

EDUCATION COMMITTEE

Wednesday 7 February 2007

Session 2

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EDUCATION COMMITTEE

3rd Meeting 2007, 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)

Tommy Sheridan (Glasgow) (Sol)

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)

Alex Cole-Hamilton (YouthLink Scotland)

Penny Curtis (Convention of Scottish Local Authorities)

Kirsten Gooday (Community Care Providers Scotland)

Russell Gunson (Scottish Council for Voluntary Organisations)

Michelle Miller (Association of Directors of Social Work)

Claire Monaghan (Scottish Executive Education Department)

Andrew Mott (Scottish Executive Education Department)

Liz Sadler (Scottish Executive Justice Department)

Lynn Townsend (Association of Directors of Education in Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education Committee

Wednesday 7 February 2007

[THE CONVENER *opened the meeting at 10:02*]

Protection of Vulnerable Groups (Scotland) Bill

The Convener (Iain Smith): Good morning. I welcome everyone to the third meeting in 2007 of the Education Committee. We have received apologies from Marilyn Livingstone, who is dealing with a family illness, and Frank McAveety, whose train has been delayed and who should be with us soon.

This morning, we will consider the Protection of Vulnerable Groups (Scotland) Bill. Following the Parliament's approval of the bill's general principles, the Parliamentary Bureau has referred it back to the committee for stage 2 consideration. In our stage 1 report, we recommended that stage 2 should not begin until stakeholders had had an opportunity to comment on drafts of the latest subordinate legislation and guidance. The committee has now received further information from the minister on the subordinate legislation, which, along with comments from the Scottish Council for Voluntary Organisations, has been included in the meeting papers.

The first of our three panels of witnesses represents the SCVO. I welcome to the meeting Russell Gunson, who is policy and communications officer at the SCVO; Alex Cole-Hamilton, who is senior parliamentary officer for YouthLink Scotland and a member of the SCVO's policy committee; and Kirsten Gooday, who is a late addition to the panel. I am afraid that I do not know what Ms Gooday does, but she is obviously representing the SCVO.

I invite the panel to make some opening remarks, after which I will open it up to questions.

Russell Gunson (Scottish Council for Voluntary Organisations): Thank you for this opportunity to give evidence. I am afraid that my colleague Lucy McTernan cannot attend the meeting because of a family bereavement. In her place, we have Alex Cole-Hamilton—who, as you say, is a parliamentary officer for YouthLink Scotland—and Kirsten Gooday, who is a policy and information officer for Community Care Providers Scotland. YouthLink Scotland is a well known leading national youth work charity and the membership of CCPS includes some of the foremost organisations working with vulnerable

adults in Scotland. SCVO, YouthLink Scotland and CCPS are all members of the voluntary sector coalition that was formed in response to the Protection of Vulnerable Groups (Scotland) Bill and now includes 42 organisations from across the sector.

At the outset, I reiterate the voluntary sector's whole-hearted support for the bill's intentions. Protecting the most vulnerable from harm while maximising their welfare should, after all, be a priority for everyone in society. As the services that are offered to vulnerable groups—often by the voluntary sector—are crucial in improving their quality of life, every attempt should be made to introduce a vetting and barring scheme that can protect children and adults without preventing them from leading happy and fulfilling lives.

We therefore welcome the positive aspects of the bill, which offers a potential improvement on the Protection of Children (Scotland) Act 2003. For example, having a more streamlined application process is a simple yet crucial step forward for organisations in the voluntary sector. Also, with amendment, the bill will be able to deliver disclosure checks that can be passported between organisations and constantly updated, thus reducing the need for the multiple checks that have drawn such criticism since POCSA was passed.

We are delighted that some of our concerns have been addressed by Executive amendments that appeared in the Parliament's *Business Bulletin* yesterday. We commend the minister for listening to and acting on some of the concerns that the voluntary sector expressed at stage 1. However, some aspects of the proposals could worsen the current system in a number of ways. The bill is uncertain: important issues have been left to secondary legislation, including fees and retrospection. We also have other concerns about the bill, to do with informal activity that is within the scope of the vetting and barring scheme and to do with definitions. Crucial implementation issues also arise.

Careful consideration of all those issues will be required before the bill is passed. We therefore continue to back the Education Committee's recommendation to delay stage 2 consideration. A delay until early in the next session of Parliament will be required so that draft secondary legislation can be published, changes to the bill can be properly considered and implementation issues can be fully resolved. In the absence of a delay, stage 2 amendments, at least, will be required to rule out the worst-case scenarios facing the voluntary sector.

We are willing to continue to work hard with the Executive—in this parliamentary session or the next—to ensure that the proposed scheme will

genuinely protect vulnerable groups in Scotland. The goal of ensuring that vulnerable groups are protected from harm is shared by everyone who works with all kinds of children and adults. With sufficient consideration, a vetting and barring scheme that is proportionate, workable and successful in protecting vulnerable groups can be achieved.

I thank the committee for inviting us today. We welcome your questions.

The Convener: What are your views on the steps that the Executive has taken to consult on the secondary legislation proposals within the pre-consultation documents, and what are your views on the timetable and on the stakeholder events that the Executive is holding? Do you have any general comments before we go into the details of what is in the documents?

Russell Gunson: The consultation process began in February last year, before the bill was introduced, and covered some of the voluntary sector's concerns, including concerns about retrospection and fees. The voluntary sector gave general responses on those issues, but when the bill was introduced we saw that there was still uncertainty. We therefore sought greater clarity. However, the pre-consultation documents do not give greater clarity; they do not give a steer to the Executive's direction of travel. They give some additional ideas, but they do not offer us the certainty that we require.

We are disappointed that the pre-consultation process seems to have been tagged on to other meetings that were already planned. That is not the most appropriate way of dealing with these important issues. We acknowledge that the Executive has offered a two-stage consultation process, albeit for the secondary legislation, which is welcome, but before the primary legislation is passed we will need further certainty.

Alex Cole-Hamilton (YouthLink Scotland): This all comes down to the issue of time. We have already stated our support for the Education Committee's recommendation that further consideration of the bill should be delayed until some time early in the next session of Parliament.

The SCVO has been made welcome, and it is good to be part of the voluntary issues group that is considering the stage 2 aspects of the bill. Part of the time problem has been that we have been fighting running battles over some of our key concerns, such as those on retrospection and fees, which has led to some confusion: sometimes assurances have been given but, after further analysis, they have been pulled back slightly.

Our chief concern about retrospection is that the voluntary sector is in a time of great financial crisis, not least because we face the demise of

European social funding, developments such as Glasgow cultural and leisure services department becoming a charitable trust and competition as a result of lottery grants being given to the Olympics. It is hard for us to compete against such big organisations.

We are being asked to write a blank cheque. We do not know how much retrospective checking will cost, because there is no definitive—[*Interruption.*]

The Convener: We are trying to be kind by putting the blinds down.

Alex Cole-Hamilton: That is all right. I stopped being able to see some time ago.

No one is entirely sure what the fees will be in the final analysis. We are concerned about such uncertainty when the voluntary sector already faces severe financial difficulties.

The Convener: We might be able to explore the fees issue further.

Fiona Hyslop (Lothians) (SNP): I have a general question about timing. Ministers have expressed concern that if we delay stage 2 there is a danger that enactment will be delayed. If something were to happen during that period, we would all be held responsible. However, the legislation will be commenced only once the slowest ship in the convoy has arrived—in other words, when the secondary legislation has been produced. In your estimation, how much time would be lost if the committee stuck to the recommendation in its stage 1 report and waited until the subordinate legislation—which your organisations will have to implement—was available for examination? Have you thought through what a delay to stage 2 would mean?

Russell Gunson: Under the Executive's current proposals, implementation will not take place until the end of next year anyway, to ensure a tie-up with the implementation of the Safeguarding Vulnerable Groups Act 2006.

Fiona Hyslop: So we are talking about the end of 2008.

Russell Gunson: Yes; that is my understanding of the current proposals. We hear that there might be difficulties and delays with the implementation of the Safeguarding Vulnerable Groups Act 2006, which might give us a window of opportunity to consider the secondary legislation before we proceed with consideration of the bill, so that would not affect the simultaneous implementation of the legislation north and south of the border.

The Convener: Do any members wish to ask about fees?

Dr Elaine Murray (Dumfries) (Lab): The pre-consultation documents contain three different options for a fee structure: an initial fee with

additional charges for subsequent checks, a fee every 10 years and an annual subscription. How do you feel about those options?

Russell Gunson: The sector responded between February and May last year—before stage 1—gave verbal evidence at stage 1 and is now giving evidence again before stage 2. It is time for the worst-case fees scenarios for the voluntary sector to be ruled out. A £65 initial check would be too much for all but a few voluntary organisations. The same applies to an annual subscription. I think that the pre-consultation documents contain the notional figure of £8 a year, which over a 10-year period would amount to £80. That is obviously a lot more than the cost of an initial check—which, at the moment, is £26—followed by one or two nominal checks. The only option that it would be realistic for the voluntary sector to cope with would be an initial check that cost roughly the same as it costs now—we hope that it would not cost much more—followed by a subsequent check at a lower level to reflect the administrative savings that we hope the scheme will bring.

Dr Murray: I know that you are anxious about the fact that the fees for disclosure checks increased after POCSA came into force and that you are keen for the bill to be changed so that it incorporates powers that would enable ministers to cap fees, should that prove necessary.

Russell Gunson: Absolutely. Following POCSA, the fee has risen from £13.60 to £20 in less than a year. That represents a 47 per cent rise in the cost of implementation for the voluntary sector. The financial memorandum to the bill proposes a further rise of 30 per cent to £26 for the initial check. If the fee rises any further, we will start to question the ability of organisations to continue with their present activities, and in some cases it might be argued that their existence is under threat.

The Criminal Records Bureau down south charges a fee of £36 for a disclosure check. If we reached such fee levels in Scotland, it would begin to call into question whether many organisations could work with vulnerable groups. The bill should set a cap, so that paid staff in the voluntary sector have certainty that the fee level will not rise soon after implementation, or perhaps into the future, over the scheme's lifetime.

10:15

Mr Kenneth Macintosh (Eastwood) (Lab): I understand the difficulty that some voluntary organisations would face in relation to paid staff, but why should a paid salaried employee who is on a pension, in a voluntary organisation that provides the same statutory services as a local

authority does, be treated differently from a local government employee when they have similar employment situations?

Kirsten Gooday (Community Care Providers Scotland): CCPS members provide most of their services under contract to local authorities. We would face difficulty simply because, in the main, we do not receive from local authorities the full cost of providing services. In general, the cost of checks would not be included in the money that we received from local authorities to provide a service, so it would be an additional layer of administration and an additional financial burden for us. It would come on top of Scottish Commission for the Regulation of Care fees and the cost of training staff up to Scottish Social Services Council registration standards.

The bill is just another piece of regulation with which we will need to comply. We have no problem with complying with it in principle, but complying is difficult for us when we do not receive from local authorities the finances that are necessary to do so. The check would be another cost that voluntary organisations would incur on top of the cost of providing a service.

Mr Macintosh: Are you not concerned about creating a split? Either you provide a service that is on a par with that of local authorities, as at present, or you opt for special treatment. Does special treatment carry the danger that you will not be regarded in the same manner?

Kirsten Gooday: I do not think that asking for the money that it costs to provide a service, which includes complying with regulations, is asking for special treatment. Local authorities cover the costs of such regulatory burdens in the settlements that they give their internal services, so if external service providers ask for such costs to be met, that is not necessarily asking for special treatment. We are asking to be treated in the same way as local authority services.

Russell Gunson: When we talk about paid staff in the voluntary sector, we are not just talking about the staff of large organisations that provide services on councils' behalf by contract. Many small organisations, such as after-school care organisations, employ a handful of part-time staff. I know of organisations whose staff turnover is high, because they use students who are studying to be teachers or they use Polish immigrants, for example. An organisation with a high number of part-time workers and high staff turnover, even if we were talking about only 12 to 15 staff, would experience a large drain on limited resources. Such organisations would have no way to claim back that money, even in principle.

As Kirsten Gooday says, full cost recovery is the ideal. It has been agreed in principle with the

Convention of Scottish Local Authorities and the Scottish Executive that the voluntary sector can receive the full cost of the services that it provides. However, in practice, that relies on negotiation between local authorities and voluntary organisations, which sometimes puts voluntary organisations in the position of being unable to ask for the full cost.

Fiona Hyslop: We will have to give ministers some discretion on fees, because the bill must stand the test of time. You are concerned about the costs that larger service providers will incur if they perform multiple checks. One interesting point is that although we must give ministers discretion, we must also give you some comfort that you will not be hit with a huge bill.

You say that you want the Executive to rule out the worst-case scenarios. The Executive has listed in its pre-consultation discussion paper options 1, 1a, 1b, 2 and 3. Which option are you most comfortable with? In your submission, you state that you want capping but, for local authorities and voluntary organisations that deal with large volumes of disclosure checks, bulk buying of checks at a reduced price might be preferable to paying one-off charges on an individual basis, which would be a costly way to administer the scheme.

Russell Gunson: There might be scope for a different fee arrangement for the statutory sector and large voluntary organisations. I take your point that statutory bodies might prefer the convenience of paying once for unlimited checks. However, for the vast majority of the voluntary sector, options 1a and 1b, whereby there would be a higher fee for initial checks and a lower fee for subsequent checks, are the sensible ways forward.

As I said earlier, a £65 initial cost would lead the vast majority of voluntary organisations to question their activities with voluntary groups and, in some cases, their existence. There are also issues about an annual subscription. For example, if someone was employed as a teacher but volunteered with two or three other projects, who would pay the annual subscription? If they were in paid employment but worked part time in two voluntary organisations, who would pay?

Our preferred options are 1a and 1b. Option 2 is ruled out for the vast majority of the voluntary sector.

Mr Macintosh: Retrospection is a crucial issue. First, do you accept the principle of retrospective checks?

Russell Gunson: The principle of retrospection—the idea that everyone should be in the scheme—is acceptable. However, the argument has always been about how it would be implemented. Would it be proportionate—and

possible, given the legal issues—to implement the scheme for one in four of Scotland's population?

If it were decided that retrospection was possible and proportionate, it would have to be implemented appropriately in the voluntary sector. We would need sufficient time to phase in retrospection and we would need funding and resources for the additional costs. We have not received an assurance about that, other than the comment that ministers are sympathetic to the voluntary sector. We need a cast-iron assurance to rule out the worst-case retrospection scenarios.

Mr Macintosh: The minister has offered some reassurances. I think that you will propose an amendment—one of us might lodge it for you—on the timescale. It is interesting that you want a timescale to be in subordinate legislation. We might have thought that you would want it to be in the bill. Will you explain your thinking on that? What statement would you welcome from the minister about the timescale, given that the Executive has signalled loudly and clearly that the timescale will be between three and five years? The alternative option is that you get three or four years and it is up to you when to implement it.

Russell Gunson: A strong statement from ministers on resources and funding would be welcomed throughout the sector and would be reassuring.

On the timescale, the worst-case scenario for the voluntary sector is that retrospection happens within three or four years of the scheme's introduction. If we can rule that out, that would be a good step forward.

Mr Macintosh: So you want retrospective checks to be made only after four years.

Russell Gunson: There is a sensible suggestion in the pre-consultation documents whereby the scheme would tick over for three to five years without retrospection and retrospection would be phased in during the three to five years following that. That would be a sensible way forward for the voluntary sector, as long as resources and funding were provided to meet the additional costs that even that option would bring.

You asked about the thinking behind our proposal for an amendment to take retrospection out of the bill and leave it entirely to secondary legislation. There are issues with the principle of retrospection that have not so far been teased out and we fear that, if the bill says that retrospection will happen and a commencement order will determine when, they will not be teased out in the parliamentary scrutiny of the commencement order. However, if we put all the retrospection measures into secondary legislation, there will be committee scrutiny, a full parliamentary debate and a vote on the statutory instrument. We hope

that that will enable us to tease out the legal issues with removing existing members of staff, for example. It will be possible to have a full discussion and we will be able to put our case, have our day, as it were, and see what comes out.

Mr Macintosh: Indeed. Can I check your figures? The one worrying point in your submission is your estimate that the turnover of paid staff in the voluntary sector is 8 per cent. If that is correct, it undermines the idea of achieving full coverage by natural turnover, which is obviously the commonsense approach.

Russell Gunson: Absolutely. The low turnover can be viewed two ways. On one hand, it means that, without retrospection, it will take much longer for the vast majority of potential scheme members to join the scheme. On the other hand, it points to the requirement for a longer phasing-in period. If retrospection is to happen and if funding is in place for it, it will be sensible to make it compulsory once natural turnover has ensured that a great number of staff members are in the scheme.

Our 8 per cent figure comes from Disclosure Scotland figures on the number of disclosure checks for paid staff, which is currently just fewer than 8,000. We estimate that there are just fewer than 100,000 paid staff in the voluntary sector. POCSA is not retrospective, so we can assume that those checks are for new or transferring staff.

The Convener: POCSA and the Police Act 1997 have been in force for some time, but the bill will not come into force for perhaps two years. If we wait three to five years before retrospection starts, and another three to five years to implement it, it will be somewhere in the region of 20 years from when the business started to when everyone has been retrospectively checked. Is that really a sensible way forward?

Russell Gunson: For us, it is the least worst option. We are where we are, although we might not wish to be in this situation. We are starting with a bill that will be implemented at the end of 2008 or the start of 2009. It will not allow any of the previous disclosure checks to feed into it, so we will be starting from scratch, but the vast majority of voluntary sector bodies will be unable to cope with a short phasing-in period for the scheme. I am afraid that the answer is that, although retrospection should go ahead in principle if the legal issues are addressed, it cannot go ahead without causing harm in less than the period of time that I suggest.

The Convener: I will turn the question on its head. POCSA and the Police Act 1997 have been in place for a long time and you are talking about a long period before retrospection starts. Therefore, anyone who came into the scheme in the 10 or 15

years before retrospection started would already have been checked by the previous regime or the new one, and we can presume that anyone who had been in longer than that had caused no concern, otherwise appropriate action would have been taken to deal with them. Would there be any need to retrospectively check people who had been working in the children's sector for more than 15 years and had caused no problems?

Russell Gunson: I have some sympathy with that argument. The three or four years that I suggest we wait before retrospection is implemented—assuming that it is implemented—could be a way forward by giving us time to pilot the new regime, investigate matters properly and conduct proper research into where the risk lay with staff members. Does the risk lie with somebody who has volunteered for the WRVS without incident for the past 25 years or with new members of staff? If we put the measures on retrospection into secondary legislation in their entirety, we could debate such issues with full parliamentary scrutiny rather than assuming that it will go ahead with the only questions being how and when.

The Convener: Before we move on—and before they all leave—I want to welcome to the meeting the delegation of five MPs and two staff from the National Assembly of Malawi who are visiting the Parliament as part of a Commonwealth Parliamentary Association-sponsored programme to examine corporate governance in the Scottish Parliament. I did not want to interrupt the evidence-taking session. I had hoped that they would be with us until the end of the meeting, but I see that they have to leave. I thank them for their attendance at committee this morning.

10:30

Mr Adam Ingram (South of Scotland) (SNP): On retrospection, you mentioned the problem of uncertainty. The fact that the discussion document contains no preferred option seems to continue that uncertainty, which is a little puzzling. I seem to remember that you got some reassurances from the minister on the matter prior to the stage 1 debate—indeed, I recollect the blaze of publicity in the newspapers about your having squared off the voluntary sector. Perhaps you will explain the situation.

Russell Gunson: To be honest, it puzzles us, too. Members of the coalition met the minister and his officials two days before the stage 1 debate, when we received assurances that he would consider including retrospection in secondary legislation—which was, in fact, the idea that we had proposed. That would allow a full debate and, at the very least, provide some certainty that retrospection would not happen immediately.

During the stage 1 debate, the minister put on record those assurances and said again that the Executive would consider including retrospection in secondary legislation.

The coalition followed up on those statements by sending an official letter to the minister, but we have yet to receive a response. We would welcome any certainty that the minister can bring today to his plans regarding retrospection at stage 2. If he has none, he should say why the assurances were given in the first place.

Mr Ingram: Perhaps we can follow that up with the minister later this morning.

On another matter, and just for the record, I take it that your fundamental problem with retrospection is not the principle of the matter but the lack of administration capacity in the voluntary sector and the burden of costs that would be likely to accrue. Will you give us a flavour of that?

Alex Cole-Hamilton: Yes. Not only would big voluntary organisations be affected by retrospective checking—myriad very small organisations, some of which rely heavily on volunteers, would also be affected. Volunteers may have been with the organisation for a long time or be new to it.

We do not yet know the costs to the voluntary sector of disclosure or of the new vetting and barring system. As I said earlier, we are talking about having to write a blank cheque. Our estimates are that the voluntary sector will need as much as £20 million just to undertake retrospective checking. If this all happens at once—if there is a deadline and not a staggered process—we will also have the added burden of dealing with a glut. We know what happened in the early days of disclosure under the Protection of Children (Scotland) Act 2003. Our concern is that, if retrospective checking is not managed over a staggered or comfortable period, with commensurate financial and administrative support from the Scottish Executive, we may see the demise of a great many small voluntary organisations.

Russell Gunson: As a country or society, we have never assessed where risk lies for vulnerable groups. If retrospective checking was to be undertaken and such checks were found to be needless because risk does not lie with volunteers who have volunteered without incident for 20 years, we would have a principal argument against retrospection.

Equally, we may find that retrospection is a barrier to volunteering. A person who has volunteered without incident for 20 years may feel that the check is an invasion of their privacy and would ask why a police check on them is wanted. That would be another principal argument against

retrospection. As Alex Cole-Hamilton said, the funding, costs and inhibition of activity that retrospection may bring would be damaging in practice to the voluntary sector. We have issues with it in that sense, too.

Alex Cole-Hamilton: Members should be under no illusion that the voluntary sector exists in quite a hostile climate at the moment; we are all living from hand to mouth. In their responses to the national youth work strategy, every organisation that YouthLink Scotland represents has cited the need for full cost recovery as a chief concern in staying afloat. As I mentioned earlier, that situation will only be compounded as successive organisations lose out on funding due to the demise or decline of the European social fund. In addition, people will face extra competition because of the burden that the Olympics will place on lottery funding. The need to apply retrospective checking would be an added burden at a time of real concern for the voluntary sector.

Fiona Hyslop: I want to explore the issue of risk and the challenge of what constitutes a proportionate response.

If turnover in the voluntary sector is as limited as is suggested in the YouthLink Scotland submission—its suggested figure of around 8 per cent is quite different from the 20 per cent figure that the Executive suggested—we could be talking about applying retrospective checking to a huge number of people. People who have worked in the voluntary sector for 20 to 25 years, perhaps including an army of WRVS volunteers, will suddenly be asked to undergo checks. We need to consider the value of such a risk assessment scheme.

The scheme will provide information not on whether volunteers will commit offences but on whether they have committed offences that should bar them from working with vulnerable groups. Therefore, an issue that we need to consider is what constitutes a reasonable threshold for barring. If the criteria for barring are to include consideration of how long ago the incident took place, that will call into question whether, even if an organisation finds that a volunteer did something 20 or 25 years ago, such an issue would be dismissed anyway. We need to consider whether a person's behaviour and performance over that period would also be criteria.

Do we need to recognise that managing people properly—by ensuring that children can speak out about anything that makes them uncomfortable and that older people receive the proper services—is a better way of managing risk than requiring volunteers to undergo checks? We need a proportionate response. We need to work out whether to require retrospection on the scale that is being considered would constitute effective risk

management. We need to have a more principled discussion about that. Will you reflect on that?

Russell Gunson: Absolutely. Throughout the process, the Scottish Executive has said that establishment of the vetting and barring scheme is but a small part of how we will protect vulnerable groups. An equally—arguably more—important aspect is what organisations do daily to protect children. The mechanisms that protect children during their use of a service are those that catch people who may not have done anything in the past but are about to do something. When the cost of retrospection is compared to the benefit that could be provided by investing that money in those other mechanisms, there is an open argument about whether retrospective checking would be the best use of money.

Kirsten Gooday: On the perception of risk, it is important to realise that individual organisations often have relatively good risk assessment and risk management processes in place as part of their own safer recruitment processes. However, decisions on how many of an organisation's staff should be checked—or, in this case, whether all of an organisation's staff should be checked retrospectively—sometimes lie outwith the hands of the voluntary organisation because they come, for example, from the local authority.

The voluntary sector issues group recently considered a number of examples in which local authorities had demanded that volunteers be blanket checked before, for example, a group could take a number of children swimming. That may be a peripheral example but such issues come up from time to time. On retrospective checking, it will be important that organisations outwith the voluntary sector, including local authorities, are given strong guidance on when demands should be placed on voluntary organisations regarding which staff should be checked and over what timescale. That is also important.

Dr Murray: Moving on, I want to ask about the occasional volunteer and the situation in which a school trip or another activity for young people or protected adults cannot go ahead because there are not enough parents or responsible adults until someone steps in at the last minute. I know that you have views on how such situations could be handled without potentially criminalising people who volunteer at the last minute. Will you explain how that concern could be handled?

Russell Gunson: Yes, and the answer feeds into the ambiguity about the definition of regulated work. Terms such as “normal duties”, “caring” and “supervising” are not defined in the bill. As such—this relates to Kirsten Gooday's last comment—they have been interpreted in a variety of ways by

organisations, third parties, insurance companies and so on.

To us, the question is about certainty: the primary legislation should tease out the terms a little more than it does. For example, to tease out “normal duties”, you could include a time provision, as was done down south in the Safeguarding Vulnerable Groups Act 2006, under which a person has to work for two days in 30 before their work must be regulated. Equally, under a frequency provision, someone has to work a number of times with someone in a certain period—regardless of the length of the work—for it to count as regulated work. Such provisions would mean that sporadic, last-minute volunteering was not within the ambit of the bill, and that volunteers did not face legal duties under it.

We have other options that we hope members will propose in amendments before tomorrow, and we could go into further detail about them. However, there is a question about whether it is appropriate for sporadic, ad hoc and informal volunteering to be covered by the legislation. On an earlier point, is that where the risk lies, or is it with other individuals in the scope of the scheme?

Alex Cole-Hamilton: There is also the deterrent aspect. Dr Murray mentioned someone who had not been disclosure checked stepping in for a parent who was sick. We do not want to deter such goodwill volunteering when there is no doubt that the person in question is appropriate and fully above board. What comes into the debate is the idea of a risk-averse society. It is right that we take every possible step to ensure that our children and vulnerable adults are safe, but we do not want to do that at the expense of deterring good-hearted citizens from stepping forward in times of crisis when their help is needed.

Dr Murray: I know that you are also proposing amendments to provide that people could be exempted if parents give consent for them to work with their children.

Russell Gunson: Yes. There is a definition of unsupervised contact in schedule 2, which determines regulated work with children. In summary, contact is currently defined as supervised only if a child's parent or guardian or an adult who lives with the child is in attendance. We think that that infringes on the informal but fundamental right of a parent to say that they trust a neighbour or friend of the family to look after their child. If the bill could be amended to ensure that friends of the family and other people with personal relationships were covered by the definition of supervised contact, we would go some way towards excluding the famous examples of the walking bus, the school disco and other informal situations that are currently in the scope of the scheme.

Lord James Douglas-Hamilton (Lothians)

(Con): I have two questions. First, will you sum up the main changes to the bill that you want?

The Convener: Briefly.

Russell Gunson: I suppose that we should start by reiterating that—credit where it is due—the Executive has listened and addressed some of our concerns. However, three fundamental concerns remain, and we have a number of other important concerns.

Our three fundamental concerns revolve around retrospection or phasing in of the legislation, the fees in the scheme, and the informal activity that is currently covered by the scheme. As we have already discussed, retrospection is so crucial that it should not be left to secondary legislation. We need some certainty on that before the bill is passed.

Likewise with fees: if the scheme is self-financing as the Executive proposes, and the estimates are incorrect—for example, £2 million for an information technology system strikes us as being very optimistic—fee levels will rise, which will impact on paid staff in the voluntary sector. Equally, as regards the informal activities that we discussed, the most informal volunteering and associations come within the scope of the bill and we wonder whether that is inappropriate—a hammer being used to crack a nut, as it were.

10:45

Alex Cole-Hamilton: Just to reiterate, the voluntary sector is behind the bill. We are very much in favour of the idea that the disclosure system will be changed so that we do not have to go for disclosure check after disclosure check, within months in some cases, but we are concerned that we are being asked to write a blank cheque when we are in financial difficulty.

Lord James Douglas-Hamilton: Thank you. You have already addressed costs, but to what extent should the Executive cover those costs?

Russell Gunson: The Executive has a number of options. It has agreed to waive fees for volunteers as it has under the POCSA scheme and we welcome that. As we discussed up to a point, there is a big concern about the fee level for paid staff and increases beyond that initial level. We suggest that there should be a cap on fees for paid staff in the voluntary sector, or even that those fees should be waived. That scheme would need Executive funding to ensure that there was no shortfall.

As regards Executive funding elsewhere, retrospection would bring a great deal of administrative costs. If the retrospection were over 50 years, that would not be the case, but if it were

over three or four years, there would be a great deal of administrative and additional start-up costs in respect of fees for paid staff in the voluntary sector.

If the scheme is to be self-financing, it is from our perspective crucial that it be properly financed by the Executive, otherwise it will have an indirect effect on us. Further consideration of the financial aspects would give us great reassurance that any shortfall in the scheme would not be reclaimed from voluntary organisations.

Fiona Hyslop: You talk in your submission about regulated work, which is referred to in schedules 2 and 3, in relation to the employment of vulnerable people and the discrepancy between the words “employment” and “work”. I suppose you are talking about the 17-year-old who, if employed, might not need to go through a disclosure check whereas a volunteer would. We have explored the question of what happens to the 17-year-old volunteer who helps at a homelessness unit where they work with vulnerable adults who might have committed offences because of difficulties earlier in their lives. How do your proposals address that situation?

Russell Gunson: At the moment, schedules 2 and 3 cover vulnerable groups, whether they are service users or in paid or unpaid employment, but they propose different standards for each. As a service user, a child is protected to the hilt at work until the age of 18, and the situation is likewise for a protected adult. If a child or protected adult is in paid employment, the scheme would remove barriers to paid employment or, arguably, reduce the protection that is offered to vulnerable groups. The argument is that we should not discourage paid employment for children and protected adults; they need it as much as anyone else.

We are asking for parity between paid and unpaid employment. It seems nonsensical that an individual who is employed as an administrator in a charity, for example, would need fewer checks than would an individual who was deployed as a volunteer but with the same role. That is a barrier to volunteering, to work-experience placements and to internships. We propose to replace in the bill the word “employment” with “work” to include unpaid as well as paid employment.

The Convener: I have a final question on annex A to the Executive’s pre-consultation discussion paper on secondary legislation under the bill. Do you have any comments on the powers to make regulations? Is there any requirement for clearer definition in the proposed primary legislation?

Russell Gunson: We have covered the issues of fees and retrospection, but it is worth reiterating how important they are. We are not sure how

appropriate the lack of detail is in that regard. We seek further clarity from the Executive on that.

If we look through the list of the secondary legislation that is provided for under the bill, vetting information is obviously crucial, although there is a question about how appropriate a matter that is for secondary legislation. We conceded that the arguments in that area could be left for further debate and consultation.

On the definition of “protected adult”, we welcome the amendment that the Executive proposed yesterday, although it will lead to a greater dependence on secondary legislation and therefore to greater uncertainty. However, it is an improvement on the current situation.

The Convener: That exhausts our questioning. I thank Russell Gunson, Alex Cole-Hamilton and Kirsten Gooday for coming along and giving us further input on the Protection of Vulnerable Groups (Scotland) Bill.

10:51

Meeting suspended.

10:55

On resuming—

The Convener: I welcome our second panel of witnesses, who are representatives of the Convention of Scottish Local Authorities. We have with us Penny Curtis, who is the team leader for education, children and young people at COSLA; Lynn Townsend, who is the head of service at West Dunbartonshire Council and is also with the Association of Directors of Education; and Michelle Miller, from Fife Council, who is the convener of the children and social care section of the Association of Directors of Social Work. Thank you all for coming along. I invite you to make brief opening remarks before members ask questions.

Michelle Miller (Association of Directors of Social Work): Thank you for the opportunity to give oral evidence. This is the second time that we have done so. There are two key issues for us. The first is retrospection and the second is fees and the financing of the bill generally.

We heard the evidence from the previous panel. The Association of Directors of Social Work, the Convention of Scottish Local Authorities and the Association of Directors of Education think that we have to hold to the principle of protecting vulnerable people from harm. That sets the context in which we need to operate and in which we need to consider the bill—as opposed to considering it in an organisational context.

This morning, you got the voluntary and independent sector’s perspective, which was

communicated using language such as “for us”, “we” and “the voluntary sector”. I do not want us to give evidence as the statutory sector or as the commissioner and provider of some services, using language such as “from our perspective” and “we” and describing the issues that affect us; rather, I want us to start from the beginning and consider the child-centred or vulnerable adult-centred perspective.

That context also applies in relation to some of the financial issues. Although I appreciate the independent sector’s expectation that any services that are provided should be fully funded by the commissioners, that argument applies to the same degree to the public sector, whether in relation to social care, education or health. There are serious issues about the full funding of local authority and health services and about the level of service needed to meet the demand in our communities, where there are high levels of need and high levels of protection are required.

The committee will be aware of the detailed analysis of the funding arrangements, particularly for children’s services, in the report by Arthur Midwinter “Spending Review 2007: An Assessment of Expenditure Need by Scottish Local Authorities on Children’s Social Work Services from 2007-2011”. The issue is how we as a society fund our aspirations to protect people, rather than whether particular organisations need to pay more or have lower demands made of them, because of the financial context in which they operate.

On retrospection, it is hard for us to conceive of an argument that a new employee could pose more risk to children or vulnerable adults than an employee of long standing, notwithstanding the convener’s point that, if they have not been identified as posing a risk during 20 years of employment, that is presumably because they have not done anything wrong. We know from a number of inquiries that have led to substantial damages claims from people who were abused as children that the individuals responsible have never been brought to book and no longer work in the organisation concerned because they have retired or died. Although the number of those people is relatively small, they can do an extremely large amount of damage. That is why the proposals in the bill have been brought before the committee for consideration.

11:00

The Convener: I was referring to situations in which a person had been working for an organisation for a number of years and had never given cause for concern. Presumably you are talking about situations in which there was no cause for concern about an individual in the

organisation for which they worked, so there would have been no vetting information suggesting that the person should be barred. How would retrospection solve the problem of an individual who is causing harm that is not being picked up by the processes in the organisation for which they work? That is what is happening in cases for which there is long retrospection.

Michelle Miller: Indeed, although there may be a conviction that would have been picked up through the check.

The Convener: There may be, but in most cases there probably is not. I am highlighting the fact that retrospection does not necessarily result in additional protection. It is a question of the balance of risk.

Michelle Miller: Of course. We are clear about the fact that checking, retrospection and disclosure are one element in a much broader landscape that involves safe recruitment, supervision of staff and proper risk assessment. However, if the kind of checking that the bill will expect organisations to carry out is relevant for future employees, I struggle to understand how it is not relevant for existing ones. My colleagues and I appreciate the complexity of the process, which is difficult and expensive, but it is our responsibility to manage that complexity in order to achieve what we are ultimately aiming for—the protection of particularly vulnerable people.

The Convener: That raises the issue of whether the bill is about protecting vulnerable groups or protecting vulnerable organisations. It seems to me that the organisations in the circumstances to which you refer have failed to deal with situations that they should have known about or that they knew about but did nothing about. The issue is not retrospection. I understand where you are coming from, but I am questioning to some extent the motives behind the bill. I am not sure that it is about protecting vulnerable groups.

Lynn Townsend (Association of Directors of Education in Scotland): You are right to say that there is no easy or targeted answer to the problem. The fact that we are talking about a very small number of people who would like to do harm to our children and vulnerable adults, hidden among a very large group of employees or volunteers, makes things difficult for us. We all struggle with the issue of proportionality, and I understand why members are concerned about it. One assumes that there are currently organisations whose procedures are not as robust as they should be. If we do not have some of the measures that are proposed in the bill, we are relying on organisations to have robust procedures and not to cover up problems. The bill forces all of us to ensure that our measures are robust and that we report pieces of soft information that, when

added together, may give us a pattern or an indication that all is not well. That is one lesson that we have learned from some of the historical investigations that have taken place.

Dr Murray: If we introduce a system that includes more people, it is important that it should be workable and should not become overburdened. It should not give people a false sense of security because it is in place but is not working properly. One suggestion is that, instead of being included in the bill, with a commencement order, the section on retrospection should be removed completely and included in secondary legislation, to enable further discussion to take place on how workable it is and on the consequences of what is proposed. As members of the statutory sector, how do you react to the proposal that the provisions for retrospection merit further discussion and could be included in their entirety in secondary legislation?

Michelle Miller: The issue is not so much to do with how retrospection is introduced as it is to do with the timescale, which we have heard might be 20 years. Accepting the issues of proportionality, we must wonder whether, if it is going to take 20 years, we really need to be doing it. If the contention is that we need to be doing it, we need to have a timescale that is more reasonable and is based on the desire to protect not ourselves but the people whom we have been tasked to protect.

How retrospection should be introduced requires some discussion so that we can achieve the end without the barriers that surround it at the moment. However, we need to think about how the timing will impact on the ultimate aim of having people retrospectively checked over a realistic timescale of, perhaps, three to five years.

Dr Murray: Do you agree that having the provision on retrospection in secondary legislation would facilitate those discussions and ensure that we have the best system possible?

Michelle Miller: It would certainly allow more time in which to have the discussion. However, the question would be at what point retrospection would commence and whether having the discussion would make a difference. The balance would be to do with whether the timing is more or less important than having the discussion. I suggest that there is a compromise to be reached. The discussion is necessary, but 20 years is too long. Perhaps there is a shorter timescale that would still satisfy the requirements.

Lynn Townsend: Perhaps there is also an issue to do with people's understanding of what we are doing. On the one hand, we are saying that the reason why we need this complex bill, which will be expensive to implement, is that there is a genuine risk but, on the other hand, it might

appear that we are saying that we think that only new members of staff or members of staff who change jobs pose a risk and the huge numbers of people who do not change their job do not pose a risk. Those two things do not sit together logically. There is, at the very least, a presentational issue to deal with. I have some concerns about retrospection being something that we might consider but not necessarily go ahead with.

Fiona Hyslop: You talked about sharing information with the vetting and barring scheme. What mechanism in parts 1 and 2 would enable you to do that?

Lynn Townsend: My understanding is that there is a duty on organisations and employers to provide relevant information to the central barring unit and that there would be penalties for failure to do so. The details around that have yet to be made clear. We would like that to be clarified so that we were certain about what we should be providing.

Fiona Hyslop: Another issue relates to the question of proportionate response. We know that most children are harmed by people whom they know, rather than by people who work with them. You say that you have a duty to share information about people who work with children if it is adverse but no duty to provide information about other people who might have harmed children—obviously, there are far more of such people. Perhaps Michelle Miller could tell us whether people who have harmed their own children are likely to harm other children.

It has been suggested that a distinction be made between someone who has infrequent contact with children—perhaps two days out of 30—and someone who has frequent contact with children. If someone is likely to be predatory towards children, are they likely to do it in a one-off situation or are they more likely to do something premeditated that has been planned during the course of regular contact?

Michelle Miller: That is a hugely complicated question and the answer is probably more complicated still. It is difficult to generalise and the answer depends on the type of harm that is inflicted and the nature of the circumstances around that. For example, a male sexual abuser of children might well carry out that abuse in the family, and will be very likely to have other relationships with other families, and might abuse such situations if he is in a position of trust. However, there are other types of harm—for example, neglect related to a very specific family issue, or a physical assault on a child that was the result of overchastisement—and in such cases we would not necessarily say that the person would automatically pose a lifelong threat to any other child they came into contact with.

It will be difficult to work out the kind of information that we would want to present to the scheme about employees, and we have to multiply the complexity several times over when we are considering people who are not employed but who are, for example, the subject of a child protection investigation.

Fiona Hyslop: Children who are harmed are most often harmed by people whom they know. If there is soft information about people who have harmed children or are suspected of having harmed children, should that information not be passed to the vetting and barring scheme? Somebody who poses that threat should not be working with children—and they might go on to work outwith the local authority area. We are considering proportionate risk. Do such people not pose a greater risk? Is information about them not more important than information about employees?

Michelle Miller: That is right, and you raise a very serious issue. When we are dealing with people whom we know represent a risk, we have to consider their capacity—at any time in their life—to move on to other employment. We have to consider how to share information.

It is very difficult. Some local authorities look for a full chronological history of both a person's employment and their addresses. The local authorities then seek information from other local authorities as to whether the person will be suitable for employment. Not all local authorities will do that, and not all local authorities will respond, but that procedure exists within some organisations' vetting procedures and safer recruitment procedures. It is hugely complex and takes a lot of time—we might be trying to employ somebody who has lived in a dozen or two dozen local authority areas, possibly across the border. Accessing information that might go back decades can be very complex. The question of proportionality and balance arises, but if we hold to one principle in one circumstance, how can we not apply it in other circumstances? It is a challenge.

The Convener: If an adult had been the subject of a child protection inquiry that involved the police, I presume that police information could be used as soft information for vetting. However, if the police had not been involved, soft information would not be available.

Michelle Miller: Not currently, that is right.

Fiona Hyslop: I have another more general question. Should the committee carry through the recommendation in its stage 1 report and delay stage 2 until we have seen the subordinate legislation, as opposed to just the policy direction?

Do you foresee any major risks in delaying consideration of the primary legislation until the

same time as the subordinate legislation? Do you have an idea of when the vetting scheme is likely to start? We heard earlier that it would be at the end of 2008.

Lynn Townsend: That is our general understanding.

Fiona Hyslop: If two or three months were added to the date of the end of 2008, would that cause you major difficulties?

Lynn Townsend: We feel that the bill will offer us additional protection for vulnerable groups, so any delay will heighten the risk. However, it is difficult to quantify whether it would be okay to live with that risk. The question is hard to answer.

Michelle Miller: I wondered earlier about whether a two-month delay really would be only a two-month delay or whether it would be greatly extended, perhaps because of debate over the decision to delay. I do not know. We should not be so rigid that we exclude proper debate to try to resolve the issues, but we need to be aware that a significant delay would not be helpful.

11:15

Penny Curtis (Convention of Scottish Local Authorities): I am less certain about the need to have the discussion in the form that is mentioned in the pre-consultation document. It is having the discussion that is important. I do not know that we need the text of the secondary legislation. I do not think that that would make much difference. A delay of two or three months would mean that we had a new Parliament that might have different priorities. If that meant that there was a significant delay, we would be concerned about that.

Mr Macintosh: I return to Fiona Hyslop's questions about whether the bill could address domestic abuse and neglect and whether information about that could or should be shared under the vetting and barring scheme. Many cases will be referred to the police anyway, but what about other cases?

Part 3 of the bill will be removed at stage 2, but if a social work department was concerned about an individual's behaviour in the home and thought that they posed a risk to others outside the home, would they share that information with other professionals under the non-statutory code?

Michelle Miller: The likelihood is that a social work department would share the information within its local authority boundary with its partners such as the police and the health and education services, but that would be done in relation to the contact that would be expected rather than the possibility that the person was going to be employed. That is the fundamental difference.

Mr Macintosh: If you found that a person whose behaviour posed a risk to vulnerable adults or children was working as a carer in another area, would you contact their employer? In such circumstances, is there a professional duty on social workers to contact the person's employer?

Michelle Miller: Yes.

Lord James Douglas-Hamilton: I have two questions about definitions. The first is about the overlap in ages between children and protected adults. I understand that people who are aged between 16 and 18 are defined as protected adults. Is that the ideal situation or would you prefer them to be considered children until they are 18?

Michelle Miller: It is not an ideal situation, but my concern is more about the complexity that arises from having two lists of barred people. Again, that relates to my view that the issue is about vulnerability and not about age per se. Children are vulnerable by virtue of their age. A small number of adults are vulnerable for a range of reasons. The issue is that those people—be they children or adults—are vulnerable. On that basis, we find it difficult to understand why there should be two lists.

Lord James Douglas-Hamilton: So you have a doubt about the definition.

Michelle Miller: Yes.

Lord James Douglas-Hamilton: My second question is about the definition of regulated work. Could the definition be improved, for example by safeguarding informal activity?

Lynn Townsend: Yes. The more clarity we have, the easier it will be for people to understand what is expected and to implement it. It is difficult to answer the question in the abstract because we are talking about the risk that individuals pose in particular circumstances to vulnerable groups.

Lord James Douglas-Hamilton: Is that something that could usefully be covered in guidance at a later stage?

Lynn Townsend: Yes. The last thing that we want to do is overregulate, but it is impossible to say—

Lord James Douglas-Hamilton: Am I correct in saying that at present there is a telephone helpline for anyone who is in doubt?

Lynn Townsend: Yes, that is right.

Dr Murray: What is your opinion about fees? The voluntary sector has expressed fairly strong views in favour of option 1 in the pre-consultation discussion paper. There is a feeling that the one-off fee might prove too expensive for smaller organisations to afford. The sector is also concerned about having an annual fee. Do you

organisations have different views about fee structures?

Lynn Townsend: From the local authority perspective, the annual subscription looks appealing when it comes to managing budgets. We think that that option would be worth exploring.

Dr Murray: This question is probably more for the minister than for you, but do you think that there is any possibility of different sizes of organisation being able to opt for alternative ways of paying?

Lynn Townsend: Flexibility is always great, but it is hard for us to comment on whether that would be administratively feasible.

Dr Murray: Would that be better than having larger one-off fees? Would you prefer an annual subscription?

Lynn Townsend: Having an annual subscription would make it easier for us to budget. There would need to be discussions on how to calculate the annual fee, so that organisations were paying realistically and proportionately for the size of their workforce and the checks that would be carried out.

Michelle Miller: I can give the example of Fife Council social work service. We took the view that we would retrospectively disclosure check all our employees working in relevant posts. That exercise began in June last year and we expect it to finish in June this year. It will have taken a year for a significant number of staff. The costs of that have been significant: about £100,000 for the disclosure fees, with staffing and administrative costs in addition. That comes to around £140,000 to £150,000. Inevitably, that is £150,000 that does not get spent on care packages or other services.

We appreciate the point that voluntary sector colleagues have made, and we would reiterate the fact that a huge cost is involved here. Voluntary organisations are pared to the bone, as has been said, in trying to make the best use of the money that they have. It would be wrong to assume that local authorities and services are not in a similar position and are not struggling as they try to meet the demand for services. A question was asked earlier about whether the Executive should be providing the funding. That would be a welcome option.

The Convener: It is interesting that Fife Council has undertaken that exercise. It would be useful for the committee to get an indication of the total number of staff involved. How many of them, if any, following the retrospective checking, were deemed to be unsuitable to continue to work with children?

Michelle Miller: I do not have the detail about the decisions, but we could provide that information in writing.

The Convener: That would be a useful illustration and would give us an indication of the importance, or otherwise, of retrospective checking.

Michelle Miller: The total workforce is between 4,500 and 5,000, depending on how part-time and temporary workers are counted. We will not have checked all of them, but we will have checked a significant number of them by the end of the year. As I say, I will be more than happy to provide the information.

Dr Murray: We have heard a suggestion that ministers should have the power, through regulation, to cap fees for paid staff in the voluntary sector. Would that give your sector any concerns about being treated differently? Are you concerned that you might have to pick up the bill?

Michelle Miller: Inevitably but—not to be sectoral about it—through their contracting, local authorities pay for the service that is provided. I appreciate that there are different perspectives on that. It is difficult to see why such differences would arise, however. Any support that comes from the centre to meet need would be very welcome. In my view, it should apply across all sectors.

Lynn Townsend: On that point, I make a plea for volunteers in the statutory and voluntary sectors to be treated in the same way. Volunteering is becoming more common in the statutory sector and it is not appropriate to treat volunteers differently depending on where they work.

Mr Macintosh: Michelle Miller might not know the answer to this question, but perhaps she could let us know when she sends the committee further information on other matters. When disclosure checks were introduced in Fife, how many people were checked before retrospective checking started? In other words, how many of the 4,500 to 5,000 people were covered as a result of turnover during the first two or three years? How many people remained unchecked at the end of that period?

Michelle Miller: I can get that information.

Fiona Hyslop: I am looking at the financial memorandum. Is a funding uplift from the Scottish Executive expected, to help to deal with the new scheme and disclosures?

Lynn Townsend: Yes. We will incur additional costs when we implement the new scheme, so we expect to receive support.

Fiona Hyslop: I am trying to ascertain how much you can expect to be given. If you commission services from the voluntary sector, will you pass on funding to that sector, to increase its capacity to cope with the new system?

Lynn Townsend: Yes. There is no doubt that the statutory sector will want to support the voluntary sector in that regard. We regard the voluntary sector as our partner.

Fiona Hyslop: Have preliminary discussions taken place between ministers, the statutory sector—in particular, COSLA—and the voluntary sector on how additional funding will be allocated and passed on? Of course, no detailed agreement can have been reached, because no information on fees has been published. If the statutory sector gets additional funding, the voluntary sector should also get extra money, but by what mechanism? Will the money come directly from the Executive or via you?

Michelle Miller: We have had no detailed discussions on the matter, but the principle is that if we receive money for a particular purpose—in this case, to meet the cost of the new scheme—and we commission and purchase a proportion of our services from other organisations, we need to take account of that proportion in the grant allocation. Our contracts require retrospective checking and disclosure checks.

We might well not be provided with 100 per cent of the cost of the new scheme, so it might not be realistic for us to pass on to other organisations 100 per cent of their costs. If we are given 60 per cent or 20 per cent of the funding we need, it is likely that we will pass on 60 per cent or 20 per cent. That is the fiscal reality.

The Convener: Do the witnesses have comments on the proposals in the pre-consultation discussion paper on determination procedures and the thresholds for barring? In particular, how much discretion should the central barring unit have? At one extreme, there is a view that the unit should have limited discretion and certain activity should automatically lead to barring; at the other extreme is a view that the unit should have a lot of discretion to determine what is appropriate in individual cases. Where is the right point on the scale?

Lynn Townsend: It is difficult to be precise. We know from our experience of disclosure checking that the issues are complex and bound by the context of the individual case, so it is unrealistic to think that many decisions will be made through a rule-based approach. Judgment will have to play a big part.

The complexity of the information that we currently receive on factors such as the pattern of behaviour or the age at which someone offended is such that it is difficult to have a rule-based approach. I think that a layered approach, involving a fair amount of discussion and judgment—especially initially—about where to put the bar, will be necessary. That is one of the

trickiest areas to get right and there will need to be a great deal of good consultation with a range of professionals about how that will be implemented.

11:30

Michelle Miller: It would be unfortunate if the bar were set so high that it automatically barred a large number of people who might have a great deal to offer, either through volunteering or through employment. One issue is how such judgments are made and the extent to which there can be confidence that organisations have robust and subtle enough risk assessment procedures to enable them to make sound decisions about people who are not automatically barred.

The other issue is false reassurance. We must guard against thinking that because someone is not barred, they must be okay. Once it has been established that someone is not barred, the attitude should be that one part of the process has been completed, but that consideration must be given to any other issues that may pose a risk and to how they should be dealt with.

The Convener: I have been concerned about the shift from the current position, whereby a chief constable provides soft information on someone's suitability for a specific post, to soft information being provided on the workforce as a whole. Is there a danger that that will just result in a dropping of the threshold? The workforce covers a wide range of people, from those who, because of the nature of their job, might have unsupervised physical contact with a child to workers who are never alone with children. Is there a danger that because the provision on the disclosure of soft information will apply to the whole workforce, more information will be put into the system out of a concern that we do not want to miss anything, with the result that more people will be barred than might be necessary?

Michelle Miller: The proposal might result in more people being barred, but if we apply the right risk assessment processes, the information could be held and considered appropriately and not result in a barring. We might achieve a better, more rounded picture of the whole. That is an idealistic aspiration—ultimately, we must rely on people making the right judgments.

The Convener: I might not have phrased my question particularly eloquently. My concern is that the decision on whether someone would be an appropriate employee will end up being made by the central barring unit by default, rather than by the employer who can carry out a risk assessment of the person's suitability for a specific post. Is there a danger that that will happen?

Michelle Miller: I apologise; I realise what you were getting at.

The Convener: No, it was my fault. I did not express the question correctly.

Michelle Miller: That is a danger and I do not know what the answer is. We will be able to review the impact of the change only after the event. There is a danger that we might set the threshold at a particular level in anticipation of what might happen, rather than give ourselves enough flexibility to look back and realise that we need to shift it because the evidence of our experience tells us that we did not set it at the right level.

Lynn Townsend: We should keep it in mind that there are two aspects to the proposal. There will be the bar that will exclude someone from the whole of the workforce, but the fact that someone is not barred will not mean that they are suitable to work in any position. Employers need to know that they will continue to have responsibility for having robust risk assessment procedures for particular posts in particular contexts. As long as employers are clear about that, we should be able to balance the two aspects.

The Convener: My final question is one that I asked the voluntary sector representatives. In relation to the annex to the Executive's discussion paper on secondary legislation, do you feel that the powers that ministers will have to make secondary legislation should be set out more clearly in the primary legislation?

Penny Curtis: I will try to answer that. I do not think that there are any specific aspects of those powers that we would want to be covered in more detail in the primary legislation. However, many of the issues with which the bill deals are extremely complex and a great deal of discussion and consultation will be necessary to achieve the right outcome.

The Convener: I think that that concludes the questioning, so I thank Lynn Townsend, Penny Curtis and Michelle Miller for coming along and giving us evidence prior to stage 2, which is a slightly unusual procedure. I will suspend the meeting briefly, while we wait for the minister's team to arrive.

11:35

Meeting suspended.

11:41

On resuming—

The Convener: We resume with our third and final panel this morning. If there were a regular users discount scheme, the team in front of us would certainly qualify for it. I welcome Robert Brown, the Deputy Minister for Education and Young People; Claire Monaghan, the head of the

children and families division; Andrew Mott, the Protection of Vulnerable Groups (Scotland) Bill manager; and Moira Oliphant of the children and families division. All are from the Scottish Executive Education Department. Liz Sadler is from the police division in the Justice Department. Presumably she is here to keep us all in order.

I thank you all for coming this morning and ask the deputy minister to make some opening remarks.

The Deputy Minister for Education and Young People (Robert Brown): I do not want to say very much, convener, because we have been going around this issue for quite a while.

The protection of children and vulnerable adults is central to the bill, but there is also a need to work effectively with the stakeholders that make everything work and to give the voluntary sector the buzz to do all the things it is able to do in support of children, young people and vulnerable adults.

Throughout, the Executive has desired to work with stakeholders, particularly the voluntary sector, in a way they are comfortable with. That is why we have put into the form of a post-bill consultation the key issues that are before the committee today, not least of which is retrospection, which I know is of concern to some people. That is understandable.

I hope that the paper that has been circulated to the committee and disseminated fairly widely beyond it has gone a considerable distance towards giving people an understanding of what some of the issues are and whether there are any policy by-blows that come back on the principal terms of the definitions in the bill. I simply say again that we want the bill to be workable. We have no interest in its not being workable. We want it to work not just for the statutory sector, but for voluntary organisations at all levels.

The bill provides significant and substantial improvements to the existing framework on which it is built. We hope that the committee will take the view that the arrangements for dealing with the development of the detail of some aspects of the scheme, not least retrospection, are workable, practical and sensitive to the needs of the sector.

The Convener: Thank you. What response have you had from stakeholders at the events you have held?

Robert Brown: We held a series of stakeholder events that involved the statutory and voluntary sectors and the regulators who will have to work with the scheme. I attended the event for the voluntary sector, which I thought very fruitful.

All the initial events have now taken place and we have a list of points that were raised at them.

The central point that has emerged from the representations that have been made to us at the events and in other ways is that people do not fundamentally disagree with the basic outline of the scheme—even if one examines the SCVO's paper and the evidence it gave this morning. The issues are retrospection and funding, not the basic outline of the scheme. It is important to keep that in mind.

In general, the issues are points that we will consult on and then deal with after the bill is passed or the subject of the usual stage 2 debate—minor issues of definition and changes that emerge from discussion and examination by the committee and others.

By the end of the week, we will be in a position to let the committee have a letter with some of the details. That will probably help the committee's consideration, but I do not think that it will contain big surprises or issues that have not been the subject of evidence.

11:45

Claire Monaghan (Scottish Executive Education Department): There is one point worth adding—it is not covered in the pre-consultation paper—that came out of Monday's determination workshop.

In the workshop, we drew together employers and other people who are involved in considering vetting information and taking decisions on someone's suitability for specific posts. They were confronted with vetting information and asked whether, on that basis, they would bar an individual from working with children and/or adults. In the early rounds of the exercise, they pushed towards immediate barring if there was any related information, but as they worked through the exercise a clear distinction was drawn—and they were keen to register this point—between decisions about barring and unsuitability for a whole workforce and decisions that are for employers to take.

In the determination criteria section of the pre-consultation paper, reinforcement is required on the division between the decisions that are relevant for the central barring unit—those on unsuitability for the whole workforce—and those that should be taken by employers. As the minister says, we will write with the full details of all the events. In general, the paper has invited a lot of discussion but has been broadly welcomed.

Mr Macintosh: Perhaps I could start off on retrospection.

Robert Brown: Surprise.

Mr Macintosh: Yes, exactly.

Retrospection and fees are closely related issues, but I want to start on retrospection. You will have seen the written submissions from the voluntary sector about its concerns. It is looking for some certainty on the timescale. I accept that we are at the pre-consultation stage, but what certainty can you offer? Will you outline your thinking on the timescale? For example—to fill you in on what happened this morning—we heard from the SCVO that it would welcome a delay to allow people to be checked through the system through natural turnover, which would take between three and five years, and then a phasing in that would last another three to five years. That is its approach. What is your thinking?

Robert Brown: There is a dilemma. Voluntary sector organisations have said that they do not want the new system to be rushed on them. We have responded to that since the beginning of the bill's development by saying that we want full consultation and that we are not closing off any options for the timescale. It is paradoxical to seek clarity on things that are yet to be consulted on.

As the committee knows, the suggestion of an initial period and then a follow-up period is one option in the pre-consultation paper. Guided by the flavour of the evidence that has been given to the committee today and by the stakeholder events that we have had, we will, with the people involved, develop the ideas in the following months to try to thrash the issue through.

I do not know whether this is the right way to put it, but I have had in the back of my mind the idea that a number of voluntary organisations re-vet all their volunteers and leaders after a certain time—every four or five years perhaps. For some of the big organisations, it would not be unreasonable to fit the period of retrospection in with that process, so that it works with the grain of what happens anyway. That is the sort of proposal that could come out in the discussions but, as I have said before, we are not closing off any options at stage 1.

We want people to be comfortable with the new system. I am bound to say, though, that the suggestion of a process that takes more than 10 years would mean a period rather longer than I had in mind. However, by the same token, I know that people have concerns that three years may be a bit on the short side. I hope that that gives an outward shell, so to speak, to the whole thing. Retrospection may be done that way but, as you know from the paper, there are a number of different ways of cutting it, some of which are voluntary to the extent that the axe will not be brought down at a certain point, and others of which have a phased implementation. There are a number of ways of looking at the issue. We want to have the full flavour of what is wanted by the

different organisations that will be affected by the provision.

We should also bear in mind the issue that lies behind all this. When retrospection has not gone ahead, some people, who have been in the workforce for a while and have not been checked out, are never checked out. Issues may be lurking in that respect. The bill is about the protection of children. We have to keep that in mind. Some stakeholders and some parts of the sector are keen to see retrospection go ahead over a timescale that is rather smarter in pace than that which we have been discussing.

Mr Macintosh: One of the submissions suggests, on the basis of figures from the central body that deals with applications for disclosure from the voluntary sector, that staff turnover is nearer 8 per cent than the 20 to 30 per cent on which the Executive has based its figures. Why does the Executive think the figure is nearer 20 per cent?

Robert Brown: There is always an element of speculation with these things. The figure will vary across different parts of the sector. We probably do not have totally robust information on either side of the debate. One of the purposes of the consultation arrangements is to allow us to engage with people who have information, so that we get a bit of a feel for it. Even so, there will always be an element of prediction, surmise and guesstimate.

We know, from the number of disclosures that come through the system, approximately how many people will be affected by the bill. We also know the system's capacity. We also have information—again, it is probably not as robust as it might be—on the number of overlaps: people who are teachers, social workers or whatever who also volunteer as Sunday school teachers, scout leaders and so forth. Under the new arrangement, they will not require to be double checked, as is the case at the moment.

There is a fair degree of working through to be done, but our view is that the number is smaller than is sometimes suggested. We think that the throughput each year will be reasonably substantial and that the number who go through the system will have an implication for the speed of the process. The administrative burden is greater if fewer people come through routinely but, equally, the number of people who will be unchecked will be greater. There is a wee bit of a double-edged argument about the 8 per cent or 20 per cent business. Suffice to say that the bill is not determined about that. The issue is up for grabs in every sense of the word when we go through the formal consultation process after the passage of the bill.

Claire Monaghan: In view of the difference between 8 per cent and the 20 to 30 per cent parameter that is used in the discussion paper, it may be helpful to give the basis on which the economists identified the larger figure. They found it in the Futureskills Scotland's "Skills in Scotland 2004" survey of employers. Indeed, evidence on the subject was given to the Enterprise and Culture Committee in June last year. The survey shows turnover rates in a range of businesses. I think that the figures range from around 34 per cent for growing businesses to 54 per cent for very small growing businesses. The economists used those figures as the basis for their calculation of a mid point.

We do not know the exact figures—that is correct—but on the basis of the Futureskills survey and patterns of repeat disclosures that are currently going through Disclosure Scotland, we would definitely say that the figure will not be 8 per cent of the overall workforce, but more in the order of 20 to 30 per cent. The difference may just come down to the different characteristics of the employed. There may be a much lower turnover rate in the voluntary sector. That does not call the credibility of the figures into question.

Mr Macintosh: We have heard evidence that the statutory sector is comfortable with the bill, sees the need for it and thinks it will reinforce that sector's systems, but the impact on other groups, such as the voluntary sector and smaller voluntary organisations, will vary. I am conscious that we are joined this morning by the moderator of the General Assembly of the Church of Scotland. It is interesting that the impact on the charitable sector—the voluntary sector—will be different.

Given the evidence that we heard at stage 1, is the minister sympathetic to amending the bill to reflect those concerns by using different definitions or by ensuring that measures for retrospection are more generous to the voluntary sector than they are to the statutory sector? A different argument applies to somebody who has volunteered for 20 years. Different arguments apply to the state sector because of the service it requires and the standards that are expected. Is the minister sympathetic to any of those arguments?

Robert Brown: The answer is yes and no, as it perhaps always is. You will recall that the genesis of the situation was that the voluntary sector was brought into the POCSA arrangements, broadly at its request, because it did not want a two-tier system to operate. Given the extent to which services for vulnerable groups and many others are provided by the voluntary sector and the statutory sector in similar ways, I return to the point that you made: we must be conscious of, and reflect in the arrangements, the voluntary sector's variety. The big voluntary sector

organisations are not the same as parent-teacher associations or small groups that operate more locally. In some ways, the big voluntary sector organisations are more similar to the statutory sector. Some voluntary sector organisations have many volunteers and some have many employees.

A range of situations applies. On the whole, our approach will be favourable to reflecting the differences rather than to setting up a two-tier system to divide the sectors. However, I have no final view about that. We have an open mind about how to deal with any issues that arise from the consultation arrangements.

The Convener: I was about to welcome the moderator of the General Assembly of the Church of Scotland to the meeting. I did not want to make the same mistake as I made with the delegates from Malawi: I waited until they had got up to leave before I welcomed them. The moderator is welcome to the meeting and welcome to stay as long as he likes.

Fiona Hyslop: The minister will appreciate that one of our concerns is the scale and scope of the measure. I am shocked that you have no idea of the numbers involved in retrospection. It does not take a genius to realise that a growing business in Scotland, where staff turnover is unfortunately rapid, and which is not a continuing successful business yet, is different from a voluntary organisation that works in care and protection. The basis that has been used for scoping for retrospection is alarming.

The question is fundamental. It is acknowledged that the scheme as presented would work in the long term. Once it is up and running and everybody is through, that will be fine. The problem is how we get there. The scale of the task is important to us. How do we proceed to the next stage—we could take stage 2 next week—without knowing the scale of what we are dealing with? That is fairly fundamental.

Have you examined the data on recruitment and retention in social work? You should be able to obtain them easily. Have you examined Fife Council's example? We have heard that that council has undertaken retrospective disclosure for all its staff and I know that at least one college—there might be others—has done that. Another point that we must clarify is what such disclosure will throw up, which will also suggest how quickly we can assess the risk of introducing retrospection over a short or long period or not at all. What other information have you considered?

Robert Brown: Claire Monaghan will deal with that in a minute, but I will make a general point. We can overcomplicate the picture. Broadly speaking, about 490,000 disclosures go through

the system each year—I have given such figures before and I think that that figure is right. Of those disclosures, about 240,000—about half—involve people who provide child care or deal with vulnerable adults and who will be affected by the new scheme. Most such people go through the current scheme. Disclosure Scotland already checks just short of a quarter of a million people across the board. Several overlaps exist, as I have said.

12:00

If we are talking about somewhere between 800,000 and 1 million positions—that is the kind of figure we mention in the financial memorandum and so on—the scale is not disproportionate to the number of disclosures that are handled under the current system. The management of the process under the current system, whereby across the board people already manage 240,000 disclosures in the area, is not disproportionate to the number we are talking about. If they came through at an even flow, everybody would be through the system reasonably quickly. I accept that problems emerge if we get the scaling wrong. We will obviously need to take on board any lessons from the information that we gather about detailed arrangements.

The main issue that we must be aware of is the variety of organisations with which we are dealing. To deal with the teaching sector in one instance is one thing and to deal with a small PTA is a relatively modest administrative burden, but an advice issue arises in that situation. Greater numbers go through the bigger organisations and there are issues about the arrangement of the system itself and the capacity of Disclosure Scotland to have a predictable throughput of people. There are also effects on the organisation concerned. That is why it is extremely important that we get input, not only general input, but detailed input, from the uniformed organisations, Barnardo's, the Church of Scotland and all the other bigger organisations that are involved and also from those who represent the smaller organisations. We must have a thorough understanding of the issue before we go ahead. That is very much what we intend to do. Perhaps Claire Monaghan can comment on the detail.

Claire Monaghan: I will do my best.

The SCVO suggested a figure of 8 per cent for staff turnover rather than the figures of 20 per cent and 30 per cent mentioned in the pre-consultation discussion paper. A combination of factors led to the prediction in the paper; it was not based only on the employer skills survey. The information matched the information that we had on multiple disclosures going through Disclosure Scotland. A triangulation of the evidence led to our predicting somewhere between 20 and 30 per cent. I think

that I am right in saying that the financial memorandum was modelled on a 30 per cent assumption, but as we know that there is a margin of error in working through the natural turnover scenarios, we brought the figure down to 20 per cent. We did not arrive at the figure just by looking at the growing business profile, but we had to go with what information we had.

An awful lot has been made of the estimate that around 800,000 to a million people will fall within the scope of the scheme. The key point is that it is not the case that rafts of new people will come within the ambit of disclosure. All those people are within the ambit of the existing disclosure requirements. The only potential difference is in how retrospective checking is handled. Because we have never invoked retrospective checking under POCSA, there are groups of people who could be within the ambit of disclosure who are currently not within it. A key distinction is that it is not the bill in itself that places a million or 800,000 people within a disclosure regime—that flows from the fact that that volume of people undertake either paid or voluntary work with children and/or protected adults. It is not the bill that is driving the numbers—they reflect the reality of the situation. The bill is about ensuring that those people have been checked for unsuitability for employment.

We all agree that retrospective checking is a key factor in getting the implementation of the scheme right. I hope that the discussion paper makes it clear that all options are up for discussion at this stage to ensure that retrospective checking happens in a way that is sensitive to all the stakeholders and the different types of organisations that are involved. We do not have the detailed information that we require to map out the process at this stage. That information will inform the full policy consultation that is scheduled to take place in the summer, but without clarity on overlap we cannot do it at this stage.

Dr Murray: Retrospection is crucial and there are many concerns about it, particularly from the voluntary sector. How do you react to the suggestion that retrospection should be introduced by secondary legislation, rather than by a commencement order? That would enable our successor committee to scrutinise the final scheme and to take evidence before the secondary legislation finally passed through Parliament.

Robert Brown: It is certainly the intention that the Education Committee and the wider stakeholder community—if there is such a phrase—will be involved in the consultation on the commencement of retrospection. As I have said a number of times during the course of the discussion, we do not want to commence anything until the issue has been clarified. Hugh Henry and

Peter Peacock have also said that to the committee, so there is no question about our desire or the undertakings that are repeated on the record at every opportunity that we have to make the point. If there are issues with the formulation of the commencement order or how it is considered, we are entirely open to examining them. As I think I said during the stage 1 debate, I do not have a closed mind on that.

However, I ask you to bear it in mind that subordinate legislation comes before the committee under a yes-no arrangement—the committee does not have the opportunity to amend it. The consultation that takes place before we reach that point is far more important. I would welcome the Education Committee's full involvement in the consultation, because that is the point at which we draw out the issues, frame the subordinate legislation, deal with the various problems that emerge and, I hope, arrive at something with which people are comfortable and that can progress. The key point is to be involved in that consultation, not the later consideration of the subordinate legislation. However, if the committee has a pronounced view on that, I am more than happy to consider the matter with committee members and determine whether we can accommodate it in the way in which we progress the bill.

Dr Murray: I accept that we have to say yes or no to secondary legislation and that we cannot amend it, but an additional layer of reassurance would be provided by introducing retrospection through subordinate legislation.

Robert Brown: Absolutely. Having given that ministerial assurance, I hope that my colleagues higher up the ministerial hierarchy will give a fair bit of reassurance about how the Executive intends to follow the matter through. To say the least, there would be a rather large political row if that did not happen as promised. Of course, there is no intention that that should be case.

The Convener: I have no doubt about your personal motives, minister. You have shown your willingness to consider the matter, but we cannot guarantee who the minister will be in the next parliamentary session, nor whether they will abide by your assurances. We cannot bind future ministers. The only way in which we could do that would be by making it a statutory requirement for them to come back to the committee. Would it not be better for the committee to put a regulatory requirement into the bill, rather than leave it to a commencement order, so that we feel that we have introduced the right protection?

Robert Brown: Well, commencement orders are how these things are usually done in similar legislation, but I do not have a strong view about that. The committee will shortly consider the bill at

stage 2 and my mind is fairly open to whatever the committee might suggest on secondary legislation on retrospection, if it is determined to put a requirement for it in the bill. My main concern is that we have an arrangement that allows a workable and effective consultation and involves the Education Committee and other stakeholders, which will give comfort to people beyond that. If the committee wants to double lock consideration of retrospection, that is a matter for the committee.

Mr Ingram: The minister covered the question that I wanted to ask about retrospection, so I will go back to first principles. Where is the added value in introducing retrospective checking for people who have been working in the system for the past 20-odd years? The minister mentioned that the POCSA regulations have not been implemented. Given that experience, would it not be more sensible not to implement retrospection at all and move on? Would that not save the voluntary sector the burden of a tremendous administrative cost?

Robert Brown: As I have tried to indicate, the burden is indirectly related to the timescale in which the retrospective checking is done. If it were done in a year, there would clearly be an enormous burden but, if it were done over 10 years, the burden would be nominal. That is the context in which we must take retrospection, but the central issue is whether we introduce retrospection at all and what the basis is for doing it. The committee and others have heard different views about whether there should be retrospective checking, but on the whole people probably want retrospective checking to proceed, provided that the arrangements are manageable.

The fact that someone has held a position for a number of years does not necessarily mean that there is not an issue. Members will recall cases to do with institutional care, which emerged late in the day, after many years. To take an extreme approach and check someone 20 years down the line is one thing; but the issue is probably more the people who have been in the system for three, five or eight years and are not in such a strong position. It is all about proportionality. Can the exclusion of people from the workforce on the ground of unsuitability be effectively carried through? Are there significant risks attached to not excluding people? Those questions remain open.

As I said, we are happy to consider whether, when and how a retrospective approach should be taken. In the context of the consultation arrangements, I hope that we will be able to flush out themes and ascertain whether retrospective checking could be done proportionately and reasonably. We will consider the advantages and disadvantages of such an approach and we will consider what the range of people who work in the

sector think that we should do. Our instinct is that people probably want to proceed with retrospection over some timescale, which will obviously be discussed. However, we do not have a closed mind on the issue.

Fiona Hyslop: Have you considered how many of the known cases of institutional abuse would have been caught through retrospective checking? I understand that those cases would not have been caught unless the police had had soft information.

Robert Brown: You should bear it in mind that the underlying arrangements under POCSA and the Police Act 1997 came into force only relatively recently. Therefore, the information that we have about what might have been remains considerably speculative. Of course, if people are not disclosed by the system, we do not know what the position is. It is difficult to make predictions—

Fiona Hyslop: I am not talking about predictions. If the people who abused in institutions in the past were still employed and if the work on thresholds and decisions were done, you should find it easy to ascertain whether retrospective checking would enable you to catch those people and bar them. I suspect—

Robert Brown: We have some information on that, but it is fair to say that it relates to a relatively small catchment of the total and does not give statistically significant results—

Fiona Hyslop: That does not matter. It takes only one person to abuse, and in an institutional context the implications of abuse are huge. Those are exactly the people whom you are trying to catch by having retrospective checks.

Claire Monaghan: We have not approached the exam question quite as you asked it. However, we have worked through a set of anonymised Disclosure Scotland enhanced disclosures, to ascertain the implications for the person who would be barred. We do not currently use vetting information in the barring system, but the people who take the day-to-day decisions think that on the basis of vetting information some people who apply for enhanced disclosures should be added to the list of barred persons.

As Fiona Hyslop said, it is difficult to quantify the issue, because if we can weed the Ian Huntleys of this world out of the system, there will be a significant benefit. Of course, the vetting and barring system is not just about the people who are currently in the system; it is about ensuring that people who want to harm children do not gain access to them in future through their work. The benefit of the system is that unsuitable people who have a history of violent behaviour are taken out. There is an assumption that someone who has been in the workforce and has given no cause for

alarm for 20 years is unlikely to be unsuitable, but we do not know that with certainty until we go through the system. The big benefit of scheme membership is the continuous updating function. Organisations can be reassured by the knowledge that if new information comes to light that suggests unsuitability, it will be flagged up.

Fiona Hyslop: However, retrospection is not about new information but about old information. Surely a pilot or scoping exercise could be done that used live case studies.

12:15

Claire Monaghan: On the basis of the determination workshop that took place on Monday, I can say with complete certainty that some people who applied for enhanced disclosures would have ended up on the barred list. We do not know whether they subsequently found work on the basis of those enhanced disclosure certificates. Employers would look at the information on the certificate and, given that the information was significant enough for the people at Monday's workshop to say, "I would not want this person in my workforce", the chances are that the people concerned would not have been able to enter the workforce on the basis of those enhanced disclosures.

Robert Brown: It is also valid to point out, as this committee has done quite a lot, that the vetting and barring system should not be viewed as a guarantee in its own right. A disclosure can provide an indication of a person's unsuitability and might contain information pertaining to the person's suitability, but the disclosure must be used in the context of robust recruitment and rechecking practices, which many organisations rightly have in place. That must be the emphasis of our work in this field. It is fair to say that disclosure checks are a tool rather than the last word.

Andrew Mott (Scottish Executive Education Department): By retrospective checking, we simply mean bringing into the scheme people who are already in the workforce. There are two aspects to that. One, which the committee has hinted at, involves looking back to see whether the workforce contains unsuitable people who need to be weeded out. The other, which Claire Monaghan referred to, involves looking forward in that, by being included in the scheme, people will be connected into the system and appropriate action will be able to be taken if there are any developments in future. If an organisation is not a scheme member, Disclosure Scotland and the new agency will not have a connection with that employer. Although weeding out the few unsuitable people who are already in the workforce is an important aspect, the future

connection is also important. If someone has been in the workforce for five years but has 35 years to go, it is arguably important that that person is integrated into the scheme. There is a backward-looking element and a forward-looking element.

The Convener: I have one technical question on employment legislation. If a retrospective check throws up the fact that a person is unsuitable for the workforce, but that person had no reason to give that information to the employer at the time of applying for the job and the person has done nothing wrong as an employee, what will happen if the person is then dismissed from work?

Robert Brown: As your question implies, the matter would need to be dealt with in terms of employment legislation—

The Convener: That is my question. What are the implications for employment legislation? Will the new requirements be in conflict with employment law, given that a person who has done nothing to justify dismissal could be dismissed because of a retrospective check?

Robert Brown: I am saying that there are implications for employment law. The issue is to do with the person's capacity to do the job. Claire Monaghan can perhaps go into the details of that.

Claire Monaghan: That scenario may well arise. Once the retrospective checking scheme starts, we will have three categories of people: those who are scheme members; those who will have undergone some sort of disclosure check as part of moving into the system; and those who have never been disclosure checked because they entered the workforce before any of the legislation existed. For the people in the second category, the presumption is that significant information will have been identified.

Issues might arise primarily with the group of people in the third category. In all probability, there will be a number of cases in which information is identified that leads to such individuals being barred. Both the individual and the employer will need to address that issue. The key point is that, by virtue of being barred, the person is barred from undertaking regulated work and will commit an offence by continuing to undertake regulated work. However, the employer may have choices about moving the person to another role within the organisation that would not constitute regulated work. The issue would become an internal disciplinary matter.

The Convener: I accept that. I do not want to labour the point too much, but only large organisations such as local authorities might be able to move such people to non-regulated work. Incidentally, the issue might arise not just when people are barred but when vetting information comes to light that, although not sufficient to bar

the person, makes the authority think that the person is not suitable for the particular post that the person holds. However, a small organisation with only one or two employees might not have any other jobs in unregulated work. What would happen in those circumstances, given that people who may not technically have done anything wrong at any point during their employment could be put out of a job because of a retrospective check?

Claire Monaghan: It would become an employment matter if they were put out of a job without being barred. It would be for the employer to defend their decision. However, I cannot see that your point negates the value of the vetting and barring procedures or the child and adult protection procedures.

The Convener: It is another concern that needs to be considered.

Lord James Douglas-Hamilton: The legislation, in large measure, arose from the appalling murders and tragedy at Soham. Will your collaboration with Whitehall ensure that the various United Kingdom schemes will be compatible and will dovetail?

Robert Brown: There has been close co-operation between officials here and in Whitehall. As you know, the definitions in the equivalent English and Welsh legislation—the Safeguarding Vulnerable Groups Act 2006—were the subject of interchange as it developed at Westminster. It is important that the phraseology in that act and the phraseology in our bill are connected so that oddities do not creep in.

That is true of the implementation of the legislation as well. Given that people move, we must recognise that the approaches on either side of the border are closely linked. The system is based on our recognising Westminster's decisions and vice versa. We do not want a double bureaucracy on the matter, so it is important to tie things together. Work on that is continuing. If you want more details, Claire Monaghan has knowledge of the area, but the objective is to make sure that the two schemes operate in tandem. They are not identical schemes, but we are working to ensure that we do not open up any loopholes.

Lord James Douglas-Hamilton: My next question is a difficult and sensitive one. How can we be certain that every reasonable effort will be made to ensure that those who come to work here from other countries will be checked to ensure that it is safe for them to work with vulnerable groups? Is it difficult to do that in practice?

Robert Brown: That is difficult. It depends on where people come from. Some European countries have advanced arrangements in that

regard but, even in the European Union, some countries' arrangements are nominal. Further afield, there are countries whose recording arrangements are different or not very specific. That is undoubtedly an issue, particularly given the movement of people across borders and the opening up of the EU.

We and the UK Government have engaged with officials and ministers in many other European countries to try to work through the issues and get some clarity on them. The scheme that we are putting in place is better than the arrangements that we had in the past, but I accept that, if the recording arrangements abroad are less than what we would want them to be, there will be an element of uncertainty.

The automatic updating in our arrangements will catch anything new that happens, and the longer people are in the system, the greater the security will be, but I accept that we cannot entirely close the door. We are trying to improve liaison with other countries to ensure that the system works as well as it can.

Do you want to say anything else about that, Claire?

Claire Monaghan: This is Liz Sadler's area of expertise.

Liz Sadler (Scottish Executive Justice Department): Two measures are being negotiated in Europe. The first is to enhance the arrangements for sharing criminal conviction information throughout the EU. A European Council decision that came into effect in May last year allows better sharing of information for policing purposes. We hope that a framework decision that is under negotiation will extend the sharing of information to include employment vetting, where the member state allows that for its nationals. Under that decision, because the UK allows access to criminal records for employment vetting purposes, other member states could ask us for information, but if they do not allow such access for their nationals, we could not ask for it. The long-term intention is that records will be shared electronically throughout the United Kingdom.

Secondly, some work is under way to recognise disqualifications from working with children across European Union member states. At the moment, the Criminal Records Bureau, which is the counterpart in England and Wales for Disclosure Scotland, has some information on its website about countries that allow their nationals to obtain information from the criminal record in the same way as we have a basic disclosure that anyone can ask for, for any purpose. So an employer can ask an individual coming from one of those countries to provide a criminal record check as

part of the recruitment process and the Criminal Records Bureau has information on how to obtain that. That is available at the moment, but we need to see whether it can be further enhanced in future.

Claire Monaghan: One of the difficulties with having a more elaborate arrangement and drawing down information from every overseas jurisdiction is the comparability of that information, and the extent to which different countries operate very different rules. Although we hope that we will be able to capture any relevant information on people coming from overseas, the ultimate safeguard in the bill is that once those people become scheme members, they are subject to the updating facility.

Lord James Douglas-Hamilton: When will the minister be able to give a final view on preferred policy options on the issues that are raised in the discussion paper? I ask because dissolution of Parliament is expected to be on 2 April and it is anticipated that all legislation will get through by the end of March. The timescale is therefore very constricted. A rough and ready estimate of the hoped-for timescale would be of great assistance.

Robert Brown: As I have said, I do not want to pin down a definitive timescale in the sense that we have to have it done by a particular time. Above all else, I want the sector to be comfortable with the arrangements. That is the main thing.

That said, following the present paperwork that has been the subject of this informal discussion, we hope that a policy consultation on the core elements of the discussion paper will take place between June and August of this year. There will be a substantive opportunity for stakeholders and the committee to offer input at that point. There will be a further opportunity to comment when the draft Scottish statutory instruments are published for consultation. It is anticipated that that might be between October and December this year. As I say, those are not guarantees; they are simply an indication of the likely timescale if the process goes reasonably smoothly.

Lord James Douglas-Hamilton: Is it the case that comparable legislation has gone through for the rest of Britain?

Robert Brown: The Safeguarding Vulnerable Groups Act 2006 has already been passed.

Lord James Douglas-Hamilton: Are we some way behind the legislation south of the border?

Claire Monaghan: The Safeguarding Vulnerable Groups Act 2006 was passed on 8 November, I think. It relies heavily on secondary legislation for implementation and operational considerations. As well as making the schemes dovetail operationally, we are now dovetailing the timescales to make sure that there is not a falling

behind that risks Scotland becoming a safe haven. On the presumption that the bill will become an act after stage 3 on 8 March, there will be no difficulty with operational dates.

Fiona Hyslop: I am glad that you are confident that we will be having a stage 3 debate on 8 March; however, the committee has not yet made a decision about the bill's progress.

The issue is the timescale. We heard earlier that there were concerns that the English legislation had been somewhat delayed, probably because of the emphasis on subordinate legislation. There is an understanding that everything is expected to commence at the end of 2008. If we were to say at this point that stage 2 should not proceed in order to allow everything to be considered at one stage, that would not necessarily have a major impact on commencement.

Bearing it in mind that any law can travel only as fast as the slowest ship in the convoy—by which I mean the subordinate legislation—is your timescale for implementation still the end of August 2008? How does that tie in with the commencement date of the Safeguarding Vulnerable Groups Act 2006? Is there a delay in implementing that act in England?

12:30

Claire Monaghan: I am not aware of a delay in implementation of the English legislation. Consideration of the bill on 8 March is contingent on the committee's having proceeded with stage 2. Assuming that the bill's passage proceeds according to that timescale, we are planning on the basis that implementation will take place around August or September 2008. The crucial next step is to ensure comparability in the details of the operation of the schemes. The scheme down south will cover Wales and Northern Ireland, too, although whether implementation in Northern Ireland is carried out by means of an order in council will depend on the political situation there. At any rate, it will be a full UK scheme.

Fiona Hyslop: Do you know when it is expected that the 2006 act will be commenced?

Claire Monaghan: I think that the end of 2008 is the expected date. There is very little difference between the expected implementation dates of the two schemes.

Fiona Hyslop: If the expected implementation date of the English scheme is the end of 2008, according to your timescale we are ahead of England.

Claire Monaghan: I was trying to resist saying that we think that we are slightly ahead of England.

Fiona Hyslop: In other words, were some slippage to occur at this stage, with the result that the primary legislation and the secondary legislation were considered together as new legislation in the new session of Parliament—whether under a Scottish National Party, a Liberal Democrat or a Labour Administration—we would still be able to deliver everything by the end of 2008, which is the timescale for the English system.

Claire Monaghan: Unfortunately, that is not necessarily the case because, once the bill is passed, certain parts of the secondary legislation would require us to enter detailed negotiations about how the new system would be delivered. In particular, we would need to consider whether to continue to use the existing public-private partnership with Disclosure Scotland. That determination will have a critical impact on fees. If the passage of the bill were to be suspended, it would not be until after the election, when the bill had crossed the finishing line under a new Administration, that those negotiations could take place. At this stage, our best estimate is that that would introduce an operational delay of eight to 12 months, although it could be longer, depending on what happens with some of the details.

Fiona Hyslop: My next question is technical. Is it possible to consult on subordinate legislation and primary legislation at the same time?

Claire Monaghan: We could do that but, crucially, it would not be possible to have the public-private partnership negotiations with Disclosure Scotland, which are necessary to inform the level of fee on which we would consult. Our view is that we could not have sufficient confidence to consult on a draft fee order until the bill has become an act.

In addition, we have not discussed with Whitehall the extent to which we would be seen as an equal partner in negotiations on detailed operational matters, such as the determination criteria and the thresholds, if there was a suggestion that the bill's passage was to be suspended.

Robert Brown: That point was made quite strongly in the submission from the Scottish Council for Voluntary Organisations, with which I disagree significantly in some respects. The SCVO said that it is important to continue liaison with the implementers of the English legislation if the bill is to be workable. Once the bill is passed—leaving aside when that happens and how everything fits together—that will narrow down the areas that will continue to be argued about in relation to the subordinate legislation. The passing of the bill will give people the clarity that they seek, which will enable the subordinate legislation and issues such as retrospective checking to be

approached with confidence and within a specific context.

It is much more difficult to have the clarity to move forward while many issues remain to be bottomed out satisfactorily, decisions remain to be taken and stage 2 amendments remain to be considered. Claire Monaghan has mentioned the likely operational delay with regard to the mechanical equipment for putting the measures into effect, but I think that the element of uncertainty that would surround the bill if its passage were suspended would add to the delay. That is speculation, but it is my view, for what it is worth.

Mr Macintosh: During stage 1, much concern was expressed about what was described at the time as the direction of travel. In other words, there was anxiety that the bill might add to what is seen as an overly risk-averse culture that is developing in this country. As well as promoting the bill, which will improve the implementation of the current disclosure arrangements, the minister was keen to make a statement or a policy commitment or to implement some sort of parallel measure to reassure people that we not only value but fully support volunteering, and that we particularly want to encourage men to volunteer. Has the minister had any further thoughts on when that might happen?

Robert Brown: I recollect saying two or three things about that. I said that the scheme gave comfort to individual volunteers and encouraged them to come forward. It is in the interests of someone who wants to work with a swimming club, for example, and to work with small children in that context, that vetting arrangements be in place because that gives them security. As you rightly said, the structure will be improved to support such arrangements and to help the voluntary sector and others in recruitment and training.

Beyond that, there are two areas of concern, one of which relates particularly to the smaller organisations, which deal incidentally with the legislation—in other words, it is not routine. The school disco was given as an example. Organisations need a solid source of advice about what they should do in such situations. That discussion centres on the central registered body for Scotland and the services it provides and, I suppose, on the involvement of the SCVO and other such organisations. We are trying to work through what would be required to make the situation better. There is provision in the financial memorandum for issues related to training and so on.

The risk-averse culture that Ken Macintosh mentioned is not an issue for the bill per se, but there has been a climate around the bill in which

people have felt that all sorts of awful things were going to happen, such as people falling in rivers when they are doing water activities and so on. Arrangements had to be in place to provide security on that. That would be resolved not by one event, but by a seminar or a series of seminars to explore those issues and to ask, "How can we firm up the expertise that is available to support teachers on school trips?" We need to work with the sector on the barriers to children having the life-enhancing experiences that we all want them to have without the risk that people will be sued, or whatever other concerns people have.

Although that is a long-standing agenda to which I am committed, in practical terms it will have to await the passage of the bill, after passions have died down a little. More particularly, in the next session of Parliament there will perhaps be a new tone or a new mandate for the Executive. There may be the opportunity to take forward those themes—which I guess will be among the legacy issues that the Education Committee will consider—in a way that is effective in beginning to mould public opinion a wee bit in a more positive direction than has perhaps been the case.

Dr Murray: The Executive's consultation document considered different ways of levying fees—there are basically three options. We have heard this morning that the SCVO is very concerned about the possibility of an annual fee, which it thinks would be difficult in the longer term for smaller voluntary sector organisations to sustain, whereas local authorities feel that an annual subscription would be the easiest for them to budget for. Is it possible to have different methods of fee payment to make the scheme flexible enough to deal with the different sorts of organisations that would be paying fees?

Robert Brown: That is entirely open for consultation. We know where we stand, broadly, with Disclosure Scotland. We have experienced the ups and downs of getting it established and achieving a level playing field. We know pretty much where we stand in terms of the costs of the scheme. It is not like introducing an entirely new scheme, in which we are starting from scratch with no information. Very broadly, we know the costs that we are dealing with in that connection.

As Dr Murray is aware, the scheme is intended to be self-funding. On balance, it should prove to be less expensive in total because of the follow-up check arrangements and expedited arrangements. However, we are open-minded about whether there should be one scheme or a combination of schemes. We want to bottom that out with the voluntary and statutory sectors to ensure that they are comfortable with the result. We included in the financial memorandum an example for illustrative purposes, but there are a number of other

schemes to play around with. It is not a question of principle but a question of what is best for the different parts of the scheme. There might be an element of compromise to be made, because the voluntary sector in particular comprises a vast array of organisations with different priorities. We want a workable scheme that is broadly acceptable throughout the sector and does not do nasty things to organisations' accounts—although I do not think that it will do that.

I ask for a degree of proportionality on the matter, given that the fees are relatively modest. Incidentally, they are also significantly lower than the fees in England. The Scottish Executive has paid, and will continue to pay, the charges for volunteers. We have done a good deal of work to make the situation manageable, but we want to work with the sector on the details of the new scheme to find out whether there are other approaches that would better suit their requirements.

Claire Monaghan: We set out the objectives of the fees in the pre-consultation paper. Three of the objectives are to make the system easy to understand, to make it equitable, and to avoid discouraging volunteering. Differentiated systems can be complicated because some people in the regulated workforce will be in paid employment and be volunteers. The objectives are almost a benchmark against which all the options can be measured when they go out for full consultation. We welcome stakeholders' views on the objectives for fees in paragraph 94.

Dr Murray: My final question is on occasional volunteers; for example, people who step in at the last minute to help with a school disco or walking bus. I understand that the Safeguarding Vulnerable Groups Act 2006 exempts people who are not involved in voluntary work for more than two days out of 30. What is your reaction to that?

Robert Brown: We are unenthusiastic about that approach. We do not think that it resolves the problem. Ultimately, any such exemption is arbitrary. The question is whether the legislation meets the requirements. We are interested in the substantial merit of the situation, if you like—what people are physically involved in doing, whether their involvement is unsupervised, and its regularity.

Under both the English legislation and ours, organisations have to make judgments according to their operative situations. As I have said before, the answer to any uncertainties in that regard—I accept that there are uncertainties—is to provide better and more accessible advice, particularly to the smaller organisations. I suspect that, in a number of the cases that have become almost anecdotal, disclosure checks would not be needed under the existing system and will not be needed

under the new system. We need to reassure people that they do not need to carry out, just for the sake of it, checks that are not required by the legislation.

Claire Monaghan: Another critical difference is that the scheme down south is mandatory. People commit an offence if they undertake regulated work while they are not a scheme member. The frequency test was introduced, but a harmful individual can do an awful lot of harm in a single day. That is why the approach does not have an immediate attraction.

12:45

Ms Rosemary Byrne (South of Scotland) (Sol): How will you ensure that people are well aware of the implications of going through the process or not going through the process? How will you get across to voluntary organisations which aspects they need to take heed of and which they do not? How much finance will be put in to address that matter? Has it been thought out and planned for?

Obviously, one of the key issues is to ensure that people are aware of what they should and should not be doing. The process should be clear and well defined so that they know what they should do. Otherwise, all sorts of unintended consequences will flow from the legislation. We have seen with POCSA that people have not been sure what to do and that the advice is not all that clear.

The response on occasional assistance being provided by parents in a school indicates that if it is a one-off and there is supervision that is fine and they should go ahead with it. However, if other parents discover, further down the line, that a particular parent had something hanging over them that the other parents are not happy with, who carries the can for that? How will we put that scenario across? How will the situation be described so that people are protected when they make such decisions?

Robert Brown: As you rightly say, you and I and others have been there before in relation to the discussion of retrospection under the POCSA scheme. You may recall that at that time a lot of work went into producing a manual, leaflets and other information that went round and to getting involved with, in particular, the voluntary sector organisations.

The issue must be seen at several levels. You must bear it in mind that we have had close engagement with representatives of the sector and that they have been involved in the discussions, implementation groups and so on. Across the sector, there is a fairly good understanding among the big organisations of the issues that emerge.

They will need to have in place arrangements to percolate that understanding down from their head offices to the local groups and so on. One can envisage reasonably easily the arrangements for how that might be done. It has been done before. I do not think that that is a challenge, although there is money in the financial memorandum for training, events and the provision of support for all that. It is a matter ultimately of doing it and ensuring that it is done thoroughly and effectively. We can learn some lessons from the past.

The situation is trickier in relation to organisations that are not part of national bodies and that exist in greater isolation. However, even in those circumstances there are often federations of local bodies that can channel advice. We must do what we can to enable such organisations to understand their position, so we should make leaflets available to them. We can use local authorities and others for that purpose.

As with any other legislation, it is about getting the information out to the bodies and people that might be involved. In many cases they are fairly obvious groups such as parent-teacher associations, organisations that deal with children and organisations that are linked to schools. We know about a wide range of organisations that might be involved. However, such an approach does not meet satisfactorily the needs of some smaller bodies, which is why I say that the advice function of the central registered body or whatever is very important—I have thought for quite a while that we need to beef that up. There is work to be done to try to ensure that we have a facility that people can readily get to and from which they can get information on which they can rely. They should not be told, in effect, that they have to look up the act and see what it says before they make a decision. That is not a realistic way of dealing with those matters.

Guidance and advice must be available to local organisations. We must put such provision in place to give reassurance beyond that which has existed in the past. The central registered body has had a role in that regard. I think that it has done useful work and has a lot of experience in doing such work. It was set up in the first place to fulfil that role, but we must consider how effective that role has been. We should investigate whether the guidance and advice have gone out to everybody that needs them and whether other arrangements need to be put in place to tighten the process up. I accept your point.

Ms Byrne: I will raise a side issue, although it is an important one that I have raised before. What arrangements are being put in place to raise awareness across the board among children and young people, the people who work with them and communities? A degree of complacency could run

right through all this unless people are aware that the scheme is never going to be 100 per cent foolproof, that there are always going to be issues around the safety of vulnerable people—children in this case—and that one of the best ways of protecting vulnerable people is to raise awareness and to train and educate people accordingly. That is a massive undertaking, but it is highly necessary. I would hate to think that all this will sidetrack us from a key area. What plans do you have and what finance is available to do that?

Robert Brown: I have said very clearly that we are trying to produce legislation that is about getting unsuitable people out of the workforce. Not allowing them in in the first place is a different, although related, issue. As we all know, abuse of children in its various forms takes place much more often in the home environment or is committed by people who are known to the young person. A whole series of issues arises out of that. Part of the solution is to put in place a reasonable degree of security to ensure that unsuitable people do not get into the workforce. Proper recruitment practices and consciousness that that is not a guarantee but just a little bit of the information that we can use is part of it, as well. Clearly, we have put money into training for that.

The broader issue is nothing to do with the bill, but is a wider issue that relates to society more generally. There is an increased awareness among parents and others about some of the risks that there are out there. That is part of the issue that we have been dealing with. Also, against that wider dimension, how do children have their childhood? I do not think that there is any single answer to that. It is a matter of using, among other things, the Scottish Schools (Parental Involvement) Act 2006 for involving parents in information sessions about the problem. It is also a matter for organisations that deal with individual young people and parents. It is a matter for the publicity people from time to time. There will have to be a range of different measures and I do not suppose that there will ever be a totally satisfactory answer.

The central point is also about the resilience of young people. They have to know or have an instinct about when they are in a situation that is not satisfactory and ought not to be happening, and to know to blow the whistle when it does happen. Again, there is a wider understanding of such things among young people, but undoubtedly a good deal more could be done. There is, however, no magic wand.

Claire Monaghan: The focus of the scheme is to ensure that when a person drops their children at school, they are not being taught by a serial sex offender. That would be absolutely unacceptable. However, a raft of other child protection issues sits

behind the scheme. The Executive has been clear on several occasions that it is not an either/or situation: it is a combination measure that will safeguard children's interests, which is very difficult to do.

Ms Byrne asked about the provisions that have been made for the scheme. The financial memorandum contains several lines on that, particularly on the operation of a telephone helpline service for an initial three years to ensure that the transition is as smooth as possible in relation to the information for new organisations. That will, of course, be complemented by delivery on the residual elements of the child protection reform programme.

Robert Brown: It is also relevant to mention that, since I went on about the central registered body, the financial memorandum includes £320,000 to raise its ability to do the sort of things that I was talking about earlier. I hope that the right level of provision exists to enable a significant upgrading of what is possible.

The Convener: Thank you. That concludes the questions and I thank the minister and his team for coming along this morning—now this afternoon—and giving further evidence on the Protection of Vulnerable Groups (Scotland) Bill.

12:54

Meeting suspended.

12:55

On resuming—

The Convener: Okay, colleagues, we will resume to discuss our next steps. As you know, the bill has been referred back to the committee for stage 2 consideration, which we are due to commence next week. As members have heard, the ministers are working to a timetable from the office of the Minister for Parliamentary Business, whereby stage 3 is to be completed on 8 March. Although it might be possible to meet that timetable, there is no guarantee that we will be able to because we have a substantial number of amendments to consider at stage 2 and only two meetings in which to do so.

Fiona Hyslop: On the substantive point, we said in our report that we did not want to proceed to stage 2 until the subordinate legislation had been provided. We said:

“The Committee recommends that Stage 2 consideration of the Bill should not begin until stakeholders have had an opportunity to comment on drafts of the related subordinate legislation and guidance.”

It is clear that that has not happened. The issue is whether the policy direction that the Executive provides is sufficient.

In the light of the evidence that we have taken and, in particular, the desire of the SCVO—which represents a large number of organisations—for the bill to progress at a pace and a time that would allow it to receive more scrutiny and examination, the wise thing to do would be for the committee to say to the Parliamentary Bureau that we are unhappy to proceed to stage 2 until we see the subordinate legislation. If that meant that an incoming Administration would have to introduce a revised bill, I think that that would be preferable, especially given that 150 amendments to the bill have already been lodged. The introduction of a new bill in June, in the new parliamentary session, would be beneficial in that the Executive amendments could be incorporated in the new bill, with the result that we would end up with a much tidier and simpler piece of legislation.

Given that the Safeguarding Vulnerable Groups Act 2006 will not commence until the end of 2008 and that Scotland is ahead of England by several months, we should say to the bureau that that would be the wise course to take. It is within the bureau's power not to ask us to proceed with consideration of the bill at this stage. The Parliament has agreed to the bill's general principles, but the timetable for stage 2 has not been agreed. We should say that stage 2 should not start next week.

Mr Macintosh: I fundamentally disagree. Given the amount of work and effort that the committee has put into considering the bill and the fact that, although we have struggled, we have now got to grips with the issues, which are difficult, we would be failing in our duty if we did not carry on and complete our work.

There are timetabling problems, but there are always timetabling problems. There were timetabling problems in the Parliament's first few years. We should address any such problems as and when they arise, rather than revisit a decision that we have already taken. The Parliament took the decision to proceed with the bill's consideration when it voted in favour of the bill's general principles at stage 1. Frankly, I think that we should knuckle down and get on with it. We have put a great deal of work into the bill, which has involved extra evidence sessions such as today's. We will definitely go several steps backwards if we do not complete the bill's consideration before the end of the session. We should put our energy to best use and press ahead to stage 2.

Ms Byrne: I have deep concerns about pressing on with consideration of the bill. From day one, we have all felt that the bill is far too important to be rushed through. We completed our stage 1 consideration and the general principles were endorsed, but there were certain issues that we

wanted to be clarified, as Fiona Hyslop has outlined. We wanted to see the subordinate legislation, but that has not happened. Numerous amendments have been lodged and many issues remain to be clarified. The voluntary sector has expressed significant concerns about possible unintended consequences of rushing the bill through. I support Fiona Hyslop's proposal.

Dr Murray: Like Kenneth Macintosh, I am reluctant to give up now, when we have done so much work on the bill. From conversations that I have had with the SCVO and Children in Scotland, I think that we might be able to reach a compromise position that allows an amended bill to proceed. If necessary, we will just have to have two long meetings over the next few weeks to get through the work.

13:00

Lord James Douglas-Hamilton: Do we have to make a decision now? I suppose we do.

The Convener: If the committee is to make recommendations to the bureau, we will have to agree today to do so.

My view is that we should proceed with stage 2 on the ground that there are some substantial amendments that will improve the bill. We might still be unhappy with the bill when we reach the end of the process, but that is what stage 3 is for. I understand that the bureau will timetable the bill next week. I am reluctant to have only two sessions because it might turn out that we need longer to deal with stage 2, so I recommend that the committee asks the bureau not to timetable stage 3 for 8 March but to give us at least another week. That will allow us at least three sessions to consider amendments. That will not remove the opportunity for us as a committee or as individuals to oppose the bill at stage 3 if it is unfit for purpose at that stage.

Lord James Douglas-Hamilton: This is an extremely unsatisfactory position. I see both arguments clearly. We are all in favour of the protection of children, and comparable legislation has been enacted elsewhere in Britain. We do not want to be in a position where we could be seen as lukewarm on the principle of the protection of children. The matter is not being dealt with professionally by the Administration, which should have introduced the bill much earlier and with greater efficiency. However, that is a matter for debate.

At this stage, the lesser evil is to put in the extra work and go the extra mile, but I do not like the way it is being done one little bit.

The Convener: The pre-consultation document usefully points to some of the areas that the

secondary legislation will cover. That gives us an opportunity. I intend to lodge one or two amendments to require the secondary legislation to do what the Executive says it will do. At the moment it is open-ended. For example, it is stated as a policy intent that fingerprint information is to be used only as a back-up when a person's identity cannot be guaranteed in another way, but that is not in the bill. I would like to lodge an amendment about that.

Do members agree that we should tell the bureau that we would prefer to have three sessions to deal with amendments but that—

Fiona Hyslop: There are two options. Should we delay stage 2 until we receive the secondary legislation or should we ask for stage 2—

The Convener: We can refer the bureau to our stage 1 report, which states that we would prefer to see the secondary legislation.

Fiona Hyslop: I would like you, as convener of the committee, to go to the bureau and say that we would prefer to—

The Convener: That is not possible because we will be in committee when the bureau meets next Tuesday.

Fiona Hyslop: The matter is not about us. It is not about timetabling. It is about what we can do as a committee. We are perfectly within our rights to go to the bureau—

The Convener: We are, but the bureau meets at the same time as we are scheduled to meet next week.

Fiona Hyslop: What time does the bureau meet?

The Convener: It meets at 2.30.

Fiona Hyslop: Having previously served on the bureau as a business manager, I know that, if the bureau knew that the matter was to be referred to it, it would change the time of its meeting so that it met before we commence the stage 2 proceedings. That is perfectly within the capability of the bureau, which is there to serve the Parliament. I hate to tell you that, but it is true.

The Convener: We are still in public so I should be careful what I say.

Mr Macintosh: What do you want the bureau to do, Fiona?

Fiona Hyslop: It should not timetable stage 2 until we assure it that we have received the subordinate legislation.

Mr Macintosh: I thought that the committee had agreed to go ahead with stage 2.

Fiona Hyslop: No. That is what we are discussing.

The Convener: The Executive made it clear at stage 1 that it would not be able to provide the secondary legislation before stage 2 because—

Fiona Hyslop: We have agreed to the general principles but we will not proceed with stage 2 until we have adequate information to do so.

Mr Macintosh: But we are proceeding with stage 2. We recommended that the Executive should provide the subordinate legislation, but the Executive could not do that. Given the circumstances, it is preferable to press on. If we cannot get through it, we cannot get through it, but we should press on and take each stage as it comes. I thought that we had agreed to that.

Fiona Hyslop: There is obviously a difference of opinion, convener. Perhaps we should take a vote on whether we should proceed with stage 2 or whether we should ask you to make representations to the bureau on our behalf and ask it not to timetable stage 2.

The Convener: I propose that we make representations to the bureau that we are given at least three sessions to deal with amendments at stage 2. The bureau plans to timetable stage 3 for 8 March, but that will not allow us the third session that might be required. I recommend that we ask the bureau not to state in the timetable that stage 2 should be completed by 23 February.

Is there an alternative proposal?

Fiona Hyslop: I propose that we ask the bureau not to timetable stage 2 at this stage.

The Convener: We will vote on Fiona Hyslop's proposal. The question is, that the committee write to the Parliamentary Bureau suggesting that it does not set a deadline for conclusion of stage 2 consideration of the bill. Is that agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (Sol)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

AGAINST

Douglas-Hamilton, Lord James (Lothians) (Con)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

That proposal is disagreed to. We will now vote on my proposal.

The question is, that the committee write to the Parliamentary Bureau suggesting that the deadline for conclusion of stage 2 consideration of the bill not be set before 2 March. Is that agreed?

Members: No.

Meeting closed at 13:06.

The Convener: There will be a division.

For

Douglas-Hamilton, Lord James (Lothians) (Con)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

ABSTENTIONS

Byrne, Ms Rosemary (South of Scotland) (Sol)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 0, Abstentions 3.

That proposal is agreed to. I will write to the bureau to ask that we not be timetabled to complete stage 2 by 23 February. I remind members that amendments for the first day of stage 2 are due in by 12 noon tomorrow.

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