns about the way in which their case has been dealt with.

The setting of the bar is a matter for the bill or subordinate legislation, as appropriate. You can agree or disagree about the way in which that is done, but, given our assurances about consultation and advance drafts, it cannot be said that we are imposing measures by ministerial diktat without having regard to the views of stakeholders across the board, including those of the committee, which is an expert on the system. I hope that that reassurance about the process is satisfactory.

There can be situations in which secondary legislation reflects on a definitional issue in the primary legislation. If the committee has concerns in that regard, I am more than happy for it to flag them up for us to consider. We do not share the view that has been expressed, but if we are wrong, we are happy to have drawn to our attention the committee's concerns, or concerns that stakeholders have raised with it.

The Convener: You might have heard the question that I asked the Scottish Child Law Centre witnesses on the vetting information. Categories of vetting information include

"information which the chief officer of a relevant police force thinks might be relevant"

and

"such other information as may be prescribed",

which will be determined by secondary legislation. There is no appeal, other than to the civil court, to challenge whether such information is relevant vetting information. The only reference to it in the bill is the provision that

"Ministers must correct a scheme record if they are satisfied … that … it is inaccurate."

There is no way of challenging the relevance of the information. Is that ECHR compliant, given that people will not have an opportunity to put their case?

Robert Brown: We think that it is. That situation exists under the current legislation; the bill does not provide anything new in that regard. Liz Sadler can tell you about the chief constables' involvement. It might be useful if she gave the committee a bit of information about the mechanisms for dealing with issues that might arise.

Liz Sadler (Scottish Executive Justice Department): The police have published guidelines on the procedures that they follow for the collection and retention of the whole range of information. They use a model called 5x5x5, which covers an evaluation of the information, its reliability and who they can share it with. The information is graded according to how reliable and robust it is. I am happy to provide you with further written information about how that works if you would find that helpful.

Access to information for disclosure purposes is a small subset of that larger provision for the police to retain information. Under part V of the Police Act 1997, which will be largely replicated in the bill, if the police hold non-conviction information about individuals, Disclosure Scotland refers the case to the chief constable who, under national guidelines, considers whether the information is relevant to the post that is being applied for. Under the bill, the chief constable will consider whether the information is relevant to the sector of the workforce in question. If the chief constable decides that the information is relevant, Disclosure Scotland has to put it on the disclosure certificate, of which the individual gets a copy. The individual can appeal to Scottish ministers about the inclusion of the information and they must ask

the relevant chief constable to review their decision.

Ministers must issue a new disclosure certificate if the appeal to the chief constable is successful. If an individual remains unhappy with the chief constable's decision, he or she has a right of appeal to the information commissioner. The chief constable is required to abide by any decisions that the information commissioner makes with regard to the information that is held.

Since Disclosure Scotland started work, more than 65,000 enhanced disclosures out of a total of 1.1 million disclosures have included non-conviction information. In 264 of those cases individuals disputed the non-conviction information that was disclosed, and 124 of the disputes were upheld. That equates to around 0.18 per cent of cases.

The Convener: It is about half of the cases that were disputed.

Robert Brown: On top of that, there is the right of application for judicial review of the act of any public authority, including chief constables. There are a number of other remedies, but Liz Sadler has described the main ones.

The Convener: I could prolong the discussion, but I will not, because other members want to comment.

Fiona Hyslop: In seven years as an MSP considering bills in committee, I have never come across a bill that has been subject to such a critical report from the Finance Committee and have never heard so many expert witnesses say that we should pause for reflection. We should also bear it in mind that you are planning to introduce a fourth piece of legislation, on getting it right for every child. The convener has commented that the bill as introduced is very broad and imprecise, and that we need time to reflect on the secondary legislation before passing the primary legislation. The Faculty of Advocates has said that the bill lacks coherence and is not easy to follow. Given all those points, would it not be wise for you to take stock, to reflect and to take more time for a debate on risk generally in Scotland, to ensure that we have a bill that is fit for purpose?

Robert Brown: We must be careful to distinguish between the various issues that are swirling around the debate. A great deal has been said about our being a risk-averse society, but most of that has little relevance to the issue that the bill addresses. However, it is obviously the job of the committee and the Executive to consider the substantive merits of the points that the various witnesses have made.

The Finance Committee has made a number of points. As I explained in response to earlier questions about the cost of the bill and the figures that have been provided, we take issue with one or two details of the Finance Committee's report. Inevitably, such matters involve a degree of estimation, but I do not think that a period of delay or reconsideration in the next session would affect the Finance Committee's observations one way or the other. For the most part, they are technical issues that can be resolved through questions from the committee. I am anxious to address any particular concerns that members have.

With regard to the more general issues, it is reasonable to consider the two elements of the bill separately. The lack of consultation on part 3 of the bill, which relates to information sharing, has been highlighted. I have tried to indicate to the committee that in my view there has been considerable engagement with the sector, notwithstanding the lack of formal consultation. We are keen to take on board the issues that were raised this morning in respect of children's rights. Those formed part of the discussions that Maggie Tierney's group had before the bill was introduced. I am reasonably confident that the code of guidance, which is central, gives us the ability to take forward part 3 in a way that addresses those issues.

The more substantial part of the bill deals with vetting and barring. In my opening remarks, I indicated that it was not about asking whether there was a better scheme somewhere in the ether. If there is, we have not heard of it. The alternative is to improve the current arrangements as soon as we can. There is general acceptance that a number of facets of the bill do that.

We need to get the main legislation in place to enable us to deal with the funding and preparation issues to allow us to make progress with the subordinate legislation. I see no great advantage in postponing remedying the faults identified in the current arrangements, which cause hassle to the voluntary sector and which mean that there is less protection for Scotland's young people than there might otherwise be. We have an opportunity to make improvements, although that will not happen overnight, as the issues are complex, but fairly quickly, as we make progress with the subordinate legislation. I see no great advantage in halting now and starting all over again in the next session of Parliament, because the issues will be the same.

We must ask what advantage there would be in deferring, continuing or delaying consideration of the issues. Most of the issues are not fresh to us—they were about when I was convener of the Education Committee and some of them go back to the previous session of Parliament, when the Education, Culture and Sport Committee

considered the Protection of Children (Scotland) Bill. For the most part, the issues are not new. They are complex issues that involve difficulties, but the Executive, our partners in the statutory sector and many stakeholders in the voluntary sector now have a fair track record of knowledge about what the system means in practice.

Fiona Hyslop will recall that, when the existing arrangements came into place, a lot of work was put into providing a procedures manual—I cannot remember what its name was—to assist voluntary organisations to deal with the implications. A lot has been learned from that process as well as from producing the current proposals.

Fiona Hyslop: The minister has obviously been too long away from the committee. He may recall that one reason why so much work was done on the implementation and operation of POCSA was precisely because the committee took evidence and raised concerns with ministers at that time. The committee has a track record of ensuring that concerns about the implementation of child protection measures are dealt with properly. We had a result that time; the issue now is whether the committee can come up with the right solution this time round.

To an extent, the Executive is taking a risk because, from what you say, it will be six years before the system is fully in place. If we are not going to have an immediate big-bang solution, why not get it right? What consideration did the Executive give to amending POCSA after carrying out post-legislative scrutiny? I realise that POCSA does not deal with vulnerable adults—frankly, we should give that issue more of an airing and consideration than we have done until now.

Robert Brown: Absolutely.

Fiona Hyslop: However, to separate out that issue for now and to deal specifically with children, would it be possible to amend POCSA so that we can have the passporting system and the retrospective element? Did you consider whether that was possible?

Robert Brown: It is fair to say that all things are possible, but we need to decide on the best way in which to proceed in the circumstances. POCSA could have been fiddled with—

Fiona Hyslop: Did you consider that?

Robert Brown: That is part of what we are doing. To all intents and purposes, the scheme will amend the POCSA arrangements. Disclosure will still be at the heart of the system. We will set up a new agency, but that is a technical amendment of the process and will be an improvement. Whether we are amending the current scheme or introducing something entirely new is a matter of definition. Our view is that we are improving the current scheme, albeit through a new piece of legislation. That is against the background of the opportunity to introduce the vulnerable adults aspect.

Andrew Mott has been involved in the process, so perhaps he can add something on the considerations.

Andrew Mott (Scottish Executive Education Department): With regard to the provisions on working with children, we have built on the POCSA regime. For example, schedule 2 to POCSA defines what a “child care position” is and, although the bill uses the term “regulated work with children”, basically we have just improved the drafting in that schedule and made it much easier to read and to follow. We have included a few new aspects in the definition, such as work that involves providing advice or guidance to children, and made one or two other changes. The rationale was to build on the measures with which people are familiar, so we took the POCSA structure and built on it. In that sense, although technically we are not amending POCSA, in spirit, we are. The bill is a progression.

12:45

Fiona Hyslop: I have one final question. There is some expectation that a bill will be produced under the getting it right for every child agenda. Can you explain the scope of that bill? Some witnesses were concerned that section 3 of this bill, in particular, might sit better in that bill, but we will not know that until you tell us the scope of the getting it right for every child bill.

Child protection in general is an important issue about which we are all concerned. In the past, the Government has initiated a national debate on education. Do you not think that some of the concerns that have been raised by witnesses, as well as the concerns of the general public and voluntary organisations, would best be addressed through a national debate, led by the Government, on risk to children? If there were such a debate, might not people be more comforted that we are moving in the right direction?

Robert Brown: That is a separate issue. Ken Macintosh made pretty much the same suggestion in an earlier question.

There may well be cause for having such a debate, although how it would be conducted is another issue. There are quite a lot of other issues in the field that are worth considering more closely—I touched on those in my introductory remarks and in my responses to questions. The Education Committee also has the right to go into such issues, if it wants to do so. There is ample scope for discussion of the issues, and I do not have a closed mind about the way forward.

However, that is a different issue from what we are talking about in the context of the bill. Although the issues in the bill are quite broad in some ways, the bill is relatively narrow in its focus on child protection rather than on children generally.

As you are aware, a draft GIRFEC bill will be produced before the end of the session, and the legislation is likely to proceed—subject to the outcome of the election—in the next session. I think that all parties will sign up to that. The proposed bill will deal with various issues arising from the review of the children's hearings system, the review of children's services more generally, and things of that sort. It would be possible to include the information-sharing arrangements in that bill—that is what was originally contemplated when we thought that the GIRFEC bill would go forward in this session. However, we take the view, which I hope the committee will ultimately share, that the issue of information sharing is critical.

As you will be aware—the issue has been touched on many times before—the lack of information sharing has been at the heart of a series of tragic events that have been detailed in a number of reports of one sort or another over the years. I am not saying that the bill will sort the situation out immediately; there is no magic wand in such matters. However, we believe that it will give us a framework that will focus more substantially on what ought to be happening with information sharing. It will address the need for a code of practice and will engage with professional practice in the area. There are misconceptions in some quarters about how data protection fits in, so it is important to move forward as quickly as we can on that front.

Yes, we could have addressed the issue of information sharing differently. However, for the reasons that I have explained, section 3 of the bill is how we are seeking to do it. I hope that we will have the committee's support in taking matters forward in that way.

The Convener: I urge all members and the minister to keep questions and answers as brief as possible. We still have quite a lot to get through, and it is almost 10 to 1.

Robert Brown: I take the rebuke, convener.

Ms Byrne: Let us go back to the consultation with stakeholders and the issue of consulting children and young people. I feel that there is a huge gap there. That brings me on to the sharing of information, which is probably the key area for children and young people, and the concerns that we have heard from witnesses about the difficulties that that will create for children and young people. I am concerned about the speed with which the bill is being pushed through, given the number of issues that have been raised. Are we really tapping into the areas that we require to tap into in order to protect children better?

There have also been discussions about complacency and the fact that not everybody will be on a list. There will be areas in which we cannot cover everything, so education and training will be a key issue. Are we still going to commit to that and allocate the resources to it? All the evidence that we have heard is that that will be very important.

Robert Brown: I take both questions seriously. Your second point, about resources for child protection in general, addresses a very wide issue. As you know from the involvement that the committee has had with the issue, child protection has engaged a lot of attention in this session and previously—certainly, during the time in which I have been a minister or a member of the committee. It is at the heart of a lot of the work that we are doing on GIRFEC, on the 21st century social work review and on a series of other issues, such as the workforce reviews, to raise professional standards and deal with the issues that have been the cause of concern. The thrust will, undoubtedly, continue in all of that. None of that should take away from the importance of the bill, which deals with the slightly different issue of protecting young people and vulnerable adults—as Fiona Hyslop rightly says—against the deficiencies that there may be in the workforce and in voluntary sector organisations.

I will ask Maggie Tierney to say something about the work that her group has been doing on children and young people. Some useful points have been made on the issue. You will recall that, when we dealt with the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill, there was general agreement that consent issues involving young people were extremely important across the board. However, in discussion of the protection of children, the overriding concern was the best interests of children.

Reasonably clearly, a number of aspects relating to that come into the present discussion, including issues to do with sexual health and whether information that people who have been abused may or may not give to others will be affected by the duties under the bill. I suspect that some of what has been said about that is overanxiety about the response to legislation by individual children and young people. I would like to give the committee some reassurance by asking Maggie Tierney to tell you about the work of her group in working through that. I ask her to specify a bit about the stakeholder aspect as well.

Maggie Tierney (Scottish Executive Education Department): There are two groups

that might be of interest to the committee in that respect. One of the work streams that we have established to help us to implement the bill in a measured way is specifically about information sharing. The group is composed of all key stakeholders with an interest in sharing information better and in sharing best practice in how to do it. Its aim is to ensure that the code of practice that we build, which we will put to the committee before stage 2, puts flesh on the bones of the provisions. One of the members of the group is the children's commissioner. We are actively aiming to hear the voices of children and young people as the code takes shape. The work of that group is on-going. It is seeking to ensure that we capture the interests and the voices of children in response to the code as it emerges.

The second group predates consideration of the information-sharing provisions in the bill and has been in existence for about a year. It is a short-life working group on disclosure of underage sexual activity. The group's interest stems partly from Bichard recommendations 12 and 13. Sir Michael Bichard suggested that social services should report every instance of underage sex, except in exceptional circumstances. We felt that, in Scotland, we would have an equal interest in capturing the voices of children on issues to do with confidentiality and that we would want to have equal regard to the sexual health strategy that is described in "Respect and Responsibility".

Part 3 of the bill tries to dovetail with the difficult issue of confidentiality in accessing information, particularly about sexual health. It ensures that the welfare of the child is paramount. When a child or young person seeks sexual health services, if the professional is concerned that the young person may withdraw from treatment if they disclose information about the young person and they judge that that would not be in the interest of the young person's welfare, they will not have to disclose the information. Part 3 gives the professional the power to make such a choice about information sharing.

In respect of young people's sexual activity, under the bill it is for professionals to make the determination as to whether there is a risk of harm. That will depend very much on the facts and circumstances of the cases that they deal with. For example, the short-life working group is considering how to develop a protocol that would establish the principle that it may not be a problem to have two 15-year-olds having consensual underage sex, although there may be a problem if it was a 15-year-old and a 29-year-old having sex. In that circumstance, the professionals are asked to balance the right of children to confidentiality, privacy and the ability to disclose in a safe way with the risks. The bill simply makes explicit the existing good practice in that regard, so that there is a greater consistency of understanding about the circumstances in which professionals agree that it is right to share information and who that information can be shared with. The code that you will have a chance to examine will attempt to articulate that more fully and consistently.

Robert Brown: We are happy to keep the committee in touch with the work of the short-life working group. That work will merge into the code of practice anyway but, if you are interested in knowing more about that and seeing the outcomes of it, we can arrange for that to be done in some suitable way.

Ms Byrne: I am still concerned that, although we have not seen the code and the consultation with the young people has not been carried out—it is now being carried out in a sort of side area—we have the bill before us and have to make a decision on it. I am also concerned that the power that the professional will have has also not been discussed openly in the sessions that we have had so far. There are a lot of grey areas that make me unsure whether we should proceed any further with the bill. I have a problem with the speed at which the process has moved and the lack of attention that has been paid to part 3.

Robert Brown: I do not altogether accept what you say. Part 3 has been available for perusal since the beginning of the process. It concerns fairly high-level powers and duties. It imposes duties that, in one view, do nothing more than restate current best professional practice and leave the details to be worked out through the code and, in terms of the voluntary sector, it creates a power rather than a duty. It is entirely right to make that distinction. I do not think that there are big issues to do with definitions and so on in the bill—the subordinate legislation is another matter. There is a legitimate concern about how the process will work in practice, given that we are dealing with different sorts of workers in different sorts of areas, all of whom have different sorts of issues. However, all that relates to the code of practice, which will be available before stage 2. It will give at least an idea of the direction of travel with regard to some of the issues that we are discussing. As I have tried to indicate, those issues are not new themes; they have been explored in a series of contexts by the Executive and the committee on a number of occasions.

We are keen to get our approach right and will ensure that we engage properly with stakeholders in order to make that happen. When the bill is passed, we will have some time in which to ensure that people—not only the professionals but young people's groups and so on—are comfortable with the guidance.

Ms Byrne: Do you intend to consult young people's groups before the code is published?

Robert Brown: It has already been said that the children's commissioner is on the short-life working group, so that covers one aspect of the matter. It is intended that there will be on-going consultation with a wider variety of children's groups before that.

Maggie Tierney: We will consult children's groups and other stakeholders as the code develops and evolves.

Ms Byrne: It is interesting that, as she told the committee a couple of weeks ago, the children's commissioner has concerns about the bill, particularly with regard to the lack of consultation on part 3 and the speed at which the process is moving. She said that taking a step back to examine and audit current legislation would not have been a bad idea.

13:00

Robert Brown: As I said earlier, the children's commissioner and others are perfectly entitled—indeed, are required—to make their views known on these matters. It is up to the committee—and, separately, for the Executive—to judge whether such views influence the bill's direction of travel and whether certain issues cannot be dealt with in the consultation on the important subordinate legislation matters and in the consideration of the bill. The big question in that respect is whether anything is likely to emerge in subordinate legislation that will influence the rather high-level definitions in the bill, and I have to say that it is not immediately obvious to me that that is the case. However, if people have particular concerns on the matter, I am happy to listen to them and see what we can do to match them.

I take the view that the primary area of importance is developing the content of the code with the involvement of all the stakeholders, children's groups and professional groups. There should be ample time for people to develop that as appropriate, in the context of the overarching duties—which, as I said are not new—that come in under the bill.

Ms Byrne: Could you give the committee in writing a list of the consultees for the code of practice and a timescale for that work to be carried out?

Robert Brown: Yes.

Marilyn Livingstone: I am new to the committee, but I have read the evidence that was given by the EIS and the Scottish Parent Teacher Council, who suggest that the bill encourages a focus on stranger danger. However, more than 80 per cent of young people who are abused are abused by people who are known to them—particularly in the home.

One of the things that has concerned the cross-party group on survivors of childhood sexual abuse, of which I am a member, has been the need to give young people the confidence to come forward and say what has happened to them. A lot of work has been done on that issue. From the evidence that the cross-party group has taken, it is clear that it can take three, four or even 10 years or more before a person says what has happened to them. In that time, many issues such as self-harm, alcohol problems and drug problems can develop. In the worst cases, there can be suicide attempts. We all agree that the sooner that someone can say what has happened, the better it will be for them, because they will be able to get support.

The representatives of the Scottish Child Law Centre said that, if part 3 contains nothing about consent, that could lead to people being reluctant to come forward and give the necessary information. There is a difficult balancing act to be done and we want to prevent bad things from happening to others, but we should not do anything that will discourage young people from coming forward. As the bill stands, there are reasons to think that that might happen. How will the rights of the child and the issue of consent be dealt with? Can you reassure the committee in that regard?

Robert Brown: I accept the seriousness of your point. In some ways, that issue has caused more anxious concern than anything else in the bill. However, as I said before, the legislation will not impose an absolute duty on anybody. Section 79 is entitled "Child's welfare to be paramount consideration".

As Maggie Tierney explained, the professionals who make the relevant judgments have to strike a balance all the time. If they take the view that disclosing particular information is not in the child's best interests, they are 100 per cent entitled to ensure that it is not disclosed. Section 79(3), in particular, makes that quite clear. If there is a requirement for a ministerial statement to confirm that, I am happy to make one. I very much endorse what the bill does in that section to ensure that professionals are placed at the centre of the process.

The issue of children's rights is slightly more complex. In our discussions on the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill, we accepted that there are circumstances in which it might not be in the best interests of young people—in particular, children who are, if you like, below the age of maturity, however that might be defined—to give them an absolute right to say, "No, I don't

want that information to be disclosed." I realise that we have to be very careful and ensure that children are taken along; that is why, in setting out the detail on this matter, the code of guidance will be very important. However, as I have pointed out, I do not think that the principle of overriding a child's consent to disclose information in certain circumstances, and if doing so is in their best interests, is a new one either in legislation or in professional practice. I am sure that the issue has been the subject of much agonised discussion in the cross-party group on survivors of childhood sexual abuse.

We are not changing the law to a great extent. Instead, we are trying to put to one side certain data protection issues that have led to exaggerated concern in some quarters; to clarify the prevailing duties and rights; and to ensure that professionals are able to decide what is in the best interests of the child for whom they are responsible. I am sure that the code of practice will set out ways of approaching such issues with children—not least sexual health issues, which we have a long track record of addressing—and will be designed to reassure those who use the legislation of its workability.

I hope that people will be reassured by the fairly strong statements that I have just made—and, indeed, which are set out in the bill—on the intention behind and practicability of the legislation. It simply will not override children's interests. Section 79 expressly puts the child's welfare right at the heart of things by using the phrase "paramount importance". Can we attach any higher importance than that to this issue?

I accept that certain issues have to be worked through. I do not think that it is suitable to put any professional detail in the bill itself; instead, it should be set out in the code of practice. As I have said, it is important that everyone is involved in the formulation of that guidance and that there is wide consultation on its practical implications.

Mr Ingram: Ken Macintosh and others have mentioned the cultural impact of child protection legislation, particularly on men's participation in voluntary activities with children. That whole area certainly needs to be examined.

However, I wonder whether the bill as drafted will do what it claims to improve child protection.

Robert Brown: In other words, whether it will do what it says on the tin.

Mr Ingram: Indeed. After all, no bureaucratic system, no matter how well intentioned it might be, protects children; people protect children, and alert and vigilant people must be on the look-out for the so-called stranger danger on which the bill focuses. Should it not focus instead on support for training for the professional workforce and voluntary agencies?

Robert Brown: I agree with almost everything that Adam Ingram has said. We must remember that the vetting and barring arrangements are based not on a person's suitability for a position, but on their unsuitability. I said earlier that all voluntary sector and professional organisations must have in place robust recruitment, training and supervision arrangements for staff. To be fair, many organisations have such robust procedures.

People sometimes forget that when Thomas Hamilton sought to become involved with the scouts—I think, or a similar organisation—he was rejected as a result of the organisation's recruitment procedures. That was before any of the current procedures had come into being. Certainly, anyone who recruits people to the child care workforce will have to take that fundamental point on board. Because they are aware of the concerns and of what has gone wrong before, many organisations have the right structures in place. People are very much at the heart of that.

Any system that requires access to public authority records could be described as bureaucratic. Nevertheless, the system is there to provide information on nasty people—or people over whom there is a question mark—to organisations that they might want to be involved with, such as organisations that work with children or vulnerable adults. As part of their recruitment process, such organisations should be able to access information that would allow them to reject unsuitable people—for example, people who have been barred under the listing arrangements.

Training is not an issue for legislation. As I said, we are working hard to improve and upskill people who work in child care and social work. We have also done a lot of work in education. Training is central to the work of many organisations in the voluntary sector. As the bill progresses, we will be more than happy to talk to voluntary sector organisations about any concerns that they may have.

Adam Ingram mentioned stranger danger, but most of the people whom we are concerned about in the bill are people who are known to the child. We are not talking about a stranger in the bushes grabbing a child who is walking down the street; we are talking about professionals and youth leaders who are known to the child. We want to offer comfort and support to groups in the voluntary sector and to parents who entrust their children to those groups for necessary and important parts of their upbringing.

Mr Ingram: A concern that has been raised is that people might be lulled into a false sense of security by the creation of a system. We cannot

allow that to happen. Alongside any system we will require some kind of programme to ensure that that does not happen.

Why will the scheme not be mandatory? Why have you taken a different approach from that which was taken in England and Wales? You have not created an offence associated with an individual's failure to participate in the scheme.

Robert Brown: The answer to those questions has to do with unintended consequences. I will ask Andrew Mott to answer them.

Andrew Mott: The rationale behind the bill is that the employer must ensure that they are not employing a listed individual. The way to do that is to ask the individual to be a scheme member. In a way, scheme membership will be enforced through the employer.

Necessarily, we decided not to make participation subject to an offence, because we might be talking about 800,000 people. Regulated work is not defined in a list of posts; there are posts at the margins. If we make participation subject to an offence, there could be difficulties with people at the margins. In the bill, we have therefore focused the offences on listed and barred people participating in the workforce, because that is what we are trying to avoid. We wanted to focus on that rather than on marginal activity. We want to be proportionate.

Mr Ingram: I think I understood that.

Does the minister accept that, because the scheme will be relied on by personal employers, there are risks in not having an offence associated with an individual's failure to participate? The example of piano teachers has been given.

13:15

Robert Brown: How the provisions relate to people who work with children and vulnerable adults more occasionally, such as piano teachers whose contact is much more incidental, is probably one of the more difficult areas in the bill. The multiple disclosure arrangements that I mentioned will help in such cases. Perhaps Andrew Mott will deal with your specific point.

Andrew Mott: It does not make sense to make a parent, for example, guilty of an offence if they do not ensure that a piano teacher whom they employ is subject to the scheme. Currently, if someone employs a piano teacher, they cannot do a formal check, whereas the scheme will enable the parent, or personal employer, to satisfy themselves that the individual they seek to employ is a scheme member and therefore not an unsuitable individual. However, it depends on parents being aware of the scheme. We have to raise general awareness.

Robert Brown: Any barred individual who puts themselves forward for such a position will also be committing an offence.

Mr Macintosh: I am conscious of a few specific issues that we do not have time to cover today. However, further to Adam Ingram's point, the Mental Welfare Commission spoke last week about some voluntary groups that work with vulnerable adults and said that it is sometimes unclear in such self-help groups whether the protected adult, the vulnerable adult and the person on the barred list might be one and the same. It is a difficult area. There are issues to explore—for example, such groups that provide a useful service might operate from a health service property. There are concerns about who is regulated and who is not when it comes to vulnerable adults. Might we put some of those specific points in writing to the minister so that we may have a more detailed response?

Robert Brown: I would be happy for you to do that, particularly on the vulnerable adults side of the bill. I am less comfortable with my knowledge in that area because that side emerges from other departments' areas of interest. If you have specific questions about that area, I will be more than happy to organise a reply.

The Convener: A number of specific issues that have arisen from the evidence we have received, including oral evidence, will need to be included in our report; they are probably for you to address in your response to our report, rather than taking up a great deal of time now.

Robert Brown: We are more than happy to provide detail on points for which there has not been time this morning, to help you in your report.

The Convener: We have not had much time to go into depth about the reports of the Finance Committee and the Subordinate Legislation Committee. I would be grateful if the minister would provide us with a written response to those reports before we produce ours.

Robert Brown: Which aspects are you particularly interested in—the numbers and the costings?

The Convener: Both committees raised a number of issues that they asked the lead committee to look into. Many of those issues are quite technical; therefore, we do not need to take up a great deal of time going into them at the moment given that you can probably respond to them in writing. If you could do so before we finalise our report, that would be helpful.

Robert Brown: Absolutely.

Dr Murray: I have a technical point about the direct payments scheme. When a vulnerable adult employs somebody who might be on the barred

list, is the vulnerable adult as the employer committing an offence?

Robert Brown: I think that I am right in saying that he is not. Is that right, Andrew?

Andrew Mott: The individual who offers his services would be committing an offence.

Dr Murray: What if somebody were not in the scheme?

Andrew Mott: If the work is regulated, the barred individual would be committing an offence.

The Convener: I have a couple of points that we need to cover today, the first of which is about age in the definition of a child. I am slightly uncomfortable about the age being 18, because it does not seem appropriate that all 16-year-olds should be covered by the bill when they can go to work, get married and do all sorts of other things. Vulnerable adults are included from the age of 16, so why is a child defined as someone up to the age of 18? We have heard evidence that several essentially adult groups are not allowing people who are defined as children to become members because of concerns that they will get caught by the bill. We heard today about mountaineering groups and art clubs.

Robert Brown: To some extent, I am open minded about the issues that might arise from that. There has been considerable discussion about that overlap. Many services that apply to young people straddle the ages that the convener identified. The overlap is probably not very significant except in a limited range of circumstances, because most protected adults would be older individuals. For example, there might be teachers working in the sixth form of schools. I am not sure that any difficulty would be created in practical terms, but we would be anxious to hear about any specific problems that have been identified in the evidence.

There was some discussion about whether there should be one list or two, and the committee has heard evidence that it would probably be an overreaction to bar someone automatically from both lists because there might be different circumstances. For example, someone who is trying to get access to an older person to defraud them of their money would not have anything to do with children. We therefore rejected the idea of having a single composite list, although there will be a fair degree of overlap between the two lists.

The age of majority is the cause of a lot of discussion. The ages of 16, 17 and 18 are used for all sorts of different things, probably because people do not suddenly grow up at the flick of a switch. The transition has to work with the types of organisation that we have to deal with. Again, we are more than happy to consider that issue afresh; it is not particularly a matter of principle for us. Rightly or wrongly, the decision was taken that there would be more advantage in fixing the age at 18 and keeping the overlap, because of the organisations that will be covered and that work on the fringes of different issues.

Fiona Hyslop: I would like the minister to reflect on the scenario that I will outline, which concerns how a young homeless person might be affected by the bill. Last week, the Cyrenians came to an event in the Parliament. A young homeless person could well be a vulnerable adult; they could also be a volunteer, because vulnerable adults take part in volunteering; and they could be volunteering to work with children or young people who are under the age of 18. Such circumstances would put quite a lot of pressure on an organisation that is already doing a great deal of work. We must protect and preserve that aspect of volunteering and working with self-help groups. For a variety of reasons, many homeless people have police records. How can the Cyrenians, as employers, ensure that their organisation can grow and flourish, and how can they be sure that the bill will not impact adversely on the organisation?

Robert Brown: That is a great example of an issue that sits on the fringe between several different areas. The question of volunteers in the homelessness context is complex. They deal with extremely vulnerable young people who might be more subject than others to abuse and exploitation. It is important to get this area right.

The primary objective is to protect young people and vulnerable adults who find themselves in that situation. The second is to ensure that we do not act as a deterrent to volunteers and organisations that deal primarily with adults and stop them dealing with young people who have become involved incidentally; we have to get to the bottom of that issue. Thirdly, there are the people who have moved from being service users to being volunteers. Many of the organisations are enabling and empowering, and part of the recovery process involves encouraging young people and people who are affected by their situations to take more responsibility for themselves.

There is a series of issues that are well worth pondering, and we will take up your invitation to have a close look at the situation in question.

The Convener: I seek some clarification. Westminster's Safeguarding Vulnerable Groups Act 2006 defined regulated work as that which

"is carried out frequently by the same person".

That seems to imply that if someone's work was occasional, they would not necessarily have to go through the disclosure system.

In part 2 of schedule 2, "Activities", the definition of unsupervised contact with children implies that if

"a responsible person, or … a person carrying out an activity mentioned in paragraph 2, 3 or 4"

is also present, someone would not be subject to disclosure. Does that cover activities such as school discos or trips where parents would be assisting a teacher, who is covered by the definition of a responsible person? Those are occasional events when someone acts as an assistant to the responsible adult who is supervising the children and is therefore under supervision as well.

Robert Brown: I want to be cautious about making generalised statements that may not apply in particular situations. However, I will comment on the example of a school trip.

If the trip is overnight and people are supervising sleeping accommodation, one would imagine that it would be desirable for the parents involved to go through the disclosure arrangements. That is reasonably clear. However, I am not sure that the same issue would arise for a day trip to the theatre, for example. The issues need to be worked on at a local level. The CRBS can give advice to voluntary sector organisations, and schools are well able to equip themselves with the information.

However, there is an issue with different approaches by different local authorities across Scotland, and it probably bears some examination to see whether we can improve the guidance. It is probably a particular issue for schools rather than more generally, but it can be taken forward.

There are important aspects in the definition that relate to supervision and regularity of contact. There would probably be no problem in an unexpected situation, for example when someone is off ill and somebody else has to be brought in, because such events cannot readily be anticipated. If people are acting under the direction and supervision of other people, there probably is not an issue, which I guess covers the school disco situation.

However, I repeat that we must consider the circumstances of the particular event. The onus is on employers to consider the matters, which takes us back to the point that Adam Ingram made. The important point that underlines the bill is that disclosure is not a tick-box exercise but must be considered in the context of wider arrangements and protocols for what is done in particular circumstances. People at all levels have to be aware of that.

The Convener: The final question is more general. One concern is that the bill might result in people taking too cautious an approach. You may prescribe the barred list so that it is overcautious and information is shared at too low a level because people are frightened about not fulfilling their duty if they miss something. The concern is that the bill will result in risk-averse behaviour, which is not necessarily in the interests of children's welfare even although it is seen as protecting them. How can we ensure that the bill will not result in a risk-averse society?

Robert Brown: That is a very important point, which links to the general points that were made earlier about risk averseness in relation to school activities. It is important that we are cautious about that.

I can understand why people are cautious in approaching legislation, and I do not blame anybody for doing that. We need to give people confidence in working with the legislation. We have to look to local authorities, because there have been some issues with them, as the owners of halls for example, gold plating legislation in terms of what they require from their users. Those are management matters, but we do not envisage or encourage situations in which people overegg the pudding by adding unnecessary restrictions to those in the legislation. I would like to make that clear as the ministerial view.

I take your point, and I have no doubt that issues will arise. We cannot deal with them all, but the combination of having improved legislation in place, some of the statements that have been made in the context of the bill and the continuing engagement with stakeholders on implementation should all help to bottom out the issues as effectively as possible and to put people's minds at rest. If behind that there is a sensible approach to the protection of young people, it will help people approach the legislation.

The Convener: I thank the minister and his team for their evidence.

Members may have picked up detailed issues from the evidence to which they would like a response from the minister before we consider our report. If they tell the clerks about them as soon as possible, I will write to the minister on behalf of the committee to elicit those responses, preferably before we consider the final version of our report.

Dr Murray: What is the timescale for the report?

The Convener: We are not meeting next week. We will have the draft report to consider the following week, and then we have to finalise it the week after that because it has to be published before the Christmas recess.

Meeting closed at 13:31.

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