



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### FINANCE COMMITTEE

Tuesday 4 May 2010

Session 3

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**Tuesday 4 May 2010**

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**FINANCE COMMITTEE**  
**12<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Andrew Welsh (Angus) (SNP)

**DEPUTY CONVENER**

Tom McCabe (Hamilton South) (Lab)

**COMMITTEE MEMBERS**

\*Derek Brownlee (South of Scotland) (Con)  
\*Malcolm Chisholm (Edinburgh North and Leith) (Lab)  
\*Linda Fabiani (Central Scotland) (SNP)  
Joe FitzPatrick (Dundee West) (SNP)  
\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)  
\*David Whitton (Strathkelvin and Bearsden) (Lab)

**COMMITTEE SUBSTITUTES**

Gavin Brown (Lothians) (Con)  
Lewis Macdonald (Aberdeen Central) (Lab)  
\*Stewart Maxwell (West of Scotland) (SNP)  
Liam McArthur (Orkney) (LD)

\*attended

**THE FOLLOWING ALSO ATTENDED:**

Trish Godman (West Renfrewshire) (Lab)

**THE FOLLOWING GAVE EVIDENCE:**

Professor Ruth Hancock (University of East Anglia)  
Dr Michael Harris (National Endowment for Science, Technology and the Arts)  
Brian McKechnie (University of Strathclyde)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Committee Room 4



# Scottish Parliament

## Finance Committee

*Tuesday 4 May 2010*

[The Convener *opened the meeting at 14:00*]

### Budget Strategy Phase 2011-12

**The Convener (Andrew Welsh):** Good afternoon and welcome to the 11<sup>th</sup> meeting in 2010 of the Finance Committee, in the third session of the Scottish Parliament. I have received apologies from Tom McCabe and Joe FitzPatrick. Stewart Maxwell will be present as a substitute member for agenda item 2. I ask everyone to turn off their mobile phones and pagers, please.

Item 1 is to continue taking evidence for our inquiry into efficient public services. The theme of this week's meeting is demographic change. I welcome to the committee Ruth Hancock, who is a professor of the economics of health and welfare at the University of East Anglia; Dr Michael Harris, who is from the National Endowment for Science, Technology and the Arts; and Brian McKechnie, who is from the senior studies institute at the University of Strathclyde.

In our call for written evidence, we asked a specific question on demographics. Given reduced budgets, will the public sector have the capacity to deliver efficient public services while also responding to the longer-term challenge of demographic change? To set the scene for the meeting, it would be helpful if the witnesses could summarise what they consider to be the main challenges of such demographic change.

**Brian McKechnie (University of Strathclyde):** At this point, based on information from the General Register Office for Scotland, 18 per cent of Scotland's population is under the age of 15 and 20 per cent is over the age of 60. Over the next 20 years, that 20 per cent will increase significantly to somewhere in the region of 1.7 million of our 5 million population, which is 34 per cent. One third of our population will be over the age of 60.

It might therefore be quite challenging to continue to operate in the way we have been doing because of budgetary constraints and suchlike. There will be a massive increase in the number of older adults and a modest decline in the number of younger people.

**The Convener:** I am contributing to that statistic every year, which is a bit of a worry.

**Professor Ruth Hancock (University of East Anglia):** My area of expertise and interest is with

the oldest old people because it is in long-term care financing, which is probably going to present one of the biggest challenges. Scotland is very similar to England in that it faces a very large increase in the number of people over the age of 85. Over the next 25 years, the number of people in that age group will more than double. That group is, of course, where the need for long-term care is greatest.

Although England and Scotland start from slightly different places because Scotland has introduced the free personal care policy, the debate for reform has gone on for many decades, and it seems as though there will continue to be pressures for reform because of concerns about underfunding and inequities in the current funding system. As far as I can tell, no one is saying that we spend too much on long-term care, so it is hard to see how we are going to address people's concerns within the tightening fiscal situation. That will be one of the biggest challenges.

**Dr Michael Harris (National Endowment for Science, Technology and the Arts):** Given NESTA's focus on innovation in the private sector and public services, our argument is that the challenge that faces public finances over the next few years only sharpens some of the questions about the long-term demands and expectations that have been circling around public services for some time. Of course, it is wrong to talk about opportunities, given the scale of the challenges that we face, but the twin challenges of the short-term demands of saving money, and the long-term demands coming from demographic change should, nonetheless, force us to think about new approaches in public services to deal with those twin pressures.

**The Convener:** Can you give us any indication of the scale of resources that would be required to meet those challenges? Can you give us any statistics to let us understand the scope of what we face?

**Dr Harris:** Obviously, the further out one gets, the more speculative some of the numbers become, but our reading of research that has been done elsewhere is that a cumulative figure would be around £300 billion in extra costs across the United Kingdom by about 2030. That is gathered from a number of sources, but we think that they are pretty respectable sources.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** On the face of it, that is one of the most worrying aspects of the enormous change in demographics. If we continue with the current models of care, we will need very big amounts, which will be difficult to achieve under current budget projections. We have been thinking about the issue for quite a long time.

To what extent can the policy objectives of redesigning care and taking preventive action significantly reduce costs? I suppose that the general objectives that have been set are to have more people being looked after at home, rather than in care homes; to reduce the number of emergency admissions to hospital, which are extremely expensive; and to have more integrated continuous care in the community that prevents emergency admissions. There is also the agenda of preventive health care. With regard to old people, some of the focus is on lower-level activities that will prevent the crisis from developing. I suppose that that has been the framework for a year or two, but I am not sure whether we have made a lot of progress, given that emergency admissions to hospital continue to rise.

**Dr Harris:** As Malcolm Chisholm suggests, it has been broadly agreed that those are the directions of travel that we have to take. We argue that the scale of the fiscal challenge should not deter us from taking bolder steps in those directions, but should instead be the impetus for making real changes and setting out on a 10 or 20-year journey towards ensuring that more preventive approaches are not at the margins of public services but are in the mainstream. I think that there is broad agreement about that policy framework, but the challenge is to make it happen. The innovations that we look at around the world show that significant savings can be made—in the range of 20 to 40 per cent—if you really go for those approaches and implement them on quite a large scale.

**Professor Hancock:** I sound a note of caution, in that we have rather little evidence on the savings that can be made from prevention, although that is not to say that we should not be trying it. The tension will always be around where you put the money. Do you put it into prevention and helping people who have relatively low needs at the expense of those who have extreme needs? That is a very difficult political decision to make. The fact that you are facing financial constraints will make it even harder to put the money into prevention, because you will be fire-fighting the whole time.

It is not possible to avoid asking where the division of responsibility between the public services and private mechanisms of payment is. You might have to accept that more of the cost has to fall on individuals who can afford to pay.

**Brian McKechnie:** I will give a couple of examples of good things that are already happening and that have made a real impact. Free travel has had a significant impact on the lives of many older adults because they are more able to go out and socialise together, to access amenities

in their cities and so on; it is also important in a rural context. It is a positive thing, because it is about active ageing. It is not about looking after people when they develop a problem but about people accessing things for themselves.

Individual learning accounts are also important. If people are to be able to access employment for longer and to get involved in caring—as a voluntary activity or whatever—access to and support for further training and education are important. Such opportunities make a difference in people's lives, although that is difficult to quantify.

At the University of Strathclyde, the senior studies institute caters for people over 50. About 4,000 students from the greater Glasgow area are involved in some form of learning. As a group, they are much healthier and more active. Is that just a reflection of the type of people who are attracted to the programme? Do people feel that they have more opportunity to get involved? Enabling people to do things—whatever the activity—that make them more active as they get older is important.

Those areas are important in the context of future funding.

**The Convener:** It is important to be active physically and mentally.

**Malcolm Chisholm:** Brian McKechnie's comments have emphasised the wider agenda to do with the contribution of, and opportunities for, older people, of which we are very aware in Scotland. We must remind ourselves of that when we talk about care costs. I should say for the benefit of our guests from England that the current Administration and the previous Administration have sought in one way or another to implement Scotland's strategy for an ageing population.

The contrast between what Dr Harris said and what Professor Hancock said perhaps takes us to the heart of the matter. I would like to believe Dr Harris, because his financial projections are more comforting and the approach that he talked about is consistent with good models of care. However, we must listen carefully to the expertise of Professor Hancock. Professor Hancock seemed to say that we need to do many things differently and that she is not confident that that will save money. Given the public expenditure projections, how can we manage the budgets? If we cannot save money by doing things differently, the budgets will increase—if not rocket—given the demographics and, in particular, the increase in the number of over-85s.

**Professor Hancock:** Let me add a point on the benefits of having an ageing population: older people themselves do a lot of the caring and provide much value in that way.

It would be a mistake to think that we can do everything by doing things differently. A big issue for Scotland—it is now a big issue in England, too—is the financing mechanism for long-term care. Scotland adopted a system of free personal care. We did not do that in England, because for many years Governments were concerned not just about the cost but that the main beneficiaries might be better-off people.

The position now in England is interesting. Just before the election was called, the Government published a white paper, which seems to commit us long term to a policy of free personal care, which if anything could be more expensive than the policy in Scotland because, from what I have seen of the figures, it seems to assume a larger contribution to care costs for people in residential care. It also seems to define care at home more broadly.

Given the tight fiscal position that we are in, such ambitions raise all sorts of questions about how the money will be raised. I do not have the answers on what Scotland should do if it wants to continue with its policy. We are talking about efficient services and the most efficient use of resources. If we are concerned to spend moneys in ways that are targeted on the people who are most in need, we must consider who those people are. We can argue that they are the people who have the most care needs and so the approach should be like the approach that is taken in our national health service, whereby all that matters is someone's need for care. We could, otherwise, argue that we should target resources on the people who are least able to finance their own care. When it comes to social security benefits, in times of tight fiscal constraints people have tended to go down the means-testing route rather than the universal route.

14:15

**Malcolm Chisholm:** We hear what you say on that.

I want to focus on emergency admissions. A highly significant proportion of hospital budgets is spent on emergency admissions of older people. In the previous session of Parliament, a report that you may have heard of was published by a group that was chaired by David Kerr. At the heart of that report was the idea that we cannot continue to have such a high level of emergency admissions of elderly people, because it is driving big increases in the health budget, and that there must be a shift towards continuous integrated care in the community. Is that a pious aspiration, or could progress be made in that area that would unlock financial savings as well as health advantages? I do not know whether such progress has been made in England, but we do not seem to

be making the progress that we want to make in Scotland.

**Professor Hancock:** I am not an expert on the systems that have been put in place or tried for admission avoidance. It is clear that emergency admissions are extremely expensive, so it could be lucrative to target them. Systems that have been used around the country suggest that that is an area in which there may be scope for improvement.

**Dr Harris:** I want to challenge our focus on efficiency and where we can save money. I completely understand why that is the priority in the current context, but the best examples of radical reform of public services often start with the question, "How can we make this a better experience for the users of public services?" rather than with the question, "How can we save money?" If that way of thinking is followed through, it often leads to the development of a much more effective service, which tends to be much more efficient because it does what the user wants. Often, such services are based in the community and involve giving people support and advice and helping them to build up their social networks in the community rather than in an institutional setting. It could be dangerous to focus only on where we can save money and not to look at better and more effective forms of public services from across the UK and around the world that we could learn from, the adoption of which would lead to much more significant savings being made.

**The Convener:** Can you give us any examples of such best practice?

**Dr Harris:** An example of best practice as regards accident and emergency admissions is the virtual community wards project that is being trialled in Croydon. Croydon Primary Care Trust looked at the data on where its costs were coming from—that is often an important starting point—and realised that just 5 per cent of patients were the cause of half its costs. It therefore began the virtual community wards experiment, which involves giving people care, management and advice in their own homes. The provision is organised as it would be in a ward, but is based in the community, which is a better setting for many of the patients concerned. It also means that A and E wards tend not to incur those costs.

**Linda Fabiani (Central Scotland) (SNP):** That was interesting. I want to follow up on the idea of achieving efficiency with regard to costs and efficiency for the service user.

It seems from reports that in Scotland the standard and the cost of care provision vary among local authorities. I invite Professor Hancock and Mr McKechnie to confirm whether that is the case and, if so, why they think that is. The

responsibility for providing long-term care tends to be divided. I wonder about that. Unpaid carers have been mentioned. In addition to local authority costs, there is the health authorities' portion. If we want to get to where we say we want to be, is there a fundamental change that we could make to service delivery that would give a better end result for the user?

**The Convener:** Who wishes to take that one?

**Professor Hancock:** I am a bit lost on Linda Fabiani's question. Can you repeat the two halves of it?

**Linda Fabiani:** Yes. Let us go with the first half. We hear stories to the effect that, across different local authorities and areas in Scotland, there are different standards of care, and that different components are funded or not funded. Would it be better all round if there was some kind of national standard? Is it the case that there are differences? If so, how could we make that better?

**Professor Hancock:** I am not an expert on variation in Scotland, but there is certainly variation in England. I have no reason to think that the situation is different here. The question whether Scotland should have a national system or local variation is a difficult one. There was discussion in England, which seems to have faded, about how disability benefits are used and whether that money would be better put into the care system. Some of the argument against that was that disability benefit is a national system with standard rules that everybody knows, which delivers a common entitlement to everyone, with no variation among localities.

One of the problems is that, when we assess people's care needs, we are not dealing with something that is easily turned into a formula or a formulaic system. We have always had the problem that, on the one hand, people do not want variation—we talk about postcode lotteries—but on the other hand there is a sense in which the people closest to those in need are best able to judge what is needed.

I suppose I am sitting on the fence. I think that there should be some local discretion, although I accept that it is not necessarily a bad thing that two people making a judgment about somebody's care needs may come to different conclusions. I suppose what probably seems most unfair is when what they pay for those things varies a lot. There may be benefits in having more standardisation in the assessment of what people contribute to their care.

**Linda Fabiani:** I understand that delivery is split between health boards and local authorities. Of course, unpaid carers also make a contribution that is difficult to assess. Would it be more efficient to have a one-stop shop or service point to deal

with delivery, rather than split it among the 32 local authorities and all the health boards?

**The Convener:** Dr Harris, do you want to respond to that question?

**Dr Harris:** Yes. I will do so in a broad way by saying that, philosophically, we tend to be quite critical of the idea of national standards because they can inhibit the kind of radical reform of public services and the local variation that are often very important. Users of services may have very different needs and see them in very different ways. National standards and all the apparatus of measurement and management that comes with them can inhibit users in articulating what they feel they need and can inhibit their getting it. Too often, we try to decide on behalf of users of services what they need—albeit that we do so for very understandable reasons—rather than create a bit more freedom in the system for them to be able to articulate and determine what they need.

**Linda Fabiani:** I would like to hear the customer's point of view from Mr McKechnie.

**Brian McKechnie:** I hope that I do not represent the customers totally. There is regional variation, but the reasons for it are quite complex. One of the major challenges is that our older population is not evenly spread throughout Scotland—some areas have high numbers of older adults. For example, areas such as Dumfries and Galloway suffer the double whammy of younger people moving away and people moving there to retire, so those areas have higher levels of older adults, which means that the system comes under more strain. Unfortunately, if councils are charged with ensuring that everyone receives a reasonable standard of care but their budgets are constrained due to higher levels of need, there will be fluctuations in provision. The fluctuations are not massive, but there are differences among areas in Scotland.

Centralisation would also create challenges. Organisations such as the Scottish Commission for the Regulation of Care set standards, but centralising provision too much would, as Dr Harris said, create challenges in how to respond actively to local needs and could remove innovation from the system by putting responsibility too far up the chain. Allowing local authorities to work in partnership with health boards is a mechanism that seems to have worked well in many other situations and is probably the right sort of approach, if we are to develop care to the required level.

The volunteer aspect of care is massive—it cannot be underestimated and is worth billions of pounds. Voluntary provision includes the input of older adults in caring for other older adults, but we also have some very young carers in Scotland.



Integrating those carers into the process so that they have a voice will be a challenge, but that will be important if we are to ensure that we have, if not the same standard of care everywhere, at least a level playing field in provision. Those people need to feel that they are supported.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** That is indeed an interesting issue, but I want to take a step back a bit. The questioning so far has focused on those economically inactive older people who might be seen as a cost but, given the demographics of a population that is growing older, I want to focus on how we configure matters so that we have increased numbers of economically active older people. For example, I was recently approached by a constituent who works for Borders NHS Board—the Borders area has a very similar demographic profile to that of Dumfries and Galloway—who is being compulsorily retired. She does not want to retire, but she is required to do so. She thinks that that is nonsense, and I tend to agree with her. How should the public sector, which is probably the biggest single employer in many of our constituencies, be configured to reflect the workforce? Should different types or patterns of employment be available, so that older people can continue as employees? Is any work being done on that? Is there any indication of how we might go forward with that?

**Brian McKechnie:** I have done a lot of research on that issue specifically in Scotland. It presents an opportunity, but we also need to understand how things are changing and developing.

Although Department for Work and Pensions oversight of employment legislation means that what can be done purely at the Scottish end is limited, there has been a large movement, both through legislation and on the part of employers, towards considering the benefits of employing older workers. People's experience, knowledge and ability are amazingly valuable and should not simply be lost at 65—or whatever age people decide they should retire.

In addition, older adults are beginning to question the whole attitude that people had of looking forward to a great retirement when they would not need to work any more. Financially, that is no longer such a viable choice. For many people, retiring is just not a choice that they want to make. People live longer if they work longer. That may seem counterintuitive, but the busier and more involved people are, the more likely they are to live a healthier—it can be healthier in many ways—and longer life.

A number of things are going on to encourage people to work longer in a positive way—not forcing them to work longer but trying to change the attitudes of employers who see the issue as a

double-edged sword. If an employer believes that someone who has worked with them for a long time is no longer productive, they sometimes think that retirement is a simple way to get rid of them—not a negative but a neutral decision. However, people can work much longer. Our working lives are healthier; we are not digging roads or carrying bags of coal so much, but tend to be in more service-centred jobs.

Encouraging people to work longer not only reduces the burden on the public purse but makes people a lot healthier and more able to contribute to society. Unfortunately, all of the legislation comes through the DWP—although it may be possible to do things at the Scottish end to influence that legislation, as well as through other legislative frameworks in Scotland.

14:30

**Professor Hancock:** My understanding is that the outgoing United Kingdom Government committed to a review of the default retirement age, which is what you are talking about. It is intellectually hard to see any justification for requiring people to stop working just because they have reached a certain age, especially as in the long run we are increasing the retirement age in recognition of the increasing length of time that people live, the cost of pensions and so on. It seems hard to justify continuing with the current default retirement age legislation.

**Dr Harris:** Like many organisations, we think that we need to start thinking about developing a set of services to help people before they are suddenly retired, whether for health reasons or because they reach a particular age. That is another example of the need to step back and look at what the problem is, because in the longer term we could save significant sums of money if we helped people to retire and prepared them for the transition from full-time work to a more mixed work-life balance. We expect a lot of those services to be based in the community and run by social enterprises, voluntary groups or co-operatives that would help people to prepare for the change rather than it coming, as it does now, as an abrupt change in their life for which they are not prepared.

**David Whitton (Strathkelvin and Bearsden) (Lab):** A considerable amount of the evidence that we heard from earlier panels of witnesses said that we should focus spend on the younger end of the age spectrum and not make cuts there. I would welcome this panel's views on that, given what Mr McKechnie said about 18 per cent of the population being under 15 and heading towards 34 per cent of the population being over 50. Is it just a case of doing the simple maths and saying that 18 per cent of our spend should be on the

younger element and 34 per cent should be on the older element?

**Brian McKechnie:** I should probably go first. No, there is no question but that we must invest in young people. That investment is really important, although there may be some aspects that we can look at again. The immediate economic impact of younger people is modest—young workers tend to be lower skilled—but their skills and experience will build over time, and we must invest in them.

We must not miss out the middle group—the people who are already in work and are trying to upskill. It is really important to give them more opportunities. Obviously, there is still a need to invest in people as they reach “the end of their working life”—the period when they are in full-time employment, perhaps moving into volunteering or part-time employment as they try to stage their retirement. Perhaps we could take a wider view of some of the issues.

I used to chair the board of one of the largest colleges in Scotland. There are just over 40 colleges in Scotland and 25 or 26 higher education institutions, for a population of 5 million. We might need to look at that. Even if they are important and have lots of specialist skills, can we really justify having 66 high-level institutions, given the size of our population? It is a tough question to ask because there are a lot of vested interests in those organisations and the sectors that they serve, but there is certainly room for some mergers, or to recraft that side of things.

We have a lower number of young people, more and more of whom are accessing universities or colleges. That is a great thing, but it is partly driven by the fact that the options for young people in other areas are limited. We do not have the employment options that we used to have that enabled people to develop trades skills, because those skills are changing. A larger number of people are going to university, but they are being trained for jobs that do not really exist. They do not need university degrees to do the jobs that they will get at the end of their courses.

There is a trade-off. We want a first-class economy with first-class minds and a highly skilled and trained workforce that attracts investment, but on the other side, we have to be realistic and say that we do not need everybody to have those skills. There are wonderful things that people can do without having to go to university or college. I am like a turkey voting for Christmas.

**Professor Hancock:** There are two sides to the matter: whom we spend public money on; and who pays for that—or where we raise the revenue to pay for it. One reason why the Westminster Government did not initially opt for a policy of free personal care is that if it was financed from

general taxation, the burden would fall predominantly on younger people, some of whom have low incomes and not much in the way of assets.

People who retire now will have better pensions and more wealth than the people who come behind them, because they have benefited from good final salary pension schemes, which are now much less prevalent. We have to ask which groups in society have the resources to pay for public services as well as asking who needs them. There is an argument for tapping into the resources of people in the older generation who have resources at a time when the generation of younger people, coming up behind them, are having a tougher time than the older generation did at the equivalent time in their life.

**Dr Harris:** The question relates back to the issue of efficiency. Broadly, the more we spend on a public service, the better it will be. Clearly, spending much more on services is not an option that is open to us now, which is why we need to rethink some of our fundamental assumptions about services, particularly from the point of view of users. We need to think about the real purpose of services, about what users really want, and about whether there are more effective ways of meeting those needs. That is not the same as asking whether we should spend a bit more or a bit less on services. The question is far more fundamental than that.

We can take better approaches in the early years, but we can also take better approaches to services for older people and that help people to prepare for being older. We need to look at both of those things and not rule one out because, for understandable reasons, we want to protect education or care for people at either end of life.

**David Whitton:** That mention of education brings me neatly to my next question, which is about universal provision.

Mr McKechnie talked about individual learning accounts and about people going to university when they are in their late 50s and so on. That would be great, I suppose. You never know—I might even think about it myself. However, there has been a big question about universal benefits. We have had a couple of papers on that, and Professor Hancock alluded to it. I am interested in the witnesses' views on whether universal provision can be continued. We have free personal care and free transport and we are heading towards having free prescriptions. The national travel concession scheme will cost £194 million in the current financial year, which is a lot of money. I heard what was said about it enabling people to move about, but is it time to reconsider it?

**Professor Hancock:** Who would you like to answer that?

**David Whitton:** You just fire away because you started.

**Professor Hancock:** I would not want you to go away thinking that I am in favour of means testing to the hilt—there are considerable disadvantages to means testing whether for social security benefits or other things, because it puts people off claiming what they could be entitled to. However, if we must focus spending where it is likely to be needed most or can be of most benefit, we have to start thinking about it. As I indicated before, there are some people who receive benefits who can afford to pay the costs of transport, care and so on. We have to ask if that is the best use of resources.

The issue is very political. In the end, it comes down to whether we prefer the benefits of universalism over some of the disadvantages of means testing and whether, as a country, we are prepared to pay for it through our taxes. The Scottish Government does not have as much power to raise revenue as the Westminster Government does. On the other hand, we are not Scandinavia and we do not, on the whole, vote for Governments that promise to raise taxes.

**The Convener:** How does that fit with the £300 billion in extra costs that you said we would face by the year 2030?

**Professor Hancock:** It does not fit well with that, and I do not know how those costs are going to be met.

**David Whitton:** Do you care to offer any thoughts on which components of care should be paid for by those who can afford it?

**Professor Hancock:** Care homes in Scotland and England already charge people for so-called hotel costs. There is a debate to be had about the split between the care component and the hotel costs of care homes. People are used to paying for housing and their everyday living expenses, so it seems quite reasonable to charge for those. Care at home is trickier. If I understand the position correctly, Scotland has free personal care at home but other kinds of domestic help are charged. One of the difficulties with that is that although some people might feel that the most important thing for them is personal care, some people with equivalent needs might prefer to have some domestic help and do the personal care tasks themselves. Who are we to tell them otherwise? Perhaps the way to do it is to say that people are entitled to a certain sum of money towards whatever care they need at home, and they can choose how to spend it. That is how personal budgets would work.

It is reasonable to ask people to pay for things that they would pay for whether or not they had care needs. The question then is how much of the rest we pay for them irrespective of their means. Ultimately, that is a political judgment.

**David Whitton:** Mr McKechnie?

**Brian McKechnie:** From our experience of the older adults learning programme at the university, I think that anything that is free is not necessarily perceived as being valued. There is a benefit to charging people for something; they value something that has a cost associated with it. If you are given a gold bracelet free of charge, you do not value it in quite the same way as you would if the person who gave it to you told you that they had to pay £2,000 for it.

14:45

**David Whitton:** Yes, but is that the same thing as a free bus pass?

**Brian McKechnie:** Well, it is still referred to as the penny ticket by various people. The bus pass has a low cost per head in Scotland and it is highly valued, in that it gives people a lot of freedom. There would be a cost involved in taking a portion of that back—it would be like the dog licence issue, when the cost of collection was greater than the cost of the licence. I am not sure about that.

Free personal care is a big issue and breaking down the costs would be a challenge. Once a door has been opened and people feel entitled to a particular benefit, it is hard to take that entitlement back. A political choice is involved. I would say that most older adults value the policy in a particular way, even if they are not aware of the actual costs, so a requirement to make a contribution would not necessarily be a negative thing in every case. However, the case for introducing such a requirement must be made carefully, so that people understand it.

**David Whitton:** Do you have a view, Dr Harris?

**Dr Harris:** The issue must be addressed on a case-by-case basis. There is a real danger in applying a general approach to very different types of service and forms of provision and assuming that the outcome will be the same.

I go back to the point about the fundamental purpose of services. There is an opportunity—or rather, a need—to think about what we want public services to do and about how, during the next 10 to 20 years, we move towards what many people are calling a new welfare settlement, which might have assumptions that are different from the assumptions in the welfare settlement of the past 50 or so years. More co-payments and charging might be part of that.

It should also be about how services, provision and entitlements can build on people's capabilities rather than assumptions about people's particular needs. It is also important to remember that people do not necessarily take up their entitlement to universal benefits, so there is not necessarily an actual cost.

**David Whitton:** I am interested in what you said about a new welfare settlement. There is evidence that large numbers of older people do not claim all the benefits to which they are entitled, often because of the bureaucracy that is involved, and I guess sometimes because they do not need the money. In the new economic times that we are entering, uptake might be much greater, because people might feel that they need the money. Do the witnesses have any idea of the budgetary implications of everybody taking up all the benefits to which they are entitled?

**Brian McKechnie:** I do not have statistics on that. There is significant under take-up of benefits and suchlike, for a variety of reasons—bureaucracy is a major one. It is surprising how many older adults would rather that the money went to young people in some way. There is massive intergenerational exchange, whereby money is passed from older adults to their children and grandchildren. There is an attitude of self-sacrifice and a willingness not to take money that people think might somehow reach children and young people.

**David Whitton:** I know pensioners who use the winter fuel allowance to pay for Christmas presents for their grandchildren, because they do not need it for their heating.

Professor Hancock looks as if she has a number for us.

**Professor Hancock:** I can dig out a few numbers. Some time ago, I did work on the take-up of means-tested benefits by older people, with my colleague Steve Pudney, who is at the University of Essex. Two main points came out of that. First, it tends to be the smaller amounts that people do not take up. If people are entitled to large amounts, which by definition means that they have relatively low incomes, they are much more likely to claim. However, that is not the whole story. The second point is about the delivery system and the information that is available to people. When we look at the patterns of the combinations of benefits that people take up, we find that people who receive pension credit, or income support as it was in the old days, are likely also to claim their entitlement to the other two main means-tested benefits, which are housing benefit and council tax benefit. That is to do with the way in which the system works.

Conversely, we find that people who claim council tax benefit are less likely to claim the pension credit, or income support as it was, to which they are entitled. That is sometimes referred to as reverse passporting. If someone claims pension credit, they are automatically told that they are likely to be entitled to housing benefit and council tax benefit, but it does not work the other way round. At least, it used not to, and I do not think that things have moved very far. That is partly to do with whether the DWP trusts the information that local authorities hold about people's entitlement to council tax benefit and housing benefit.

We did some work recently to estimate the take-up of attendance allowance, which is not means tested. That is much harder to work out, but we submitted some evidence to the House of Commons Health Select Committee's inquiry into social care in which we stated our view that as many as 30 per cent of people who are entitled to attendance allowance are not claiming it.

To return to David Whitton's first point about costs, the latest DWP statistics on the proportion of benefit entitlement that is claimed—what it calls the expenditure basis of take-up—show that the take-up of pension credit is estimated to be between 70 and 78 per cent. In other words, the pension credit bill could be 20 per cent higher, or more, if more people took up their entitlement. With council tax benefit, the take-up of which is much lower, the bill could be as much as 40 to 50 per cent higher if people took up their entitlement. The figure for housing benefit is lower. I should say that all the figures that I am quoting relate to pensioners. In general, there is a higher take-up of housing benefit, but even in that case the bill could be 10 to 15 per cent higher if everybody took up their entitlement.

**Dr Harris:** David Whitton is right to point to a bigger issue. As we come out of an economic recession, there is a danger that we will move into a social recession. The time when the costs of the economic recession begin to feed through into greater demand on public services—we know that there is a time lag in the effects on ill health, mental health, worklessness, family breakdown, offending behaviour and so on—is the very time when we will begin to cut services because of the broader public finances. That means that we need to think quickly about some different models of service provision. That cannot happen overnight, but we need to try to deal with some of those costs imaginatively in the short term as well as in the long term.

**David Whitton:** So is your idea that we would roll up all the benefits into a single payment to make it more efficient? When someone reached a certain age, they would get the payment. They

would not have to make a claim and it would be an allowance rather than a benefit.

**Dr Harris:** There are a couple of reasons why that could seem attractive. First, it could give the individual greater flexibility to allocate some of the money in different ways. Secondly, we have seen that the more budgets are pooled in that way, the more it gives different providers of services, assistance and support opportunities to combine services in imaginative ways. For example, we know that silos have been a problem in public services. Different services or departments are responsible for different things, so they have their own performance measures and so on. They might deliver the services very well within those boundaries, but they are not always very flexible and do not have much incentive to find ways of combining services in more efficient ways. That kind of mechanism could help with that problem.

**David Whitton:** Finally—this may seem a daft question—is there any evidence to suggest that people retire to Scotland because we have free personal care and the rest of the country does not?

**Professor Hancock:** I do not have any evidence for that.

A slightly different take on the question might be to consider whether the evidence suggests that the demand increased as a result of having free personal care. As I understand it, demand for residential care did not change very much, but demand for care at home increased. That does not surprise me, because I do not think that many people were queuing up to go into care homes just for the fun of it, but there were probably a lot of people who could usefully benefit from a bit of extra help at home.

**David Whitton:** Is the model that we should aim for, then, one that looks after people at home as much as possible rather than in residential homes, care homes or hospitals? Should we focus more resource on such community-based care—if I may describe it like that—and less on the rest?

**Professor Hancock:** I am not particularly suggesting that as a model, but older people tend to say that they want to stay at home. One can understand that. We need to be a little bit careful because not much work has been done on those on the margins who might be able to stay at home but might need to move into residential care. I suspect that many people do not want to contemplate a time when they will be unable to live in their own home. That said, I am sure that there is a lot of merit in targeting money at providing care for people in their own home.

**David Whitton:** Are there any particular types of people who are most disadvantaged by the current long-term care regime in the UK?

**Professor Hancock:** An issue that is perhaps made worse by the current legislation, under which free personal care is available to those at home but not to those in residential settings, is that local authorities potentially have an incentive to place people in residential care because that will be cheaper than providing care in the person's home. For that reason, we are in a rather peculiar position at the moment.

**The Convener:** The final questions will come from Jeremy Purvis.

**Jeremy Purvis:** Professor Hancock makes an interesting point, which probably also applies to where people die. Perhaps due to the cost profile, many people die in hospital even though they would prefer to die at home if a suitable care package or palliative care was available.

I have a broad question on the panel's perspective on the budget going forward. In evidence to our committee, some have argued for an approach that would protect particular budget lines, such as the line for the health service, which primarily provides the services that we have talked about today. However, the Chartered Institute of Public Finance and Accountancy submission argues against such an approach, as does the recent Institute for Fiscal Studies briefing on the manifestos of the main UK parties. If the health budget line continues to receive either real-terms growth or an uplift in line with inflation, there would be an impact on everything else, including the local authority services that provide a key component of care. What are the panel's thoughts on whether we should protect a particular budget line, such as the health budget line? Would that be a good thing, or would it have negative impacts on other services?

**Brian McKechnie:** Obviously, that is one of the more challenging political questions, so I am glad that I do not need to make the decision. Making the case for the health service being so different that the health budget is more important than, say, the education or transport and infrastructure budgets would be a challenge. Each of those things has a part to play. The NHS employs something like 10 per cent of the workforce in Scotland, so cuts there would have a dramatic impact in other areas, which brings us back to the question whether cuts lead to genuine cost savings. However, it is probably difficult to justify an approach that leaves health, alone of all parts of the budget, unscathed.

15:00

**The Convener:** Does anyone else want to respond?

**Professor Hancock:** It is a decision for the politicians. As a mere academic, I will not comment.

**The Convener:** Does another mere academic want to add anything?

**Dr Harris:** If we are coming from the perspective that we are trying to reform services to make them much more effective and therefore more efficient, it is dangerous to appear to take any service out of consideration and imply that it should remain unchanged—I do not think that anyone means to imply that. The NHS itself has said that it needs to save between £15 billion and £20 billion over the next few years merely to cope with the demographic change that we have been talking about.

I can understand why, from a public policy maker's perspective, one might want to prioritise certain areas of spending. However, if that is done in a certain way it could prove unhelpful in improving services in the longer term. If possible, it would be preferable to take something like a zero-based budgeting approach, which involves thinking about the purpose of services and changing demands and expectations, so that we can then think about what resources are needed over the longer term.

**The Convener:** David Whitton has what he assures me is a short, final question.

**David Whitton:** It is on a point of clarification. Professor Hancock, you talked about the differences between residential care and care at home and mentioned that some local authorities prefer the cheaper approach. Is that UK-wide or were you talking about England?

**Professor Hancock:** I was talking about a system in which there is no free personal care for people in residential homes but there is help for people at home.

**David Whitton:** Therefore, what you described is happening outwith Scotland.

**Professor Hancock:** The issue might arise in Scotland if people needed intensive care at home, the cost of which exceeded the free personal care element of residential care. That might bring people up against the same, rather perverse incentive.

**The Convener:** Do the witnesses want to make final comments?

**Brian McKechnie:** The majority of older adults will enjoy good health for most of their lives. The extensive costs kick in in the final two or three years of life. We should regard longer life as a real benefit. We want to encourage people to be healthy, to work longer and to enjoy their lives; we

should not just think about the cost implications of that.

People sometimes get the impression that they are a burden on society, when that is not the case. A healthy 75-year-old can make a tremendous contribution to their community and does not need to be a cost in any way. At some point we will all be a cost on our society, because we get ill towards the end of our lives—some of us get ill for a long portion of our lives, which is unfortunate but might not be at all related to age.

**Professor Hancock:** My final comment is on the issue of universal versus means-tested provision. If we have a universal system and a fixed budget, we must find some way to ration. In such a system, only the eligibility criteria can be used to ration, in the context of care, people who need lower levels of care might lose out. In a system in which there is a degree of means testing and user contribution, there is another tool in the armoury, which can be manipulated. That might be seen as an advantage.

**Dr Harris:** I thank the committee for the opportunity to give evidence. You are asking difficult but necessary questions. In the submissions that you have received from diverse organisations, the need for more preventive approaches seems to have come up again and again. We talked about that shift in approach.

I urge the committee not to lose sight of that as it thinks about the shorter-term demands of the public finances. If we lose focus on the longer-term transformation of services that we need, we will be in a worse position in five or 10 years' time, when we will—I hope—have dealt with the public debt but will have, in essence, unchanged services that are not well suited to the future.

**The Convener:** The committee is well aware of the importance of the matter.

I thank all the witnesses for their expert and insightful comments, which are much appreciated and will greatly help the committee in its work.

15:05

*Meeting suspended.*

15:10

*On resuming—*

## **Scottish Parliamentary Commissions and Commissioners etc Bill: Stage 2**

**The Convener:** Item 2 is stage 2 consideration of the Scottish Parliamentary Commissions and Commissioners etc Bill. This is a committee bill, and I welcome to the committee Trish Godman, who was convener of the Review of SPCB Supported Bodies Committee, and her officials. Members should have in front of them copies of the bill, the marshalled list of amendments, and the groupings.

*Section 1 agreed to.*

### **Section 2—Functions of the Commissioners**

**The Convener:** Amendment 1, in the name of Trish Godman, is grouped with amendment 2.

**Trish Godman (West Renfrewshire) (Lab):** The purpose of amendment 2 is to tidy up the Public Services Reform (Scotland) Act 2010, where it refers to bodies supported by the Scottish Parliamentary Corporate Body, to reflect the changes brought about by the Scottish Parliamentary Commissions and Commissioners etc Bill. I will refer briefly to the provisions of the 2010 act that are affected.

Among other things, sections 14 and 17 of the 2010 act give Scottish ministers the power to make provision by order to improve the exercise of public functions and to reduce the burdens on any person resulting from any legislation. In section 14(1), public functions are defined by reference to the functions of certain persons, offices and bodies that are listed in schedule 5 to that act. Schedule 5 includes the chief investigating officer, the Commissioner for Public Appointments in Scotland and the Scottish Parliamentary Standards Commissioner.

As members will be aware, following concerns expressed during stage 1 scrutiny of the Public Services Reform (Scotland) Bill, section 19 was introduced to restrict exercise by the Scottish Government of powers under sections 14 and 17 in relation to the SPCB-supported bodies. Such powers can be exercised only with the corporate body's consent. The offices affected by section 19 are listed in schedule 6 and comprise the parliamentary commissioners, the Scottish Commission for Human Rights and the Scottish Public Services Ombudsman. Part 3 of the 2010 act imposes duties in relation to the publishing of certain information by listed public bodies. Section 35 provides that the listed public bodies to whom

those duties apply are those specified in schedule 8. Again, schedule 8 includes the chief investigating officer, the Commissioner for Public Appointments in Scotland and the Scottish Parliamentary Standards Commissioner.

Amendment 2 ensures that all references to those offices that will be abolished as a result of the establishment of the commission for ethical standards in public life in Scotland are removed from the 2010 act.

Given that, under the Scottish Parliamentary Commissions and Commissioners etc Bill, the functions of the existing offices will be transferred to the new SPCB-sponsored body, the CESPLS—not a very nice acronym, but that is how it has ended up—including the public standards commissioner for Scotland and the public appointments commissioner for Scotland, references to those offices should be inserted as and where appropriate into schedules 5, 6 and 8 to the 2010 act. Amendment 2 also provides for that.

Under the bill, responsibility for sponsorship of the Standards Commission for Scotland is transferred from the Scottish Government to the SPCB. Amendment 2 also provides for the insertion of the Standards Commission for Scotland into schedule 6 to the 2010 act to ensure that all SPCB-sponsored offices are brought within the scope of section 19 of the 2010 act. Amendment 1 makes the necessary technical amendment, adding the 2010 act to the list of enactments that will be amended as a consequence of the establishment of CESPLS.

I move amendment 1.

*Amendment 1 agreed to.*

*Section 2, as amended, agreed to.*

### **Schedule 1—Consequential amendments of enactments referred to in section 2(5)**

*Amendment 2 moved—[Trish Godman]—and agreed to.*

*Schedule 1, as amended, agreed to.*

*Sections 3 to 17 agreed to.*

### **Section 18—Advisers, assessors and other services**

**The Convener:** Amendment 3, in the name of Trish Godman, is grouped with amendments 4, 6, 14, 21 and 22.

15:15

**Trish Godman:** Amendments 3, 4, 6, 14, 21 and 22 all relate to supervision by the Scottish Parliamentary Corporate Body of the appointment

of advisers in relation to SPCB-sponsored bodies. Although each amendment relates to a different body, the effect of each is the same, and it is probably easier if I refer to amendment 3 throughout.

Section 18, as drafted, provides that the commission for ethical standards in public life in Scotland can obtain advice, assistance or any other service for use by itself or by a commissioner, the public standards commissioner for Scotland or the public appointments commissioner for Scotland. The commission determines who to appoint and what they should be paid. However, under subsection (3), appointment and payment of advisers are subject to approval by the SPCB.

The effect of amendment 3 is to remove the requirement for the appointment of advisers to be subject to SPCB approval. Its approval remains required for payments that are made to such advisers.

The provision in subsection (3) derives from my committee's recommendation that the appointment of advisers should be agreed in advance with the SPCB, including their terms and conditions of appointment. In making the recommendation, my committee considered previous reports, such as that produced by Audit Scotland in 2006, which was followed by the Finance Committee report on accountability and governance. Both reports recommended that enhanced governance arrangements be put in place to ensure SPCB oversight of commissioners and ombudsmen in relation to financial matters.

Concerns have been expressed that the SPCB having powers over appointment could prove unwieldy as, in some cases, advisers are appointed on a regular—even weekly—basis. Delays could ensue if approval was not received timeously.

The process for seeking approval for the payment of advisers would be set out in a framework document.

SPCB power over approval of advisers' appointments is now considered unnecessary and little benefit accrues from it having such a power, provided that the SPCB retains power over the payment of such advisers. Amendment 3 removes SPCB input into appointments made by the commission for ethical standards in public life in Scotland, while retaining the need for it to approve all payments.

Each of the other amendments in this group does likewise. Amendment 4 covers the Standards Commission for Scotland; amendment 6 covers the Scottish Public Services Ombudsman; amendment 14 covers the Scottish Information Commissioner; amendment 21 covers the

Commissioner for Children and Young People in Scotland; and amendment 22 covers the Scottish Commission for Human Rights.

I move amendment 3.

*Amendment 3 agreed to.*

*Section 18, as amended, agreed to.*

*Sections 19 to 29 agreed to.*

### **Schedule 2—Amendments of the Ethical Standards Act**

*Amendment 4 moved—[Trish Godman]—and agreed to.*

**The Convener:** Amendment 5, in the name of Trish Godman, is in a group on its own.

**Trish Godman:** Amendment 5 corrects an unnecessary addition in the bill. Paragraph 13 of schedule 2 to the bill inserts paragraph 10A into schedule 1 to the Ethical Standards in Public Life etc (Scotland) Act 2000, which requires the Standards Commission to produce a strategic plan and details arrangements for timing, content, consultation and review.

The effect of amendment 5 is to remove the public standards commissioner for Scotland from the list of bodies that must be invited to comment on the Standards Commission's draft strategic plan. There is no good reason for the commissioner to be specifically consulted. Indeed, given his role in reporting on investigations to the Standards Commission, it would be unusual for him to be routinely required to seek views on matters that are not within his remit. Where the strategic plan proposes matters of direct interest or concern to the commissioner, that officer can be consulted, as appropriate, under new paragraph 10A(3)(c).

I move amendment 5.

*Amendment 5 agreed to.*

*Schedule 2, as amended, agreed to.*

### **Schedule 3—Amendments of the Scottish Public Services Ombudsman Act 2002 (asp 11)**

*Amendment 6 moved—[Trish Godman]—and agreed to.*

*Schedule 3, as amended, agreed to.*

### **Schedule 4—Amendments of the Freedom of Information (Scotland) Act 2002 (asp 13)**

**The Convener:** Amendment 7, in the name of Jeremy Purvis, is grouped with amendments 8 to 13 and 18 to 20.

**Jeremy Purvis:** Amendments 7 to 10 are concerned with the restrictions on the appointment



of an individual to be the Scottish Information Commissioner and amendments 11 to 13 and 18 to 20 are about the terms and conditions related to the appointment.

In his briefing, the Information Commissioner has pointed out why there should be balance in the restrictions both on someone who is coming into post as a commissioner and on someone who is seeking further employment after leaving the post. He points out that the restriction on employment in any other public authority in Scotland brings into consideration 10,000 such public authorities in Scotland, including general practitioner practices and others that are categorised as a public authority.

The issue is also linked, in paragraph 14 of schedule 4, to the on-going employment of a former commissioner. The essence of the amendments is to introduce an approach of reasonableness, which is to say that an appointment or place of employment will not be rejected by the SPCB unreasonably and that any request for approval will be dealt with timeously.

I think that my amendments are reasonable and that they acknowledge the range of public authorities in Scotland.

I move amendment 7.

**Malcolm Chisholm:** I am particularly concerned with the problem that is addressed by amendments 18 to 20, which relate to what happens after a commissioner demits office. The effect of the bill as it stands would be to make it almost impossible for a commissioner, when they leave office, to have any role in public service for up to two years without the approval of the SPCB. That is disproportionate to the risk involved. It significantly limits the capacity of former office-holders to make a living in Scotland and may prevent experienced public servants from using their acquired knowledge and expertise to Scotland's benefit and, equally significantly, it may deter potential candidates and mean that the post becomes attractive only to those approaching retirement or with alternative means of financial support.

Although the approval of the SPCB can be sought, there is nothing to indicate that it would usually be forthcoming, nor is there any clarity about how quickly approval would be given or refused. The opportunity to take up a position or enter into a contract may therefore be lost owing to the SPCB failing to give its approval within a reasonable period.

For all those reasons, I particularly support amendments 18 to 20. I shall listen to what Trish Godman says about the other amendments.

**The Convener:** I will allow other members to make comments, to which Trish Godman can respond in total.

**Derek Brownlee (South of Scotland) (Con):** I read the briefing note from the Scottish Information Commissioner from which Malcolm Chisholm took some of the concerns that he raised. It initially sounded like quite a reasonable list of concerns but, on rereading it, I have to say that it appears to be predicated on the assumption that the corporate body will act in a way that is unreasonable.

It is clear to me that the restriction that applies for two years does not prevent a former commissioner from being employed by a public body in Scotland, nor does it suggest that the corporate body would usually seek to impose a restriction. I would have thought—we may get more clarity on the issue—that the corporate body would exercise a power not to approve an appointment only in exceptional circumstances when it was thought that to approve it might lead to some question about the probity or appropriateness of a former commissioner moving into a particular role. It is difficult to think when those circumstances might arise but, nonetheless, it is reasonable to have a residual power in the statute book to allow the corporate body to exercise some oversight.

We need to be careful that we do not treat the Information Commissioner differently from the other commissioners. I think that I am right to say that, even if the amendments are agreed to, similar provisions will remain in relation to the commission for ethical standards in public life in Scotland, the appalling acronym for which was just read out. There should be a presumption of consistency between the commissioners.

We need to think carefully before we predicate judgments on the idea that the corporate body would somehow act in an unreasonable manner. There is no evidence from previous experience or anything that has been said publicly to suggest that it would.

**Trish Godman:** In considering this group of amendments, it is appropriate that we consider the genesis and purpose of the new requirement that approval be sought before the Information Commissioner may hold office in or be an employee of another Scottish public authority. The provision forms part of a package of governance changes that follow from the written and oral evidence that was taken by the committee that I chaired. The committee did not decide off its own bat that the provision should be included, nor is it exclusive to the Information Commissioner, although I note that Jeremy Purvis is concerned only with that commissioner's terms and conditions.

The committee was advised that, as a general principle, there should be restrictions on what posts the commissioner may hold both while they are in office and immediately afterwards, but we were also warned that a balance should be struck between introducing restrictions and ensuring that people are not deterred from applying for posts in the first place so that, after employment as the commissioner, the benefit of their knowledge, experience and skills is not automatically lost to the public sector.

We state in paragraph 95 of our report that restrictions should be in place

“to avoid the perception of conflicts of interest or allegations of corruption”.

The restrictions in the bill are proportionate. We restricted the period that was suggested to us and, importantly, added a safeguard to ensure some flexibility by giving the corporate body the power to consider requests. The bill restricts appointment in the first instance if the applicant is already an office-holder, employee or appointee of another Scottish public authority. Thereafter, if they want to take up another post while holding office, approval from the SPCB is required. Finally, when the commissioner demits office, any restrictions in their terms and conditions about subsequent employment will continue to apply for a specified period, which is until the end of the financial year following their leaving. This is a full-time post and we would expect it to remain the focus of the commissioner's attention.

The commissioner was shown an earlier draft of the bill and he helpfully observed that an issue could arise in relation to membership of working groups and involvement in inquiries. I accepted that concern and added a provision that allows other positions to be held provided that the corporate body agrees. That seems a proportionate response that allows flexibility while recognising the underlying principle and reflecting where the commissioner's priorities should lie.

Amendment 7 allows the commissioner to take up whatever post he wants between now and commencement and prevents the corporate body from doing anything about it. That cannot be right. It undermines the intention of the provision to avoid any perception of conflict, corruption or use of the position to secure another position. It is perhaps worth while to note that the commissioner's terms and conditions of appointment already require him to seek permission from the Presiding Officer before accepting any outside employment or appointments.

Amendment 8 implicitly suggests that the SPCB might act unreasonably, but it already has an obligation to act reasonably under administrative

law so, even without the provisions in the amendment, the SPCB could not withhold consent in an unreasonable manner. If it did so, it could be judicially reviewed. Amendment 8, like amendments 11 and 18, which are identical, is therefore unnecessary. It is not appropriate to suggest that, in exercising its functions under the bill, the corporate body will behave unreasonably.

15:30

Amendment 9 requires the corporate body to give a decision on an application to hold another post with a Scottish public authority within one month. On the face of it, that is reasonable, and I expect that the corporate body would always strive to respond timeously. In fact, I understand that it will seek to agree guidelines, if not time limits, in a memorandum of understanding covering a range of matters arising from the new powers given by the bill. However, that is quite different from having to reach a decision within one month.

If, for example, the corporate body wanted further information in relation to a request and, for whatever reason, there was a delay in receiving that information—perhaps the commissioner was on holiday or the corporate body was seeking information from another source or conducting its own research—the time limit would continue to run. Within one month from the application being received, the corporate body would then have to determine the request without necessarily having all the relevant information.

The current position is that, in considering a request, the corporate body must behave reasonably. Undue delay may not be reasonable, but neither is specifying an arbitrary time limit that applies regardless of situations or time of year. This is a matter that will require a degree of flexibility and one that the corporate body proposes to cover in a memorandum with the commissioner. That, in my view, is a better way to deal with such matters than through an inflexible provision in primary legislation. The position is the same in relation to amendments 12 and 19.

Amendment 10 requires that, if a request to take up another position is refused, the reasons for withholding agreement must be given in writing. The amendment is one of a number that are predicated on there being conflict between the commissioner and the corporate body. The corporate body has little option in this matter: if it does not give a written response to a written request and its decision is reviewed, it will have to provide reasons. A similar position arises on amendments 13 and 20.

**Jeremy Purvis:** I note absolutely all the points that Trish Godman has made.

There are some general points that I will ask members to reflect on. The first is about the restrictions that are sought to apply to the Scottish Information Commissioner. As members know, the bill puts restrictions on their appointment to any other Scottish public authority. There are 10,000 public authorities, which shows the scale of the operation, and it is balance that is the consideration.

Mr Brownlee considers that the amendments would not be fair for all the other bodies that are mentioned in the bill. He will have read the bill and will know about, for example, the amendments to the Scottish Commission for Human Rights Act 2006 in schedule 6 to the bill. That schedule provides for a restriction on employment by bodies in relation to which the commission has conducted an inquiry—there are no wider restrictions on employment. That is fair and understandable. However, the restrictions are not comparable across all the bodies that are affected by the bill, which is why I lodged the amendments.

I take on board absolutely the points that the Deputy Presiding Officer made about amendments 8 and 11. They are fair comment, and I will not pursue those amendments. On the time limit in amendment 9, I think that, given that the overall context is the sheer number of public authorities covered by the restriction, the burden should be on the corporate body preventing future employment if it believes that there is a strong case to do so, rather than on a former commissioner seeking approval for future employment. It is therefore reasonable for such a decision to be taken within a month. After all, this would be an individual seeking further employment having carried out work in post, so it is fair for the burden to be on the corporate body to respond timeously. With regard to amendments 8 and 11, I take the point about having to act in a reasonable manner.

I will press amendment 7.

**The Convener:** The question is, that amendment 7 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
Maxwell, Stewart (West of Scotland) (SNP)  
Welsh, Andrew (Angus) (SNP)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 7 disagreed to.*

*Amendment 8 not moved.*

*Amendment 9 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 9 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
Maxwell, Stewart (West of Scotland) (SNP)  
Welsh, Andrew (Angus) (SNP)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 9 disagreed to.*

*Amendment 10 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 10 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
Maxwell, Stewart (West of Scotland) (SNP)  
Welsh, Andrew (Angus) (SNP)

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

*Amendment 10 disagreed to.*

*Amendment 11 not moved.*

*Amendment 12 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 12 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Maxwell, Stewart (West of Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 12 disagreed to.*

*Amendment 13 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 13 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Maxwell, Stewart (West of Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)

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

*Amendment 13 disagreed to.*

*Amendment 14 moved—[Trish Godman]—and agreed to.*

**The Convener:** Amendment 15, in the name of Jeremy Purvis, is grouped with amendment 16.

**Jeremy Purvis:** My amendments are linked to the amendments in Trish Godman's name, which were agreed earlier, on the SPCB's powers over the appointment of advisers, their terms and conditions and their payment. Those amendments improved the bill by retaining the independence of the commissioners, and my amendments complement them.

Amendment 15 ensures that, when the corporate body approves the payment of advisers, any subsequent payments within the envelope that has been approved will not require further approval by the corporate body.

Amendment 16 seeks to protect the payment of legal advisers, given that decisions on both the level and the scope of the payment of legal advisers can materially affect the extent and the level of the legal advice that an information commissioner can seek.

I move amendment 15.

**Malcolm Chisholm:** I want, in particular, to speak in favour of amendment 16 because this takes us to the heart of a very important function

of the Scottish Information Commissioner. He has responsibilities for enforcement and, as part of that, has no choice but to instruct legal professionals. In recognition that that is central to his quasi-judicial function, the current arrangement is that the Information Commissioner makes a call upon the office bearers' contingency fund, held by the SPCB, to cover such costs. The Information Commissioner has pointed out to us that the consequence of what is now proposed would be very significant indeed. That is because if the SPCB is required to approve such legal action in advance, it would in effect—by virtue of approving the appointment and payment of solicitors and counsels—determine whether and on what terms the commissioner could pursue such action, for example whether junior rather than senior counsel was appointed or, indeed, whether the commissioner was in a position to legally defend or enforce decisions. As the commissioner points out, that strikes at the heart of the independence of the Information Commissioner in meeting his or her enforcement obligations.

I regard amendment 16 as the most important of all the amendments that Jeremy Purvis is moving today.

**Trish Godman:** In speaking to the second group of amendments, which encompassed my amendment 14, I provided some background on the purpose of new subsections 42(9A) to (9C) of the Freedom of Information (Scotland) Act 2002. Members will recollect that those subsections are concerned with ensuring that the SPCB retains some control of the commissioner's expenditure. They have their genesis in work that was done in the previous session by Audit Scotland and the Finance Committee. The new subsections will ensure that there is control over expenditure that is incurred by the commissioners. I also indicated earlier that the process for seeking approval for the payment of advisers would be set out in a framework document.

Amendments 15 and 16 undermine and undercut the provisions that are proposed in the bill and put the Information Commissioner in a unique position among office-holders. That alone undermines one of the main objectives of the bill, as suggested by the previous Finance Committee, which is to bring consistency to the governance arrangements. Worse than that, amendment 16 in effect allows the Information Commissioner unfettered discretion to spend whatever he determines appropriate on legal advice and removes all budgetary controls on the amounts that he might expend. In effect, it could top-slice the corporate body's budget.

That said, I am unsure how amendments 15 and 16 work together and I am working on the basis that the member is seeking two separate bites at

the same cherry. Amendment 15 reduces the amount of control that the corporate body can exercise by reducing the types of matters that require approval. Such a move is contrary to the thrust of the governance arrangements that the bill will put in place.

Perhaps I can reassure the member that there is no intention on the part of the corporate body to micromanage the commissioner's operation, and that is why I have referred to the intention of the corporate body to enter into a framework agreement. I do not know what such an agreement might contain. That will properly be for the corporate body to suggest, but perhaps the committee might find reassurance from the operation of the framework agreement that is currently in place on financial matters. That allows for matters to be ultimately brought to the Finance Committee should disagreements arise. I do not understand that to have happened to date.

On the possibility of interference in functions, which lies at the heart of the amendments, perhaps I can further reassure the member with the words of the Information Commissioner in evidence to my committee:

"I must say at the outset that I do not think that there has been a conflict of interest. The SPCB has acted extremely well and I have experienced no interference with my role as a commissioner."—[*Official Report, Review of SPCB Supported Bodies Committee*, 3 February 2009; c 97.]

Returning to amendment 16, it might be useful if I explain broadly what should happen with regard to potential legal costs. The commissioner has a budget line for legal fees and that becomes a first call to pay for legal advice. When that budget is exhausted or is anticipated to be inadequate, further expenditure is met from a contingency fund. Should that be exhausted, further costs can be met only from the corporate body's budget, to the detriment of other services, or following an application via the Finance Committee for further funding. At all stages, decisions need to be made about respective priorities. I ask the committee to think long and hard before making a specific, open-ended exception for one or, indeed, any commissioner.

15:45

**Jeremy Purvis:** This is an important area. We require the legislation to be right, given what the Scottish Information Commissioner may well be involved in in the future. We simply do not know what will happen. The commissioner may seek legal advice on decisions that have been taken by the corporate body on behalf of the Parliament. We would not wish such a situation to arise, but we cannot rule it out. That is why I do not think that a framework agreement is the right

mechanism. I think that the matter must be dealt with in statute.

I note Trish Godman's comments on amendment 15, but I will press the amendment. There are areas in which it is perfectly appropriate for the corporate body to approve fees and allowances as an envelope, but I would be slightly concerned if, within that, payments had to be separately authorised by the corporate body.

The most important aspect is the payment of legal costs, which amendment 16 deals with. I take on board the point about making an open-ended exception in that regard, but I intend to move amendment 16. If the bill is amended to protect the commissioner's ability to obtain legal advice independently of the corporate body—payment for such advice is a key element of that—and the corporate body wishes to test the matter with the whole Parliament, we can return to the issue at stage 3. It is extremely important that the commissioner can be independent when it comes to legal advice.

**The Convener:** The question is, that amendment 15 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale)  
(Liberal Democrats)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
Maxwell, Stewart (West of Scotland) (SNP)  
Welsh, Andrew (Angus) (SNP)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 15 disagreed to.*

*Amendment 16 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 16 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
Maxwell, Stewart (West of Scotland) (SNP)  
Welsh, Andrew (Angus) (SNP)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 16 disagreed to.*

**The Convener:** Amendment 17, in the name of Jeremy Purvis, is in a group on its own.

**Jeremy Purvis:** The purpose of amendment 17 is to allow the commissioner to make representations to the corporate body and to ensure that it has regard to those representations when it makes a direction with regard to the sharing of services or other resources. The provision on the sharing of services or other resources is broad and may have an impact on the ability of the commissioner to carry out the legal duties that they are required to carry out and on the commissioner's independence. Under new paragraph 8 of schedule 2 to the 2002 act, which paragraph 13 of schedule 4 to the bill seeks to insert, the commissioner would have to share services or resources with

"any other officeholder or any public body"

if the corporate body made such a direction.

Amendment 17 simply seeks to allow the commissioner to make representations in advance of the corporate body making a determination on shared premises, services or—critically—other resources, which is a reasonable addition.

I move amendment 17.

**Trish Godman:** Amendment 17 is directed at proposed new paragraphs 7 and 8 in schedule 2 to the 2002 act, which will require the commissioner to comply with any directions given by the SPCB as to the location of the commissioner's office and the sharing of premises, staff, services and other resources. At the risk of repeating myself, I remind the committee that those enhanced provisions are part of the improved governance arrangements that the bill introduces, which have long been sought by the committee and its predecessor.

Amendment 17 is unnecessary because consultation will occur in almost all situations and it is difficult to envisage an SPCB decision being made on anything significant on which consultation or, at the very least, prior discussion, has not taken place. In fact, consultation will absolutely be required when such powers directly affect contracts that are entered into by the commissioner in his name.

Where is the harm that the amendment brings? First, it would introduce an absolute requirement that applied across everything that the term "resources" encompasses, so no sharing of stationery or other such items could be directed without prior consultation. I make that point to highlight what a blunt instrument legislation can be

and to suggest a need to be careful about what is put in a bill. On the practical application, the amendment would add nothing to the existing situation, as the commissioner would invariably have to be consulted.

**Jeremy Purvis:** I note the comments from Trish Godman. The significance of the issue is not necessarily to do with premises and stationery, as there is a wider aspect of sharing staff, given some of the functions that the Scottish Information Commissioner will perform. However, given that the member said that no decisions would be taken without prior consultation, I will take those comments on board and seek agreement to withdraw amendment 17.

*Amendment 17, by agreement, withdrawn.*

*Amendment 18 not moved.*

*Amendment 19 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 19 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
Maxwell, Stewart (West of Scotland) (SNP)  
Welsh, Andrew (Angus) (SNP)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 19 disagreed to.*

*Amendment 20 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 20 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**Against**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
Maxwell, Stewart (West of Scotland) (SNP)  
Welsh, Andrew (Angus) (SNP)

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

*Amendment 20 disagreed to.*

*Schedule 4, as amended, agreed to.*

**Schedule 5—Amendments of the  
Commissioner for Children and Young People  
(Scotland) Act 2003 (asp 17)**

*Amendment 21 moved—[Trish Godman]—and  
agreed to.*

*Schedule 5, as amended, agreed to.*

**Schedule 6—Amendments of the Scottish  
Commission for Human Rights Act 2006 (asp  
16)**

*Amendment 22 moved—[Trish Godman]—and  
agreed to.*

*Schedule 6, as amended, agreed to.*

*Sections 30 and 31 agreed to.*

**Schedule 7—Transfer of staff, property and  
liabilities and transitional and saving  
provisions**

**The Convener:** Amendment 23, in the name of  
Trish Godman, is grouped with amendment 24.

**Trish Godman:** Amendments 23 and 24 are  
technical drafting amendments to correct  
references in paragraph 12 of schedule 7.

I move amendment 23.

*Amendment 23 agreed to.*

*Amendment 24 moved—[Trish Godman]—and  
agreed to.*

*Schedule 7, as amended, agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2  
consideration of the bill. We move into private to  
consider our work programme.

15:55

*Meeting continued in private until 15:58.*





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