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Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 17 November 2010

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

30th Meeting 2010, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Alasdair Allan (Western Isles) (SNP)
*Claire Baker (Mid Scotland and Fife) (Lab)
*Ken Macintosh (Eastwood) (Lab)
*Christina McKelvie (Central Scotland) (SNP)
*Elizabeth Smith (Mid Scotland and Fife) (Con)
*Margaret Smith (Edinburgh West) (LD)

COMMITTEE SUBSTITUTES

Ted Brocklebank (Mid Scotland and Fife) (Con)
Hugh O’Donnell (Central Scotland) (LD)
Cathy Peattie (Falkirk East) (Lab)
Dave Thompson (Highlands and Islands) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Carolyn Brown (Association of Scottish Principal Educational Psychologists)
Christina Burnett (Association of Directors of Social Work in Scotland)
Bryan Kirkaldy (Association of Directors of Education in Scotland)
Jean Maclellan (Scottish Government Primary and Community Care Directorate)
Andrew Morrison (Convention of Scottish Local Authorities)
Andrew Mott (Scottish Government Children, Young People and Social Care Directorate)
Dr Judith Piggot (Tayside NHS Board)
Shona Robison (Minister for Public Health and Sport)
Rachel Sunderland (Scottish Government Learning Directorate)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 1

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 17 November 2010

[The Convener *opened the meeting at 10:01*]

Autism (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): Good morning. I open the 30th meeting in 2010 of the Education, Lifelong Learning and Culture Committee. I remind all those present that mobile phones and other electronic devices should be switched off for the duration of this morning's committee deliberations.

Agenda item 1 is to continue taking evidence on the Autism (Scotland) Bill. I am pleased to welcome the first of our two panels this morning. We have been joined by Bryan Kirkaldy, who is the head of education (north) for Fife Council and is representing the Association of Directors of Education in Scotland today; Christina Burnett, who is the head of support for children, young people and families at the City of Edinburgh Council and is representing the Association of Directors of Social Work in Scotland; Carolyn Brown, who is from Fife Council's psychological services and is representing the Association of Scottish Principal Educational Psychologists; Andrew Morrison, who is the policy manager at the Convention of Scottish Local Authorities; and, last but not least, Dr Judith Piggot, who is a consultant psychiatrist in child and adolescent psychiatry from NHS Tayside.

I thank you all for joining us today and I thank your representative organisations, which submitted written evidence to the committee in advance of the meeting. I will start by asking a question about diagnosis of those on the autistic spectrum, because the committee has received considerable evidence on diagnosis. When we heard oral evidence last week, concerns were raised about the difficulties experienced, in particular by adults on the autistic spectrum, in obtaining a diagnosis. How easy do you think it is to access a diagnosis and do you think that the various professions have the necessary skill base to provide these diagnoses?

Bryan Kirkaldy (Association of Directors of Education in Scotland): I will offer an initial response to which colleagues may wish to add.

The whole context of autistic spectrum disorder is one of very rapid development. In the school system, there has been a marked increase over the past 20 years in the incidence of autism. That is associated with better-quality identification, assessment and diagnosis. The reason for that is that autism has become more widely understood by the professional groups involved, by parents and by society at large. That is a healthy and important development, but it means that the recorded incidence of the condition has risen. In Fife alone, between 2006 and 2008, there was a 15 per cent increase in the number of children in our school population who were identified as autistic, which represented 100 additional children over that period. We believe that that change reflects an improvement in the identification and diagnosis process rather than a change in the child population.

Secondly, the quality of the interagency pathway that we offer at diagnosis and assessment is extremely important. I know that my colleague Carolyn Brown has been directly involved in the development of such a pathway in Fife over the past few years, so I will hand over to her.

Carolyn Brown (Association of Scottish Principal Educational Psychologists): Broadly, from a best-practice point of view, it would be possible to replicate nationally what has been done in Fife, and we have discussed that in the reference group. As that work relates to the zero-to-19 population, it does not necessarily provide an answer to your question about adult diagnosis, but it could be transferred to that group.

We have successfully piloted a multi-agency approach to the identification of autism. It is a tiered approach, the innovative part of which has been at community level. It has been co-ordinated in schools and has involved all relevant agencies, including health services. We have been able to reduce our waiting lists by at least 50 per cent in the pilot area. We are in the process of rolling that out to all areas of Fife, and we anticipate a further reduction in waiting lists.

For the more complex cases, there is a further tier of more in-depth assessment, which we call the third tier. That process allows us to target the more complex cases and enables the people concerned to be assessed and processed more quickly. It has already had a marked effect and we anticipate that, over the next three years, as the process is streamlined and implemented across Fife, it will significantly improve diagnostic services in the region.

The Convener: With regard to the multidisciplinary work that you have been doing in Fife, who takes responsibility for the different parts of the service and who holds the purse strings for those different parts?

Carolyn Brown: There are probably two aspects to that question. First, the work that we have been doing in Fife is part of the getting it right for every child agenda nationally, which we have been progressing. Secondly, control of the purse strings is shared by health and education. Basically, it is a joint venture.

Christina Burnett (Association of Directors of Social Work in Scotland): We are better at early identification. As Bryan Kirkaldy said, there has been a massive improvement in performance in that area over the past 10 years. Linked to that is how we manage earlier identification of need on a multi-agency basis, which is what you are asking about. Across Scotland, there are different ways of doing that, but people recognise the multiagency issues that exist.

When it comes to the purse strings, I can speak for the City of Edinburgh Council. All of us—including social care—put resources into the issue. Although it is not managed by one agency, we all recognise that we have a part to play, not just in service delivery for children but in supporting their families, which is important, too. The process starts at under-five level.

The Convener: Mr Morrison, you are representing COSLA. At the moment, local authorities can all do their own thing when they are addressing this issue. What is the picture like across Scotland from COSLA's perspective? Where is the good practice and the not-so-good practice? The committee certainly has the sense that things are improving, and that is right, but we still have a long way to go before they can be as good as everyone wants them to be.

Andrew Morrison (Convention of Scottish Local Authorities): That is right but, first and foremost, all councils have a fundamental commitment to bringing positive change to the lives of people who have autism. We believe that significant progress has been made during the past decade.

We noted from the evidence that was given at last week's meeting that the National Autistic Society Scotland suggested that we are no further forward than when we started out 10 years ago. I argue against that. The work that the national ASD reference group has produced has been internationally acclaimed and has delivered significant improvements to the lives of many people who are affected by autism.

In saying that, we know that a lot more needs to be done to improve co-ordination of practices, and to put tools and appropriate guidance in place. That is why we are committed to the work of the reference group in producing and implementing the national autism strategy, which is out for consultation. That points to a number of recommendations for the way forward.

Carolyn Brown has been involved with the reference group from day one, and I think that she would echo the view that it has achieved a lot.

Carolyn Brown: It is fair to say that the reference group has done a lot of work, but I reiterate that there is more to do. The reference group has been instrumental in carrying forward a number of recommendations from the Physical Health Institute of Scotland report of 2001. It would be tedious to go through everything that has been done in the past 10 years because it is outlined in the draft strategy document. There was a lull a couple of years ago when the reference group was not in operation, but it is now proposed that the reference group should carry on its work and a number of recommendations are outlined in the strategy document, as you know. Once the consultation process is finished, the reference group will be a strong enough body to oversee the implementation of a national strategy. A key element of implementation is scrutiny by the scrutiny bodies. That is a powerful tool for the national context, and for ensuring that we get the best services for children, young people and adults on the autism spectrum.

Dr Judith Piggot (Tayside NHS Board): Could I speak to the original question, which was about adults with autism in Scotland?

I am a Scottish clinician who trained in Scotland, but I have spent the past 10 years working on and off in the United States, and with the tertiary services consultant lead in Cardiff when the National Assembly of Wales was going through a similar process to what we are going through today.

The provision of diagnostic identification for adults with autism has been identified as an area of concern. We identified it as that when I was here in 2000 and it is still an area in which there is a considerable lag. The issue also pertains to transition. We have a specialist service for that in Tayside. When people reach the age of 16, I have to decide where they transition to.

10:15

I see a lot of complex children for whom the issue is very often not diagnosis but co-morbid mental health. A third to a half of these individuals have complex mental health needs that might not be diagnosed. For a start, they might have a complex information processing disorder, and the fact that they look at the world differently from other people leads to stress and anxiety, social phobia and so on. I need to look into this a bit more but, as a child psychiatrist, I feel that in the current service context I have to pass individuals on to adult psychiatrists who have not developed the specialist knowledge that is needed to look after an individual with a complex information processing disorder and complex mental health presentation.

Not only have we not addressed the diagnosis of adults, we have not really addressed the question of where the complex people who have been identified in children’s services are going. It feels like failure to have to say, “Things aren’t going well but, even though I’ve acknowledged that your developmental disorder is such that you are functioning at a socially less mature stage, you can’t see me any more because of your chronological age. You’ll have to go to adult services”. That raises issues of identification and transition, which, as far as I have been able to see in the whole month that I have been back, have not really been addressed.

The Convener: That was helpful. At last week’s meeting, NAS Scotland expressed frustration with and disappointment at health professionals’ apparent lack of skills and expertise to acknowledge individuals, particularly adults, who are on the autistic spectrum. Your comments suggest that you share some of those concerns. How do we improve clinical standards and ensure that our health professionals have a much better understanding of autistic spectrum disorder and that our health service offers these individuals a better service?

Dr Piggot: It all goes back to what Carolyn Brown was saying about the tiering of services. There are two tensions: first, the increasing prevalence of the condition and the need to give people a diagnosis at a local tier; and, secondly, the need to ensure that there is capacity to identify more complex cases, which can then be referred to more specialist services. Therefore, we need to reduce waiting lists for diagnosis and for tier 2 and tier 3 services. We need to train up people while acknowledging the need for a specialist core service to provide training and to which individuals who are beyond their skills base can be referred.

As a developmental psychiatrist, I have to wonder why I should stop looking after someone when they turn 16 and why I am not part of a cradle-to-grave service that understands needs and provides for individuals. I know that there have been moves in that direction such as one-stop shops and the introduction of central locations that people can access, but the attitude to the school-age children we deal with is that, when they fall out of school, they are okay. At least, they had better be okay, because there is nothing else for them to go to.

The Convener: Given your international experience, do you think that these issues are addressed better in Wales and the United States?

Dr Piggot: Wales and the US—my experience is very international.

The Convener: From your experience, does any other country do this better than Scotland? Is there anything that we can learn from anywhere else?

Dr Piggot: Those are two different questions. First, are there places that do this better? Everything sits on a gradient. Of course, there are places that are better at this but, if we are talking about making a co-ordinated effort to improve things across a whole country, I should point out that those places often have centres of excellence, certainly in the United States. The University of California Los Angeles is just such a centre and I returned from my time there wishing that we could move through the diagnostic issue and get people profiled so that we are able to understand where they need support.

The interventions that are being provided in centres of excellence in America are of huge benefit. A difficulty arose for a genetic study that I headed up when, in a sneaky move to fulfil our research agenda, we brought people back thinking that because they had had an autism spectrum diagnosis four years before, they would be eligible for our study. However, as this was in California, where there are very proactive patients and lots of interventions are available, we were very disappointed that we could not get them into the study because they had all had interventions and were considerably better. Their social understanding and capacity to interact and function in their communities had improved greatly.

I would like us to move beyond the idea of diagnosis, which is, in a way, reductionist—it is one word. If there are 100 people with autism in a room, they will all be different. We somehow have to capture that complexity, because that is what informs what we do next by way of an intervention and how we move forward.

The Convener: My final question is on the work of the reference group. When was it established and what is the timescale for completion of your work, or is there no fixed timescale for that work?

Carolyn Brown: As I understand it, the idea is that the reference group will run for the foreseeable future to oversee the implementation of the strategy and that it will also commission other bodies, as it sees fit, to fulfil all the recommendations. You might want to ask the reference group convener the same question, but my understanding is that it will basically run for as long as it needs to.

Andrew Morrison: The consultation on the draft strategy is ending at the start of December and the next meeting of the reference group will take place shortly thereafter. I know that we will touch on the bill later on, but one of our key issues with it is that a finalised strategy can be delivered through the reference group far sooner than it would be if we wait for the legislative process to be completed. That is another reason why we believe that going through the reference group is the best way to achieve a strategy.

The Convener: I am sure that we will come back to that point, but I will not pursue it with you now.

Elizabeth Smith (Mid Scotland and Fife) (Con): It has been put to us that, in different local authority areas, there is quite a difference in the ability of mainstream schools to identify the youngsters who need to be identified and to provide them with specialist help. Would you care to comment on that?

Bryan Kirkaldy: It is likely that there will be variation across Scotland, some of which will be justified and some of which may not be. As I said, this has been a very rapidly developing area of practice. The growth in incidence of children on the autistic spectrum has been very marked. We believe that the growth in incidence reflects the improvement in assessment and diagnosis. I strongly agree with Dr Piggot's point that this cannot only be about diagnosis; it has to be about shared assessment with a view to intervening to help, because that is the point.

Because of the volume of cases that we are now dealing with—I think that I said that we are talking about 800 children or thereabouts in Fife—we really need a shared assessment approach. All schools need to be able to identify children on the autistic spectrum immediately and to address that with parents.

We need schools to be able to plug into NHS services to help with diagnosis where that is appropriate, but we do not wait for a diagnosis before we respond. If our teachers identify children on the autistic spectrum—which we train them to do—we expect them to respond on day one. If diagnosis follows, that is helpful, but it is an additional aspect.

Elizabeth Smith: Is there a process by which local authorities that operate good practice can share it with other local authorities?

Bryan Kirkaldy: There is. We must understand that in the context of the Education (Additional Support for Learning) (Scotland) Act 2004 and the duties that apply to all local authorities to meet the needs of all children with additional support needs. That includes all children with autism, and the dispute and complaint resolution aspects apply to children in that population.

All the regulation mechanisms for quality improvement and assurance to which local authorities adhere internally apply, as do the regulation and inspection mechanisms that Her Majesty's Inspectorate of Education brings in independently. All the quality improvement indicators that HMIE uses apply to that area. We can look at the 32 local authorities and see how well they all do in meeting learners' needs, which is the key quality indicator that is relevant to that population.

Elizabeth Smith: Is that process sufficient to improve standards across the board in a relatively short space of time, or would you make other recommendations to improve specialist skills in schools?

Bryan Kirkaldy: It already has improved the situation. The increase in incidence to which I keep referring is a strong indicator of that improvement, but you are right to say that the outcome—the quality of the help and the response—is of equal interest.

Those regulatory mechanisms are world class, and I do not think that they could currently be bettered by any education system in the world. We have techniques for sharing practice, and the introduction of the curriculum for excellence and the work that goes on between local authorities and the Scottish Government to support staff and their continuing professional development in a school improvement context are all about meeting the comprehensive needs of the population. We have regulatory and improvement mechanisms, and the evidence shows that we have made tremendous strides in the past 10 years.

As an association, we welcome the national strategy that is being developed by the reference group. We think that it will take us further towards where we need to go in the next 10 years.

Carolyn Brown: I want to add a bit more about the sharing of practice, for which the strategy contains a number of recommendations. One concerns the Scottish autism services network, which is an internet mechanism for sharing practice.

A number of the committee members will be aware of "The Autism Toolbox: An Autism Resource for Scottish Schools", which would be another mechanism—perhaps if it was relaunched—for sharing practice; I know that the reference group is considering that.

Alasdair Allan (Western Isles) (SNP): Carolyn Brown mentioned the autism toolbox. How is that being implemented in different local authorities and how successful has it been?

Carolyn Brown: It partly relates to the point that I am making. The toolbox is an excellent resource:

the Scottish Government has distributed one to every school in Scotland. It is being used, but it would be useful, particularly as the GIRFEC agenda and the multi-agency approach are so important, to examine the usage in conjunction with schools and other agencies, which is less apparent at the moment. We could make more use of that resource across the board nationally, involving all professionals.

10:30

Alasdair Allan: Does anyone else want to comment? Mr Kirkaldy?

Bryan Kirkaldy: My experience is that schools use the toolbox and find it useful where they have a need. Of course, not all schools need to deploy the toolbox, either because they already have in place the content that it would bring or because they do not have any youngsters at the time who are on the autistic spectrum. We are therefore not in favour of monitoring the effectiveness of the deployment of the toolbox by checking how many schools have introduced it. We are more interested in accounting for the outcomes that schools achieve in relation to children who have additional support needs, including those who are on the autistic spectrum.

Alasdair Allan: Is there any evidence that there is now a greater understanding of autism among the wider teaching profession? That was alluded to earlier. Is there evidence to support the idea that teachers now have an increased understanding of autism and the autistic spectrum? I have anecdotal examples of teachers, particularly in secondary schools, who have been shown not to understand what Asperger’s is. I am sure that you can think of similar examples. Is any attempt being made to establish whether a wider understanding of these conditions exists?

Bryan Kirkaldy: We audit our approach to autism, and that includes an audit of staff understanding. With a population of some 50,000 school-age children, we need a graduated approach. If we assume that 1.6 per cent are on the autistic spectrum, which is the figure that we found in our previous audit, we can see that roughly two children in 100 can be considered to be on the spectrum, so we need all front-line staff to be capable of identifying the condition. They need to be sensitive enough to the condition to know when to respond to it. We then need graduated levels of specialised skill. Our learning support staff, our behaviour support staff, our psychological service and our specialised autistic support service all require to come in at different levels with specialised responses. All that we require of front-line staff is for them to be sensitive enough to the condition to be able to identify it and then to know who to seek more specialised advice and support from. We believe that we are in position for that purpose. Autism is part of the teacher training agenda and it is part of our induction processes for new teachers and staff who are appointed to management positions. We support that with guidelines and professional development activities.

Alasdair Allan: Again thinking of the education of education professionals, do any of the witnesses wish to say more about their views on the Government’s autism strategy? I do not want to put words into your mouth, Mr Morrison, but you alluded to fears that there would be delay if we went down another route. Can you say more on that?

Andrew Morrison: As I mentioned, the draft strategy, “Towards an Autism Strategy for Scotland”, is out for consultation. The consultation closes in December and, as Carolyn Brown suggested, we hope that it will be implemented soon after that, in the new year. I am sure that my understanding of the legislative process is not as good as yours, but I understand that the bill would not be finalised until the summer—probably June at the earliest—and implementation would not take place until quite a while after that. The bill proposes four months for the implementation of guidance and, thereafter, another year before full implementation. The strategy is a draft rather than being complete, but I am sure that it will be tightened up based on the consultation responses. Our view is that, if we go with it, we will have a strategy in place much earlier than if we wait for the legislative route.

Claire Baker (Mid Scotland and Fife) (Lab): I will ask questions that relate to the phrase “postcode lottery of service provision”. We have received evidence that suggests quite a variation in the services that people across Scotland can expect, particularly at transition stages and in adult services. We accept that much progress has been made in schools, but much concern was expressed last week that the problem tends to be greater in employment support services and criminal justice support services. How will we resolve that issue? What is the most effective mechanism for ensuring consistency and allowing people to have some expectation about services?

Christina Burnett: There are issues for us to work on. In my experience, the best way to bring children into adult services is to have good local policies that have been agreed across the piece. Numerous councils have transition policies that cover all children who are affected by disabilities, including children with autism.

The ASL act has ensured that the right people work together throughout a child’s life and into their adulthood. In Edinburgh, through adult services and children’s services, we pay for a joint team to manage the transition of young people into adult life, whatever that may be. We work closely with health services, which are the third prong. What has not emerged today is our close working relationship with the voluntary sector and the role that it plays for young people and adults.

To answer your questions, formal measures need to be put in place through local agreements. It is perfectly possible to do that and many good examples show that. Through learning hubs under GIRFEC, adult services want to play their part. They recognise that there is no point in getting it right for every child but not getting it right for every adult who requires services. Great potential exists to move all that on and to ensure that the good practice in some areas is available to colleagues throughout Scotland to take on board.

Claire Baker: You referred to good local policies. A tension exists between good local policies, a good national strategy and what people can expect. In its evidence, NHS Ayrshire and Arran says that it does not

“have a specific service to support people with autism.”

How do we overcome such gaps? Is legislation the best way to address gaps or a lack of prioritisation for services by local authorities or NHS boards? That happens for a variety of reasons, which I appreciate relate sometimes to finances or staffing. A conscious decision not to provide a service might not have been made, and the reasons why a service cannot be provided can be complicated. However, would national legislation mean that people who are on the autism spectrum would have more assurance about the services that they could expect?

Bryan Kirkaldy: Different transitions exist. Our experience is that most transitions are a consequence of our designing a system that is not one whole system. As the committee determined, the recent Education (Additional Support for Learning) (Scotland) Act 2009 was an improvement on the 2004 act, because it applied new duties on the nursery to primary school transition and on the primary to secondary school transition. They are examples of our designing three separate bits in an education service that require transitions to be managed. Transitions are always problematic, but the legislative reform of the 2009 act has addressed those aspects and it applies to children who are on the autistic spectrum as well as to others who have additional support needs.

The bigger transitions between council provision and the NHS or between council provision and voluntary sector provision also need treatment. I agree with Christina Burnett that that must be done between local partners and cannot be done nationally. Services should be joined up. We may want to take out some of the unnecessary splits between services. As Judith Piggot said, there is an unnecessary split within the NHS between child and adult services. That split has been designed by professionals, for professionals, but it could be taken out. None of that requires legislation—all of it is up for local development in the context of a national strategy.

Claire Baker: Christina Burnett said that the voluntary sector is an important player in this area. In Fife, there is an active group of parents and other adults who promote autism services. Last week I attended the arts in autism concert in Glenrothes, into which people put a lot of time and effort. Sometimes there seems to be a gap between the services that parents and other adults want and those that can be provided. The formal services are sometimes quite bureaucratic and feel difficult to engage with, unlike many of the things that people take on themselves, such as arts in autism and the project with Strathclyde Police about which we heard last week, which provides people with a card that shows that they have autism. How effectively do the ideas that are generated by families who are involved with autism and by the voluntary sector engage with the more formal services that the NHS and local authorities deliver? Is there more to be learned from listening to what the societies tell us needs to be done? If we did that, we would probably find quite simple solutions that would improve people’s day-to-day lives.

Christina Burnett: You are right. Across Scotland, we have been charged with listening to people more than we were used to doing. That is the right approach. We have just conducted a consultation with parents and young people in Edinburgh to find out what services they want. You are right to say that people do not necessarily want huge expensive services—they want services, especially for young people, that enable them to be involved in local society. For example, we are building up teenage clubs so that people can play their part in a different way. I believe strongly that that is the right way forward.

We need to act in partnership with our funding bodies, to allow the voluntary sector to thrive as part of the process. We must listen to parents and children. That does not negate the fact that some young people require quite specialist services; we need to ensure that those services are available. However, we want to involve many children and young people in local services and communities. We must strive to do that.

Dr Piggot: There is an even bigger task to perform on representation, to ensure that everyone is heard and understands what our aspirations should be. In addition to putting in place supportive services and having teenage friendship clubs at which people with autism come together, we could help individuals more to integrate with their communities by using some of those venues to teach social skills. Although individuals with autism feel comfortable when they are brought together with other kids with autism, that does not negate the difficulty that they have when they are in their communities. We could consider peer-facilitated social skills development in settings such as teenage groups. It is about highlighting to parents that there are things that we could do to promote outcomes, rather than just to support the status quo. In our communication, we must talk about what we really want and what would be of real benefit, instead of passing around old ideas that have become points of conflict.

10:45

Kenneth Gibson (Cunninghame North) (SNP): Last week, we heard conflicting evidence from the National Autistic Society Scotland and the Scottish Society for Autism on the need for the bill, although both welcomed the strategy. Do you believe that the existing legislation covers all the needs of people with autistic spectrum disorder, or do you feel that there are gaps in current provision?

Andrew Morrison: I will start on that, and colleagues may want to come in.

Brian Kirkaldy mentioned earlier that we currently have robust legislation in place, and that is one reason why we argued against the bill in our submission. I will touch on our reasons for that.

We think that, by focusing on autism, the bill creates a hierarchy of conditions that goes against the holistic approach that has been developed under existing legislation. A couple of colleagues have mentioned that the additional support for learning legislation places a legal duty on councils to provide support to all children with additional support needs. Underpinning that legislation is a range of guidance and national policies—which colleagues have mentioned—such as GIRFEC, which focuses on improving outcomes for all children. We think that it would be inappropriate to legislate for just one group. Another reason for that view is one that the Equality and Human Rights Commission touched on in its submission, when it referred to the Equality Act 2010. It raised the concern in our minds that the bill would dilute activity to advance equality for all disabled people in Scotland.

I have touched on a couple of pieces of legislation, and others may want to come in.

Bryan Kirkaldy: The different context and legislative arrangements in England and Wales and in Scotland are probably worth mentioning. The fact that the National Autistic Society has a commitment at a United Kingdom level to the introduction of a strategy by legislative means is a reflection of the legislative context in England and Wales. The fact that the Scottish Society for Autism is going more with the grain of the local authority view in Scotland is a reflection of the ASL legislation in the Scottish context, which the Scottish Society for Autism obviously understands. There are significant differences north and south of the border in the legislation for children with additional support needs.

From our point of view, the bill would go against the grain of what we consider to be a robust legislative framework for additional support needs that takes care of all conditions. If we had specific legislation for one specific condition, why could we not have specific legislation for another 10 or 12 specific conditions? We do not see that as a way of building a comprehensive or inclusive approach to the support of children.

Our view is clear. We support the idea of a national strategy, but it is hard to see what specific additional duties could be introduced on top of the ASL legislation for a particular set of conditions.

Carolyn Brown: I agree with the points made by both Andrew Morrison and Bryan Kirkaldy. In Scotland, we have tried to create a community approach that looks after the 20 per cent—or whatever—most vulnerable individuals in society and our local communities. In doing that, we have tried to build capacity in our services so that we meet the needs of all young people, children and adults who have difficulties, whatever those might be.

I reiterate that siphoning off one area for legislative attention, as the bill does, could be damaging for other groups. It would also duplicate what we already have under the ASL legislation. If we were to divert our energies in that way, we would be wasteful of resources.

Christina Burnett: We also need to remember that other pieces of legislation are relevant in this area. I am thinking of the Social Work (Scotland) Act 1968, which is an act for all children in need. The 1968 act includes children with autism; it does not exclude them. It is one of the pieces of legislation to which we have to work, and I see it as an inclusive piece of legislation. Obviously, like other professional bodies, we have had to take on the issues around the growing needs of people with autism in the context of the present legislation. That adds weight to the point that we are trying to make. We have adequate legislation; the question is how we use and develop it.

Carolyn Brown: As Dr Piggot said, autism is a complex condition that often involves other conditions. The autism diagnosis is different for different individuals. Again, that adds to the mix of difficulty in focusing on one area for legislation.

Kenneth Gibson: What you have said today reinforces the comments that you made in your submissions, which contained more detail on the issue. It is important to get that on the record.

The Convener: I will play devil's advocate for a moment. Where is the legislation that covers autistic adults in Scotland? I do not see it. We have the ASL legislation, which covers autistic children but not autistic adults. How do you respond to the point that autistic adults made rather convincingly to the committee last week in private session? They said that approximately 50,000 people in Scotland are on the autistic spectrum. They feel that their needs are being ignored and that the existing legislative framework neither protects them nor provides them with services. What is happening right now that makes you believe that everything is being done so well to protect autistic adults in Scotland? Why should we not legislate to give them the strategy? They told us that that is what they want. What legislation protects them? Why do they not deserve to be protected in that way?

Christina Burnett: As I said, we have the Social Work (Scotland) Act 1968. Obviously, the ASL legislation covers children in the main, but it also contains a responsibility to ensure that the outcomes and transitions for children are good. We also have legislation for vulnerable adults, and duties of care for adults that we have to put in place through health and social work.

I am not saying that everything is as good as it could be—none of us is saying that. We are arguing that legislation will not make it better. What will make it better is the strategy and the more multi-agency way in which we are trying to work in Scotland, as Bryan Kirkaldy said. We are doing that in assessment and service delivery and we are changing some of the ways in which we do things to meet different needs.

The Convener: Your argument is that we have sufficient legislation in place to protect this group of people. I am trying to get some clarity on what exactly that legislation is. Much of the legislation that has been mentioned does not cover the group of people who have written to the committee and made representations to us in seeking recourse. They believe that legislation is necessary.

If I think back over the passage of the ASL legislation, I remember people arguing against it. COSLA, education authorities and councils always argue against legislation and say that they can do the things for which it provides. However, sometimes a legislative focus means that, all of a sudden, there is a political will to make things happen. We do not always need legislation, but without it things just do not happen.

Andrew Morrison: As we have already said, we believe that over the past 10 years significant progress has been made in relation to autism and that the work of the reference group has been successful. For that reason, we think that it is right for us to return to the group and to look to move things on over the next 10 years, accepting that there are gaps in areas that require improvement.

The legislation that is needed to provide protection for all is already in place. Another piece of legislation that should be mentioned is the Adult Support and Protection (Scotland) Act 2007, which gives local authorities new inspection and investigation powers. As colleagues have suggested, legislating for one group creates a divide in how we deal with different groups that have disabilities or require our support. We are strongly of the view that legislation is not necessary at this time. It might even be an admission of failure that we would not want to make at this stage, because a great deal of progress has been made over the past 10 years and more can be made using the current structures.

Carolyn Brown: The reference group has acknowledged that there are gaps in adult services. That is not my area of expertise, but I am aware that the group takes the matter seriously. There are gaps in relation to criminal justice and access to adult services generally. The current draft strategy recommends that the reference group do more work in the area. I take the point that there are gaps in adult services that need further study. The existence of a postcode lottery has been mentioned. The situation could be improved further through local initiatives and linkage to the reference group.

Dr Piggot: I hear us talking about inequity across populations and duplication of legislation, but there is a concern about how we can make change happen and standardise practice across a national locale. It seems to me that underpinning the whole discussion is a resource issue. That issue really came to the fore in Wales. We can create a strategy, but if it is not affordable it will not be realised. We can argue that a measure will be cost neutral, because there will be cost transfer between different agencies, with agencies that get benefits giving money to agencies that created those benefits, but that does not often happen. It is about how we get cost transfer, but if we acknowledge that there has been a huge increase in prevalence of the condition and that there is still much to be done, new moneys will have to be secured to address that. Although there are tensions around inequality and the need for legislation, the real tension is whether there will be the resource to do what we see as fit for the population.

The Convener: Christina McKelvie is supposed to put our next questions, but it seems to make sense to take Mr Macintosh's question on resources, after which we will return to Christina McKelvie.

11:00

Ken Macintosh (Eastwood) (Lab): My question is on the financial memorandum and the costs associated with the bill. Clearly, COSLA has taken the view that there are associated costs, as has the Government. How much will it cost to implement the bill? Where would resources have to be diverted and by how much?

Andrew Morrison: Our concern is that the bill is very light on cost implications. There are cost issues and they need to be investigated further. We believe that that can be done through the reference group. Indeed, the draft consultation document has a recommendation on that.

Ken Macintosh: You say that you believe that the cost implications need to be investigated. What are they? You need to spell that out a bit.

Andrew Morrison: The issue for us is that, at this stage, we do not know what they are. The bill makes reference to the National Audit Office. I cannot remember the exact cost that is given, but—clearly—it comes from an English piece of work. We cannot base our activities on a piece of research that was carried out down south. We need an evidence base up here. We have questions around costs, but that is not the central argument in COSLA's submission nor in the responses from my colleagues. Our central argument is that it is inappropriate to legislate for this one group. Indeed, it is particularly inappropriate in the current economic climate when resources are so tight. The bill could lead to a focus on one group at the expense of others.

Bryan Kirkaldy: There are two parts to the question on resources. First, the resource that is associated with the introduction of a new duty on top of the existing duties—for example, the ASL duties—

Ken Macintosh: I do not mind talking about the ASL act, but for the moment will you please put to one side provisions for children and think only about adults in giving your answer.

Bryan Kirkaldy: There are resource implications for adulthood in all of this. Dr Piggot mentioned that. Twenty years ago, we were estimating that 0.1 or 0.2 per cent of our population would be on the autistic spectrum and we now estimate it at 1.6 per cent. Clearly, there is a lag, but we have to assume that before long there will be the same prevalence in the adult population as we have in our schools at the moment. As I said, the present figure puts 1.6 per cent, perhaps rising to 2 per cent, of our population on the spectrum. When I say "on the spectrum", I mean the whole gradient of need. Some young people and adults will live independently in the community; others will be in highly dependent resource-intensive provision. I suspect that most of those at the highly dependent end of the spectrum in adulthood have been identified and are receiving services under the existing legislation that Christina Burnett identified. However, there is no doubt that a resource implication is associated with a higher prevalence in adulthood, and that needs to be costed.

Ken Macintosh: We heard in evidence last week that the needs of those with complex needs are being met. The argument from the bill's proposer is that there are no cost implications, particularly for that group. The logic behind your argument is that there is unmet need, which the bill will force local authorities to meet. My difficulty with that argument is that it sounds like an argument for legislation. You are happy to manage the situation without legislation. You recognise that there is unmet need—I think we all do—but you would rather approach things in a gradual fashion through a strategy. You are worried about legislation because it will force you to address need where you do not have the resources to do that. I do not want to put obligations on local authorities when you do not have the resources to meet them. That said, the logic of your position is that you do not want the legislation because you cannot afford to meet the need that you recognise is unmet. Is that not the case?

Bryan Kirkaldy: What would be helpful given the stage that we are at with the national strategy would be to have prevalence estimates for the adult population along the gradient or continuum of support that is required. We would then need to build in the implications of those national projections.

The rise in the number of children who have been diagnosed from 100 to 800 has led us to build capacity in the system that depends not just on specialised services but on all staff in the system playing their part. Many of the 800 children participate in everyday social and educational activities in our communities and at home. The same applies to the adult population. We need to build capacity to support the population of adults both through specialised social work and NHS services and as a society. There is an interesting and important strategic task in all of that. For me, the question is not, "How much does it cost?" but, "How do we develop the strategy?"

Ken Macintosh: I do not disagree with you on identifying need. If we look at children's services, we see that the growth to which you alluded, with a rise from 100 to 800 cases in Fife, has led you to build capacity. That might simply be a response to the increase in the prevalence of autism or, as the convener hinted earlier, it might be a response to the passage of the ASL act, which placed a statutory duty on local authorities. I am saying not that legislation is the only reason why you do things but that it has led to the service levels that you now provide for children. However, it seems to me—I cannot speak for other committee members—that local authorities are not providing for adults. There is a strong logic that says that legislation—statutory powers or "teeth" as the bill's proposer put it—is needed to ensure that unmet need, which we all recognise is there, is met. Do you recognise that logic?

Christina Burnett: I recognise the logic, but there is an issue in all of that that we need to address. We are not arguing against legislation as such. It is absolutely right to have the ASL act or any legislation that is inclusive of all children and young people. It makes us as staff in local authorities, hospitals and so on do our job properly. I have no problem with that. Our argument is that there is a divisiveness in picking one group of children. A number of those children—

Ken Macintosh: Adults, please.

Christina Burnett: Okay, I am sorry—adults, but they are children originally.

Ken Macintosh: But children are already protected by legislation. Children have a number of pieces of legislation already in place; it is the adults we are asking about.

Christina Burnett: I am aware of that, but when they are children they will be seen to have needs and issues, some of which will go on into adulthood. Our argument is not that there is not unmet need but how we manage need in future in an inclusive way and not by picking out one group of adults in this way. We see that as divisive.

Carolyn Brown: There is adult legislation in place. Mr Macintosh seems to be highlighting a gap in legislation for adults, but there is legislation to support vulnerable adults and for the protection of adults. We need to highlight any gap in that legislation.

Ken Macintosh: That is a different logic. It is the logic that my colleague Christina McKelvie highlighted—the logic against equality for women or ethnic minorities. The fact that a need is identified does not mean that it is necessarily right or wrong to pass an act to address the need. The fact is: there may be implications for others.

Carolyn Brown: I think that you are talking about the impact on whole communities, a capacity-building response and something being true for children and adults. From that point of view, the matter is quite simple. If there is legislation that covers children and adults, that should be used. That exists in both sectors.

Dr Piggot: I do not have any answers to the question, but I have some questions, although I know that I am not meant to have them.

One difficulty in legislation for people with learning disabilities is the idea that individuals who are high functioning on the autism spectrum do not have a learning disability. However, in a world in which everything is social and we have to be able to communicate well socially to get on, a social disability—an inherent, innate incapacity to understand the social world—is a learning disability. I wonder whether there is a tension and whether we have legislation for people with learning difficulties that covers individuals with autism. Perhaps things have been unclear. When some people think of autism, they think of someone with an intelligence quotient of 120. A person may be high functioning in terms of their IQ, but that does not mean that they are high functioning in their social ability. Many young people with Asperger's whom I see are as socially disabled as people who would get a diagnosis of autism, but they have not had language delay, and they have a very high IQ by virtue of other areas in which they process information way above how the rest of the population processes it. They do very well on splinter skills. Things average out, and that gives them a high IQ.

I wanted to say that because if we think about a disability correctly as a social disability, sometimes there will be legislation that can be used. I do not think that legislation gets used in that way because people think of children with learning disabilities as being kids with a global impairment across all aspects of their development. I wanted to put forward that idea in case there are people in the room who have more understanding of adult legislation. It might influence them. The concern is really about the duplication of legislation. Obviously, if it is true that adults are not covered and are disadvantaged, that is a different matter.

Ken Macintosh: Finally, an argument that the bill's proposer makes is that, if a local authority responsibility is backed up by statute in a time in which there is pressure on costs, it is more likely that that service will be protected. In other words, the statutory services that local authorities provide are less vulnerable to cuts than the non-statutory services. I am sure that you have heard that argument before. Ensuring that the services that are already provided do not suffer, even if they are not increased, is quite a good argument for supporting legislation in the area.

Andrew Morrison: We return to our central argument and logic. That is another reason for not legislating solely for people with autism. Scarce resources would be diverted to one group, possibly to the detriment of other people. It does not make sense to us to legislate for one group in that way.

Bryan Kirkaldy: I agree. The comprehensive approach that is taken in the example of the ASL act applies to adult contexts as well. There is no reason why a person who has a severe hearing impairment or a person who suffers from a significant physical disability as a result of cerebral palsy should be disadvantaged by specific legislation for autism or any other condition. In our view, the comprehensive and inclusive approach that is taken in the ASL act is the way to go. I am no expert on adult legislation, but if a shortfall in provision is identified in the national work, it should, in principle, be addressed in an inclusive and comprehensive way.

Christina McKelvie (Central Scotland) (SNP): Section 3 of the bill would require local authorities and health boards to “have regard to” the guidance issued under a national strategy. The bill also provides for guidance to be issued for things such as diagnosis, assessment and training. What would that mean for you in practice?

11:15

Bryan Kirkaldy: Again, I will speak about education to begin with, if you do not mind. We work within the framework of the ASL act and all the other statutes that apply to us, so our local authority has already developed a strategy for autism. All that we would be doing is testing all the elements of that against the national advice. We are well connected with the national advice and we tend to try to anticipate what it will be before it is published. Indeed, some of the national advice reflects leading-edge practice in various local authorities. There is a continuous dialogue with the work of the national reference group and we would pay attention to any guidance that came from any national source.

Christina McKelvie: Does anyone else want to comment on that? The witnesses are all quiet, so maybe not.

The issue is that “have regard to” almost means that people can take it or leave it. It does not impose a duty on people. From COSLA’s point of view, would local authorities have to act if the requirement in the bill is to “have regard to”?

Andrew Morrison: I am not a lawyer, so I am not sure that I can comment on the legalities of what “have regard to” means, but we are strongly committed to having regard to the guidance that will come out of the national reference group. We are represented on that group and our colleagues from our professional associations will feed into it as well. We will absolutely have regard to the guidance that is produced because we are involved in the group that will make it up, if you will.

Carolyn Brown: One of the reference group’s recommendations on the draft strategy is that we should seek to consult scrutiny bodies on how the issue can be embedded in scrutiny practices throughout local authorities. That point is well made. The reference group is keen to ensure that that happens—I certainly am—and we have plans to look further into how we can share best practice and information on duties locally and throughout Scotland.

Christina Burnett: To follow on from Carolyn Brown’s point, in child protection and other areas, we have robust inspection that local authorities, health boards, the police and everyone else listens to. There is something to be said about how we drive that forward under the new arrangements that are to be put in place for scrutiny and inspection. Most of us would welcome that approach.

Christina McKelvie: On that note, the bill provides for “guidance”, “relevant services” and “appropriate stakeholders”. Is that enough? Are there other things that are missing but should be included, such as some form of inspection?

Dr Piggot: Sorry—can I speak to the previous question? Are we saying that the current legislation covers the situation and no duplicate legislation is necessary? Are we saying that we already have strong legislation and that things should work? Having just arrived back in Scotland, I am a bit perplexed, I suppose, as to why so many of our service users feel that it is not working. I suppose Carolyn Brown spoke to that point in relation to scrutiny. It seems that there is a desire for scrutiny, which might be contexualised in people saying, “We need more legislation.” That raises a point for reflection. If we have the legislation, why does it not work? I am not clear whether we have it but it is not working, or whether we do not have it, in which case we would not expect it to be working. I am a bit confused.

Christina Burnett: The point that we are making is that inspection regimes across health and local authorities are changing and being redefined. I cite the experience that we have had already with some of the education legislation. We have been scrutinised and inspected a great deal on child protection—I use that example because I know the policy area well. It is all overseen by inspection authorities and the Scottish Government.

There is something to be said about other areas of work that could be dealt with in that way. At the moment, for instance, social work inspection is sometimes thematic. The themes have included learning disability, although I am not sure whether they have included autism.

There are different ways of scrutinising the work that goes on across Scotland. They are not necessarily in place right now, but there is no reason why they could not be under the present procedures and legislation.

Christina McKelvie: It can be quite confusing to try to understand where the draft strategy sits, where the bill sits and what we are talking about, because the bill provides for a strategy that would do much the same as the draft strategy. Are there any stakeholders, relevant persons or services missing from the bill that should be in it?

Dr Piggot: I am speaking from memory, but it seemed to me that it would also be important to include voluntary organisations that are involved in supporting individuals in the community. We work a lot with Barnardo’s and Parent to Parent, which support families and would have a view. There are also some autism activist groups—more grass-roots groups—that are not represented.

Andrew Morrison: On that point and harking back to our view that the strategy is the way to go, as far as we can see, the national reference group involves all the key stakeholders, including the voluntary sector and individuals with autism as well as their carers and parents. We think that that covers the point, although the group would obviously welcome discussion of any gaps that exist. I am sure that, if there was a feeling that there were gaps in representation, they could be plugged.

Christina McKelvie: Is there a risk that having a strategy that is underpinned by legislation could create a two-tier system in Scotland, as we have other strategies—such as the one on domestic abuse—that are not underpinned by legislation?

Andrew Morrison: Yes. Our central argument is that that is exactly what it does. As you mentioned, there are other strategies that are not underpinned by legislation. I am sure that we would be able to argue that they work well. To create legislation for one group would drive a wedge into the more inclusive approach that we have taken to other issues.

Bryan Kirkaldy: Not only do we need a strategy for children and adults that is comprehensive and inclusive, but we need it to be nimble; it needs to be responsive to the quickly changing picture of autistic spectrum disorders.

Ken Macintosh: It is clear from what Mr Kirkaldy and Ms Brown said that good work, which has led to an increase in identification of young people with autism, is going on in Fife and elsewhere. My question is for Dr Piggot in particular. Is autism on the increase generally in society? That question keeps getting asked.

Dr Piggot: Michael Rutter himself—the godfather of autism study and child and adolescent psychiatry—does not know the answer to that and is still open to the possibility of there being environmental causes for the condition. However, it is widely acknowledged that changes in diagnostic practice—including a change in the classification system that is used—and increased awareness have had an effect. There is also a threshold effect. Autism diagnostic classification uses a categorical approach; the idea of autism spectrum disorder, which we all use, was introduced by Lorna Wing. It is a threshold, so someone can be on the spectrum and not fulfil all the categories. It is more about the idea of social communication impairment. We have been lowering the threshold at which we identify individuals as having a considerable social communication impairment, in an appropriate way.

As I said earlier, someone can have a social communication impairment and, although they might not fulfil the other autism criteria, they can be even more socially impaired than someone who would get an autism diagnosis. I am hedging my bets by giving you the literature. It is a lot to do with how we think about it. It could mean that the prevalence of autism among the adult population is exactly the same but those adults were unidentified, rather than that the incidence has increased and there are now many more people with autism.

Carolyn Brown: It is worth adding that Professor Chris Gillberg, who—as some of you will know—presented in this building a few years ago, stated that in 10 years’ time we might not be talking about autism, because it is such a complex issue and such a variety of different attributes are attached to it.

Dr Piggot: My interest lies in the neurobiology of autism; I take pictures of people’s brains when they perform different social tasks. I concur with Carolyn Brown that it is a huge simplification to call something autism. Social communication is one of the most complex things that we do, and we require a huge number of faculties to do it well, such as being able to identify faces, watch biological motion and attribute theory of mind.

In practice, people have very different reasons for their social communication impairment, which becomes particularly important when we want to intervene. We will still be talking about autism, but we will understand that it means many different things and we will be helping young people much more effectively.

The Convener: That concludes the committee's questions to you this morning. Thank you for your attendance. The committee will suspend for a short comfort break.

11:27

Meeting suspended.

11:34

On resuming—

The Convener: We continue our consideration of the Autism (Scotland) Bill with our second panel. I am pleased to welcome Shona Robison, the Minister for Public Health and Sport, who is joined from the Scottish Government by Jean Maclellan, who is the head of the adult care and support division, and by Rachel Sunderland, who is the deputy director of the support for learning division.

The minister wishes to make an opening statement.

The Minister for Public Health and Sport (Shona Robison): I thank the committee for the invitation to address it. At the outset, I make the important point that we share the common goal of wanting to make the lives of people with autism and their families the best that they can be. We agree that the time is right for a national strategy for autism, but we differ on how to get there. I believe that we can do that just as effectively and more quickly through implementing the draft strategy that is out to consultation rather than waiting for legislation to require ministers to develop a strategy.

The main purpose of the member's bill is to place a statutory duty on the Scottish Government to prepare and publish a Scottish autism strategy. The Scottish Parliament information centre briefing paper summarises the key issues, a couple of which I will touch on.

Much has been achieved in Scotland and I pay tribute to the previous Administration for much of that. The original remit of the national ASD reference group, which is made up of user and carer representatives and professionals, was to develop the recommendations of the Public Health Institute of Scotland's needs assessment report, which was a world first—Scotland was ahead of the game. That work was supported with £4 million of funding.

Much progress has been made in the five years of implementation. I highlight the publication of commissioning guidance for health and social care staff; extensive training and education opportunities through support that has been given to the national centre for autism studies at the University of Strathclyde; a national directory of diagnosticians to provide professionals with clear points of reference; and a set of diagnostic standards to ensure national consistency in approach from referral to service delivery.

We have made significant progress. The creation of one-stop shops in Edinburgh and Glasgow has helped to support people with autism. In 2008, the Scottish Government created several ASD co-ordinator posts in Highland, Borders, Fife and the Forth valley to help to deliver better outcomes for people locally.

As members are no doubt aware, the Education (Additional Support for Learning) (Scotland) Act 2004, which was updated in 2009, ensures that the needs of all children are met. Much work has been done on transitions. The 2009 act provides the legal framework that underpins the system for identifying and addressing the additional support needs of children and young people who face barriers to learning.

The 10-year programme "The same as you?" has done much—particularly through the employment framework, which was published this year—to ensure that those with a learning disability and autism receive the support that they need to progress into employment. However, I am not complacent. Now is an appropriate time to refresh and revitalise what has been achieved and to build on that. More needs to be done and a refreshed Scottish strategy is the way to do that.

I will talk briefly about finance. Today of all days, we focus on the financial challenges that face our public services, which will experience a fall in funding of 11.3 per cent in real terms by 2014-15. The financial memorandum to the member's bill suggests that the only cost would be from consulting on and publishing the strategy. That does not address the potential cost to local authorities and health boards, which would depend on how the purpose and effect of statutory guidance were interpreted.

If, as many stakeholders believe, local authorities and health boards will be required by law to implement every aspect of the strategy to the letter, the current financial memorandum is in no way accurate. In that regard, COSLA has expressed concern about prioritising the needs of people with autism over the needs of individuals with other disabilities, and I recognise its concern. If, on the other hand, you accept that local authorities and health boards will require only to have "due regard to" the guidance and that the financial memorandum is, therefore, accurate, the question is why we need the bill when the same could be achieved through the draft strategy that is already out to consultation.

I am unable to say at the moment what the position will be on future resources for autism, but I am happy to come back to the committee once the spending review outcome is known, following the budget statement.

I believe that we can do what the bill sets out to do without the need for legislation by developing a strategy with guidance. That would be more appropriate, as it would not raise false expectations, it would be more affordable in the current financial climate and it would be achievable with a clear implementation plan and arrangements for progress to be monitored. Of course, we will seek to involve Parliament in doing that.

The Convener: Thank you for those comments, minister. You were right to start by highlighting the progress that has been made in the area over the past 10 years, which we all welcome. However, the committee has heard orally and in writing from a number of individuals who remain concerned about health professionals, in particular, and some people in the teaching profession who are reluctant to engage with people on the autistic spectrum. NASS raised the matter with us last week in our first panel of the morning. We covered the issue of the skills set of health professionals, in particular, and their ability to respond to the needs of adults on the autistic spectrum. You rightly highlight the work that is being done on training, but have we gone far enough or could more be done?

Shona Robison: More could always be done. We have a Scottish intercollegiate guidelines network guideline for the diagnosis of children with autism, which helps to inform the way in which health professionals go through the process of diagnosis, but SIGN guidelines do not exist for the diagnosis of adults with autism. We could well address that through the strategy, asking for SIGN guidelines to be developed to help us to get a more consistent approach to diagnosis. We could then have input from NHS Education Scotland on the training requirements to back up a new SIGN guideline for the diagnosis of adults. Those things would come as a package.

You are correct in saying that more could be done. That has already been picked up by the reference group as one of the early priorities to be taken forward.

The Convener: It would be helpful if you could give us an indication of how the bill, as drafted, will affect the diagnosis of adults on the autistic spectrum and of the obligations that will be placed on health professionals, in particular, but also on education professionals, if appropriate. How does that compare with what the Scottish Government intends to do?

Shona Robison: Again, it comes down to how we interpret the requirements that the bill will place on local authorities and health boards. If it boils down to getting a more systematic and consistent approach to the diagnosis of adults with autism—let us focus on adults for the moment—there is not a great deal of difference between what can be achieved through the member’s bill and what can be achieved through the strategy.

It would, of course, be up to ministers to take forward the detail of what the bill lays out in general terms. The best way in which to achieve that approach would be to focus on developing a SIGN guideline, which is the recognised standard for health professionals, and to ensure that that is backed up by the appropriate training support through NES so that that standard can be rolled out.

11:45

The dementia strategy is not underpinned by statute but focuses to a great extent on diagnosis. In that regard, there are many parallels between the bill and what is laid out in the dementia strategy, which is about identifying what the standards have to be and what the training requirements are for staff, and then setting up an appropriate training programme. Of course, NES is the organisation that is best placed to deliver that.

The Convener: Whether we go down the road that the Scottish Government is currently on, which involves working in partnership with COSLA and other agencies, or choose to support the bill, the outcomes will be more or less the same. The committee’s job is to decide whether the bill is appropriate or necessary. Why should we not support the bill when, ultimately, the outcomes might be more or less the same?

Shona Robison: I can give you a couple of reasons, one of which is that the bill would be a very unusual step. I cannot think of any examples since the Parliament was established of a particular strategy being singled out and given a statutory basis. That has not been the way in which strategies have been developed.

Listening to the previous evidence, I was struck by something that was said by Christina McKelvie—I think—which was that there is a danger of creating two tiers of strategies. If the bill is passed, the stakeholders in the various current strategies might feel that their strategies are deemed to be of lesser importance because they are not underpinned by statute. Eventually, a strategy might not be seen to be a strategy unless it is underpinned by statutory guidance. I worry that we might end up with two sets of strategies, one of which is deemed to be more important and, therefore, more deserving of local resources than the other.

The other reason is the simple one of delay. We are consulting on the draft strategy until 9 December, after which the intention would be to quickly put in place an implementation plan and get on with the job. If the committee decides to go down the route of requiring ministers to develop a strategy, there could be about a year's delay before we had in place a plan of action that would address many of the same issues that we could be getting on and addressing at the moment.

Margaret Smith (Edinburgh West) (LD): On the point about delay, if we all agree that there should be a strategy, whether or not it is underpinned by legislation that requires councils to do certain things, what is to stop you simply implementing the strategy and letting the legislation catch up, in a sense, with the situation that you have created? You would not have to implement the strategy in a different way because it had legislation underpinning it, would you? Why would there be a delay?

Shona Robison: A strategy that involved statutory guidance would need to go back out to consultation, because there are different elements to such a strategy. We would also have the consultation on the statutory guidance and what is in it.

Another practical issue is that the team that is working on the strategy would have to move to working on the bill, because there are elements of the bill that would require to be looked at. We would have to decide whether there required to be stage 2 amendments and so on. In effect, the people who are working on the strategy would have to work on the bill, and we cannot do everything at the same time. There would be some practical effect. We would not be starting from scratch, but in effect we would have to press the pause button while the committee took forward the bill.

Margaret Smith: And you think that hitting the pause button would be a year's delay.

Shona Robison: It could be. The bill would probably reach its conclusion just before we reached the break for the election. We would then have the election and—shall we say—a period of reflection. We would then have the consultation process and a period to get the guidance looked at. It may not take a year, but it would not be far off it by the time that all those steps were in place.

That would not be a problem but for the fact that I think that we can get on now and do largely what the people round this table, and the stakeholders, want to be done. It will be an incremental approach, but every strategy at the moment takes an incremental approach. It has to be realistic, although it must achieve clear aims, too.

Elizabeth Smith: You have been clear about why you feel that there is not a need for legislation. How would the non-legislative process help to address some of the inequalities in service delivery across different areas of Scotland?

Shona Robison: I do not think that, in isolation, the strategy will do that—I will be honest with you about that. It can go some way to address things such as diagnostic standards, and it can do a lot in education, training and ensuring through guidance that local authorities and health boards are aware of the best practice, but other things that we are doing will have as much impact, if not more, particularly on young adults with autism.

I highlight the self-directed support strategy and the forthcoming bill. Yesterday I met the leads of the test sites where people are looking at pushing the boundaries of self-directed support. Some really good work is going on in test sites in Glasgow, Highland and the Dumfries and Galloway, and the point that jumped out at me is how much that work is supporting young adults with autism. From what I heard yesterday, that group of service users could benefit more than any other group from self-directed support. I suppose that that is a different approach from addressing some of the local implementation issues, as it puts the service user and their family in the driving seat of the package of care.

Elizabeth Smith: Are you sufficiently confident that, if one local authority or health board was not making much progress, there would be a mechanism in the non-legislative process for ensuring that it improved its service?

Shona Robison: That would be easier to address with health boards because we have performance management arrangements with them, so we could address progress through the normal mechanisms—regular meetings with officials, annual reviews and so on—that put the work of health boards out to public scrutiny.

There is a different arrangement with local authorities, but listening to the witness from COSLA this morning I got the sense that there is an acknowledgement that improvements require to be made. Local authorities are very much involved in the national reference group, and there is a genuine desire to move forward.

Looking to the future, I think that the reshaping care for older people model on which we are embarking in a big way and which focuses on pooled budgets might open up possibilities for other care groups. We are beginning to look at different ways of joining up the dots a bit more at a local level.

I acknowledge that all that is probably beyond what is before us in black and white, but the fact is that looking at where future improvements can be made might well have a bigger impact. After all, it is all about joining up local services, which we would all accept are still a bit disjointed.

Alasdair Allan: Witnesses have talked about the progress that has been made over the past 10 years. What has been the role of national leadership in that regard and do you feel that it has been adequate?

Shona Robison: By driving forward best practice and putting in place arrangements for setting standards and raising the level of training and education of health professionals and others, the previous Administration and our own Scottish Government recognised at a national level that more had to be done for people with autism. However, we will all concede that the local implementation of those measures has to be driven forward and built on, and the strategy has the potential to pick up that implementation and make it far more effective for people.

Progress has been made but, of course, more can always be done. The implementation plan that will follow the strategy will have to be driven forward nationally with the national reference group’s support to ensure that we keep the momentum that has worked so well in the past in addressing, for example, waiting lists. We need to get back some of that momentum and I think that the strategy and subsequent implementation plan can achieve that.

Alasdair Allan: I realise that you have already touched on this, but how do you plan to address some witnesses’ reservations about a recommendations-based approach?

Shona Robison: I understand that view, but even having statutory guidance that the health boards and local authorities must have regard to does not mean that things will suddenly be different at a local level. We need to change the culture and drive the recognition of and priority given to people with autism, and that is partly about education and training and partly about service standards. There is no one magic bullet, and I believe that we can capture all those things in the strategy and plan.

As I said to Elizabeth Smith, it is not just about this strategy but about other real drivers for change such as empowering people through self-directed support. Such moves might well have a transformational effect on many service users, including people with autism.

Alasdair Allan: I suppose that this is a slightly hypothetical question, but some people who have given evidence have felt that strategies underpinned by legislation have more teeth. Are you in a position to suggest how a strategy might be different with and without legislation?

Shona Robison: As I have said, the strategies that we have developed over the Parliament’s lifetime have not been underpinned by statute. Indeed, I think that such a move would be a real change of direction: one might well ask why we would take that approach for one group of service users, and where it would leave all the other strategies.

By and large, we can achieve the same ends. It will be an incremental approach. There will be no big bang—the resources are not there for big bangs in any strategy, and we must be honest about that. We can compare the autism strategy to the dementia strategy. It has been greatly welcomed by dementia sufferers and their families, who can see what has been pulled together in the strategy in a comprehensive way, and what it sets out to do through an implementation plan that will make a real difference. What Hugh O’Donnell’s bill sets out to achieve is very similar. I am confident that we can achieve in the autism strategy what we have achieved in the dementia strategy.

12:00

Claire Baker: We took evidence last week from NAS and the Scottish Society for Autism. Although there was disagreement on the appropriate timing for legislation, both organisations agreed that legislation would be a good thing and that it would give strength to and enforce the strategy. Will you say more about the timing of the legislation? One of my colleagues suggested earlier that it could be argued that the strategy could still go ahead but that legislation could be introduced in the future. If we do not go for legislation now, will the effectiveness of the strategy that has been introduced by the Government be monitored so that legislation could be considered in the future?

Shona Robison: The debate about timing relates to whether it would be right to continue to develop a strategy when the bill would require us to develop a different type of strategy that would be underpinned by statutory guidance. My view is that that would require a separate consultation. However, there is room to debate that. There would also be a consultation on the statutory guidance and what would be required in it.

There are also timing issues. Parliament dissolves in March. If the legislation were to be passed just before that, there will be a period before anything further could happen. Those are not insurmountable problems. All I am saying is that we could be getting on and doing some of that very quickly in the new year.

The point about monitoring is important. I am happy to make a commitment to the committee and to Parliament on that. If the committee believes that service users and stakeholders could be reassured, for example about the committee's involvement in monitoring the implementation plan and looking for evidence of progress, that could be put in place through regular progress reports. Of course, there is nothing to stop any future committee or Parliament going down a different route if they felt that what the strategy had set out to do had not been achieved. That option is always there. If the committee were to look for particular things that could be put in place to involve it in the monitoring of the strategy and implementation plan, I would be happy to consider that and come to some agreement on it.

Claire Baker: The minister has laid out the reasons why she believes that national legislation would not be necessary—for example cost, timescales and trying to move forward with the strategy. Do you accept the argument for legislation to enforce implementation at local level? We heard quite a lot of discussion from the earlier panel about the need for local partnerships and local solutions. Furthermore, there is sometimes a feeling among service users that it should be clear what services they—children and adults—can expect to receive.

Shona Robison: I recognise that there is frustration because the pace of change is sometimes slower than people would like it to be. Sometimes I feel that way—I think that we all do. We would like things to have happened yesterday, but sometimes change has to be incremental, especially when we are talking about changing cultures, providing education and training, and developing different ways of doing things, which can take time to achieve.

I put it back to Claire Baker that if we set a precedent whereby legislation is needed to enforce any change at local level, we would have to go back and look at every strategy that had sought to make change at local level without legislation. Every service user in a group that was the subject of such a strategy would suddenly feel that their strategy was ineffective if legislation were regarded as being the only thing that would drive change. We would have to think very carefully before going down that road.

Claire Baker: What is your view on the general response to the strategy in the continuing consultation? Do people feel that it is sufficient to meet the demand that they have identified?

Shona Robison: I will say a little bit about that, then I will ask Jean Maclellan to comment.

Some excellent suggestions have been made in the 16 local consultation meetings that have been held to get responses to the strategy. For example, there has been a focus on the need for SIGN guidance on diagnosis for adults. Another suggestion that has come through quite strongly has been on the need to get far better and more robust data in a Scottish context.

Jean Maclellan (Scottish Government Primary and Community Care Directorate): Only one other major theme has emerged so far. Typically, we tend to get the bulk of responses to consultations in the final week or so. A request has been made for service standards. We already have a diagnostic standard, but a request has been made for compulsory training for teachers. What that would consist of could be encompassed in a service standard. That is the other main feature of the responses thus far.

Shona Robison: While the issue is fresh in my mind, I add that service standards could be quite important in driving the change that everyone wants, because the new scrutiny body, Social Care and Social Work Improvement Scotland, could measure and report on performance against those standards at local level. Such standards would give SCSWIS something against which to benchmark the performance of local authorities. We have other performance management arrangements for health boards.

Ken Macintosh: I want to ask about costs, about which I know the Scottish Government and COSLA have concerns, although they are rather unspecific concerns. Would the bill result in new costs for local government, or would they merely be displaced costs?

Shona Robison: I take you back to my original comments: the answer depends on how one views statutory guidance. If one views statutory guidance as being equivalent to saying, "You will implement every element of this strategy. If you don't, you will be in breach of the legislation," there would be a cost to local government and health boards. In the current financial climate, as COSLA has suggested, that money would have to be found from within existing resources, which would have knock-on consequences.

If one takes the view that statutory guidance is lighter touch and is about having due regard to the issue, what the costs would be is debatable, but the question that arises from that is whether it would drive change to a greater extent than the strategy that is out to consultation.

It is an extremely hard question to answer. The potential exists for additional costs to arise if councils and health boards were to take the view that because there was legislation and statutory guidance, they had a duty to give a higher priority to people with autism than to people in other care groups. That issue was explored with COSLA earlier.

Ken Macintosh: Another argument is that giving the strategy statutory backing will protect the services to the degree that non-statutory services are not protected at local government level. Do you accept that argument?

Shona Robison: I suppose that what I have just been saying applies. If you take the view that it is right to give more protection and attention to one group of service users than to others, you might accept the bill as being a good thing. In the current financial climate, that would set a dangerous precedent: we would face a knock on the door from every single service user group wanting statutory guidance to either underpin existing strategies or to make new strategies for that particular group. I do not think that we could blame them for that, but I am not sure that it is the most helpful way of getting to grips with some of the real issues and concerns that people have raised.

Ken Macintosh: Which other conditions, or groups, would you fear would do that? I understand the argument; it has been put to the committee several times. The difficulty is that we have the bill in front of us and the evidence has flagged up the real need of adults with autism. I accept the argument for the inclusive approach that was well put earlier. Who would lose out? I cannot think of any service that would lose out.

Shona Robison: It is difficult to single out any particular group of service users. The community care budget of any local authority covers all service user groups. No one particular group would suffer over another. However, if local authorities felt that they had to give services to people with autism before others, it could affect all other service users rather than one particular group.

My question is: Is it a helpful precedent to set? Service users in other groups might then see statutory guidance as the way forward, and by the time we ended up with statutory guidance for every group in society, it would be less helpful and we would have come full circle.

We need to drive change; no one is arguing against that. I am just not convinced that the bill is the way to do it. It could create more problems than it would resolve.

Ken Macintosh: I hear the minister’s arguments about costs. Is any work being done to scope the costs? You mentioned the work with COSLA. The difficulty that the committee has is that we understand the fear, or anxiety, that COSLA and the Scottish Government have expressed, but it is unquantified. The sponsors of the bill are clear that there will be no additional costs. The bill is simply to give statutory backing to duties that already exist and are already funded. Is any work being done to scope the cost?

Jean Maclellan: The only piece of UK research that has been done on what is defined as the true economic costs of autism has been done by Martin Knapp and his team as part of the National Audit Office’s work. The committee is already aware that the cost is identified as being somewhere in the region of £23 billion per annum. One of the recommendations in the draft strategy is to look at that work and the basis on which that figure was arrived at, and to establish what in that work is relevant to Scotland, as a means of identifying the cost.

Shona Robison: It is difficult to quantify exactly the potential cost of the bill itself. It boils down to what I said before about interpretation of statutory guidance, which will determine whether local authorities and health boards would feel that they were required to meet the letter of the law, and to do things very quickly to address all aspects of the legislation.

The financial memorandum only mentions the costs of publication and consultation. It does not talk about the potential costs of a dramatic and revolutionary change in the way that we provide services to people with autism at local level, but it raises the expectation that that will happen. There seems to be some expectation among service users that that will happen, but it is difficult to see how it could without a major injection of resources. It must be either one thing or the other. If the bill is cost neutral, will it really drive revolutionary change? If it is not, cost is an issue, although that is hard to quantify.

12:15

Ken Macintosh: Committee members would welcome greater clarity from all sides on costs. The bill’s promoters and those on the autistic spectrum from whom we have taken evidence take the clear view that the needs of people with severe needs are met, so we do not expect revolutionary increases in costs. The aim is to bring about a change of attitude that ensures that people on the mild-to-moderate range of the spectrum, especially adults, access services that are already there.

A strong argument can be made that there is variation in services across Scotland, and that a strategy that was backed up by legislation would provide some local authorities with an incentive to bring their levels of service up to that of the best. We have heard the anxieties that COSLA has expressed, but no figures were attached to those. I accept the point that Jean Maclellan made about some of the costings that the NAO has produced, but we have heard other evidence from service users about the huge benefits and savings that come from getting some adults with autism back into the workplace. All of us heard last week how worth while that makes them feel and how beneficial it is to their mental health, but there is also an economic saving.

I agree that we need greater clarity, but I am worried by the argument that both COSLA and the Scottish Government are making. The bill may raise expectations, but they are raising a fear without providing any real description of what the range of costs would be or of the difference that the bill would make.

Shona Robison: It is not my intention to raise any fears; I am just trying to be honest. If people believe that the bill does not require a major injection of new resources and is about the changes to the draft strategy that I have described, why not just go along with the draft strategy? Why does that need to be underpinned by statute? We keep coming back to that point. You referred to the need for a change of attitude. I am not sure that legislation brings about such change. It is difficult to drive cultural change and changes to people’s practice through legislation; as you know, the process is a bit more complex than that.

Ken Macintosh made the pertinent point that there is the potential for large savings to be made from doing things differently, shifting the balance and earlier intervention.

We can achieve those savings by means of the proposed strategy and some of the other things that we are doing; take the example of self-directed support. We can deliver services in a radically different way, and the types of preventive services that have been shown to be of great benefit to people with autism cost less, but achieve much better outcomes. The drivers for change are important, but it is not just about the strategy—other things need to happen. Empowering people and giving them far more influence on the types of services that they receive is probably one of the most powerful drivers for change. That is linked to the strategy, but it is also about doing things very differently.

Margaret Smith: I come back to the cost. You mentioned the NAO report—in fact, I think that Jean Maclennan mentioned it, so I apologise if it was not you, minister. The NAO report looked at the costs of autism services across the UK and put it at £28.2 billion. The bill gives an approximate cost of £2.3 billion. Are those real costs and does the figure reflect money that is being spent, or is it a desktop idea of what the costs of autism services should be? Does the figure include services that are provided by people outwith the public sector?

Jean Maclellan: The analysis is based on some data on prevalence, on the level of intellectual disability and on the place of residence, which were all combined with average annual costs of services and support, together with what were described as the opportunity costs of lost productivity—the costs of people not being in employment. The cost of supporting children was estimated at £2.7 billion each year. Depending on whether the person with ASD had a learning disability in addition, the lifetime cost per individual ranged from £0.8 million to £1.23 million.

The analysis is about taking several building bricks and leaping from one to another. We want to use the data, because they are the only data that exist, but we must look at them carefully in order to ensure that the joins are the appropriate ones and that we apply them to the Scottish context appropriately.

Shona Robison: It needs more work.

Margaret Smith: Yes. Because of factors such as opportunity costs and all the other issues that you mentioned, it is not just a simple question of me asking you, “Right. That particular piece of work says that the cost to Scotland of autism services should be £2.3 billion every year, so what are we spending in Scotland on autism every year?” and saying that anything in between is a funding gap. There is obviously a complex picture.

Shona Robison: It is a complex picture and I think that we need to do more work to understand the situation far better in a Scottish context by getting far more robust data and figures. As Jean Maclellan said, that has been flagged up as being required work.

If we are to monitor—I would like to do so—the potential for releasing resources from some current models of care for more innovative types of support, it would be useful to have oversight of that to get a picture of how much resource would be released by changes. I hope that we could have really good monitoring of that service change.

Ken Macintosh: I think that the use of the term “costs” is probably misleading, because it is really £2.3 billion in savings, or, I should say, in potential savings. The figure is the money that could be saved if we supported people with autism better; it is not the cost of the service.

Shona Robison: Releasing that resource is very important in changing the different models of care. I do not think that anyone is disagreeing with that.

Christina McKelvie: Good afternoon, minister. We heard from you and were told in written and oral evidence that autism-specific legislation could be detrimental to the provision of services for others. The Equality and Human Rights Commission backs up that point and backs up the Government's strategy. We were also told that individuals with ASD are covered by existing legislation. Do you think that their rights are sufficiently covered by that legislation? Are there any gaps in the legislation, especially for adults?

Shona Robison: There are a number of pieces of legislation, several of which cover children, and the important stuff around transition has been recognised fully. With adults, it is a bit more complex. Many different important pieces of legislation impact on people with autism, from the basic community care legislation and the right to an assessment of need to the adult protection legislation, which is strongly relevant to people with autism.

I am not sure that there are gaps in legislation as such. The gaps are in the things that we have already talked about, such as diagnostic standards. It seems strange that we have a diagnostic standard for children but not one for adults. That is something that we could address quickly. The other gap is in service standards. Again, if we could develop a set of service standards for adults with autism, that would give our regulators—SCSWIS in particular—the ability to measure against those standards and tell people in a very public way what they have found. It would also give local authorities a benchmark to enable them to look at where they lie in relation to others and best practice. Service standards are important. That is where the difference will be made, rather than in new pieces of legislation.

Christina McKelvie: In private session last week, we heard from some of the adults that the big issue for them is standards and getting what they think they deserve. Does your strategy go the distance for them? How will we reassure and convince them about that? The committee does not want to disappoint people. We have learned that the legislation in England has disappointed people. Does your strategy address the concerns of people with autism?

Shona Robison: It is probably important that we pause for a second, because the legislation in England is underpinned by statutory guidance, but there are issues with the resourcing of the strategy—I think that it came with half a million pounds. The early indications are that expectations were raised but, unfortunately, the strategy might not be being delivered in the way that people expected.

It is important that people are given a clear picture of what change they can expect to see and are assured that it will be incremental, albeit that it will not happen overnight. If there is a clear implementation plan that everyone is signed up to and it will be monitored in the full glare of scrutiny, we can reassure stakeholders and service users that change will happen, and indeed we can involve them and the Parliament in the monitoring of that.

I know that people want to see change, and I absolutely understand that. The way forward, in my view, is to have a clear plan that lays out timescales for what will be achieved—for example, when we expect to have a new diagnostic standard in place for adults with autism, when we expect to have service standards, and when SCSWIS will be expected to do the first round of monitoring against those standards. Let us have it all planned out so that people can see in black and white by when we expect to see X, Y and Z delivered. It is not my intention to have a strategy that just contains vague notions that it would be nice if certain things happened. We need something far more robust than that.

Christina McKelvie: Do you agree that, if all the stakeholders have been involved in the strategy and have ownership of it, it will have a certain power to it, rather than something that is enforced?

12:30

Shona Robison: The national reference group should be given due credit for the work that it has done in getting the draft strategy together to consult on. The group has been around for some time and it very much involves and includes the experts in the field. By that, I mean not the professionals—although they are involved, of course—but the service users and carers round the table who have worked hard since 2002 to make things better.

Ironically, if the pieces of work that were done at the time had been pulled together into a strategy, Scotland would have been noted for being the first country to have a strategy for autism. It was not badged in that way, but in effect that is what it was. I am not sure that we are giving due credit to the national reference group for their work. Is it now time to build on that, to build up more momentum and to go further? Yes, it is. However, I do not believe that legislation is required for that.

Kenneth Gibson: I will pick up on what Ken Macintosh said about potential savings of £2.3 billion. Surely that figure, assuming that it is accurate, includes not just the opportunity cost of people not reaching their full potential and the employment gap but the cost of delivering the services, which could be quite costly for some people over a long period. Is that the case?

Shona Robison: Yes, it includes all that.

Kenneth Gibson: This has been touched on already, but what effect might the introduction of autism-specific legislation have on other impairment groups? You spoke earlier about the possibility of people knocking on your door asking for new legislation in their particular areas. How serious a concern is that?

Shona Robison: I have worked closely with people with dementia, with their carers and stakeholders, and with carers groups and organisations to develop a dementia strategy and a carers strategy. We have clear expectations of what those strategies will deliver, and that has been done without statute. My concern is that people who are involved in that area would ask whether their work is of less value if it is just covered by a strategy and not underpinned by statute. Might it take second preference when service providers—local authorities or health boards—are considering where to allocate resources? I worry about a “two-tier system” emerging, as Christina McKelvie put it.

There are strategies and there are strategies. Some strategies are underpinned by statute and others are not. Over time, the introduction of such legislation could have serious implications for existing strategies, and we could almost guarantee that any strategy that was being developed in future would be accompanied by a call for it to be underpinned by statutory guidance. There comes a point where that almost ceases to be meaningful, as every strategy would require to have the same status if a level playing field was to be maintained. I do not believe that that is the best way to take things forward in Scotland.

Kenneth Gibson: What about the views of the Association of Scottish Principal Educational Psychologists, which feels that the bill could be considered by some groups to be discriminatory?

Shona Robison: I will ask Rachel Sunderland to say a bit more about this. There could be a concern that other groups might lose out. I do not want to overplay that, but it is a possibility in these difficult financial times, when service providers are considering what they believe they are required to deliver, by statute or otherwise.

Rachel Sunderland (Scottish Government Learning Directorate): We are in a slightly different place on the education side as we have a legislative framework in place, with the Education (Additional Support for Learning) (Scotland) Act 2004, as updated by the Education (Additional Support for Learning) (Scotland) Act 2009, which commenced three days ago. We have a statutory code of practice in place. Under the code of practice and the legislation, there is a focus on the needs of individual children.

On a policy level, under both the previous Administration’s 2004 act and the present Administration’s 2009 act, we are clear about not listing specific groups. There is a risk that if we have a separate autism bill, it might send a message that children with autism have a slightly different status from that of the rest of those children and young people who have additional support needs, so it might be thought that their needs require a slightly different emphasis. The committee was concerned about how we deal with different groups of young people when it was considering the bill that became the 2009 act. That issue might come back.

Shona Robison: As I understand it, the committee decided not to pull out autism as a specific category of children and young people under the 2009 act. That is perhaps something else for the committee to reflect on.

The Convener: That concludes our questions to you today. I thank you and your officials for your attendance.

12:35

Meeting suspended.

12:36

On resuming—

Subordinate Legislation

National Health Service (General Ophthalmic Services and General Dental Services) (Scotland) Amendment Regulations 2010 (SSI 2010/378)

Scottish Social Services Council (Appointments, Procedure and Access to the Register) Amendment (No 2) Regulations 2010 (SSI 2010/379)

Protection of Vulnerable Groups (Scotland) Act 2007 (Power to Refer) (Information Held by Public Bodies etc) Order 2010 (SSI 2010/380)

Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Purposes for Consideration of Suitability) Regulations 2010 (SSI 2010/381)

Police Act 1997 (Alteration of the Meaning of Suitability Information Relating to Children and Protected Adults) (Scotland) (No 2) Order 2010 (SSI 2010/382)

Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010 (SSI 2010/383)

The Convener: Item 2 is subordinate legislation. The committee will take evidence from Scottish Government officials on the final batch of subordinate legislation relating to the protection of vulnerable groups scheme. I am pleased to welcome Andrew Mott, who is PVG implementation legislation manager in the Scottish Government's PVG implementation team, and Ailsa Heine, who is senior principal legal officer in the PVG and schools solicitors division of the Scottish Government. I understand that Mr Mott wants to make an opening statement.

Andrew Mott (Scottish Government Children, Young People and Social Care Directorate): Yes. Thank you very much for giving me the opportunity to make an opening statement on the six Scottish statutory instruments. I expect that members will be pleased to hear that this is the last scheduled batch required for PVG implementation. That said, it is inevitable that we will need to come back from time to time to respond to changes in policy and practice, and, in due course, we will need to make provision for retrospective checking.

The batch comprises six negative resolution instruments that, broadly speaking, pick up consequential changes that are required in light of the PVG scheme. SSI 2010/380 makes provision for Disclosure Scotland to access information that is held by the Scottish Court Service to assist it with consideration cases. In particular, the order will facilitate the retrieval of information about historical convictions where the information that is held on police systems such as the criminal history system is not sufficient to allow the case to be concluded. The order also amends the Protection of Vulnerable Groups (Scotland) Act 2007 (Power to Refer) (Information Relevant to Listing Decisions) Order 2010 (SSI 2010/178), which the committee considered in the summer, to correct defects in it. The Subordinate Legislation Committee had highlighted problems with SSI 2010/178, in that it did not identify "relevant functions" of the NHS tribunal. The Scottish Government undertook to correct those defects, which the order does.

SSI 2010/381 allows organisations to access PVG disclosure records for individuals whom they are recruiting or retaining to do activities outside the UK that would have been regulated work had they been done in Scotland. That provision is made in response to stakeholder demand and delivers on the policy proposal in the Scottish Government's response to the consultation on draft SSIs in April 2010. Members should note that provision for work done in England, Wales and Northern Ireland is properly a matter for the UK Government and the other devolved Administrations.

SSI 2010/381 also makes provision to allow PVG disclosure records to be obtained in respect of certain positions in the Scottish Social Services Council. In particular, the convener or members of the council or the convener or members of the registration or conduct committees or sub-committees are eligible. Those committees deal with the admission to and removal from the register of social service workers and complaints against such workers.

SSI 2010/379 prevents the Scottish ministers from appointing a barred individual as a convener or member of the Scottish Social Services Council. SSI 2010/381 gives ministers the power to access PVG disclosure records in respect of such appointments, and one effect of those regulations is to make such checks a requirement. The SSSC is responsible for appointments to its committees and sub-committees, and will use the PVG scheme to prevent the appointment of barred individuals.

SSI 2010/378 places requirements on health boards and ophthalmic medical practitioners, opticians and dentists who seek to do NHS work to make appropriate use of the PVG scheme. Health boards must maintain lists of such practitioners who are authorised to do NHS work in their area. These regulations amend existing regulations that govern the operation of those practitioner lists, primarily to substitute references to enhanced disclosure with appropriate references to the PVG scheme and PVG disclosure records.

SSI 2010/382 removes the requirement to include information about cases that are being considered by the Independent Safeguarding Authority on enhanced disclosures with suitability statements. Members will recall that the fact that an individual is under consideration for listing by Disclosure Scotland will be included on PVG disclosure records and enhanced disclosures with suitability statements.

The long-standing intention was that those disclosures would include the fact that the ISA was considering an individual for listing. However, that information will not be available to Disclosure Scotland for that purpose at go-live, because the UK Government is not progressing the necessary arrangements, at least while the remodelling of its vetting and barring scheme is on-going.

SSI 2010/383 sets out the requirements on organisations that want access to standard and enhanced disclosures and PVG disclosure records. The regulations consolidate and build on existing regulations—the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006 (SSI 2006/97)—with the most significant change being the implementation of the new charging regime for registration. That delivers on the policy proposal that was set out in the Scottish Government's response to the consultation on draft SSIs.

Organisations that seek to countersign applications and receive disclosures need to comply with a code of practice as well as the regulations. The code covers the handling of disclosure information and sets out in detail what registered persons need to do. Contrary to what the Executive note states, the code has not yet been laid before the Scottish Parliament, but it will be laid before go-live. There is no parliamentary procedure attached to the code; the requirement is that it be laid before Parliament.

Changes to the code will mainly be logical consequences of the introduction of the PVG scheme, and the revised code will be made available to organisations in good time before go-live.

That concludes my introduction. I am happy to take any questions.

The Convener: Thank you, Mr Mott. Does any member wish to ask a question?

Ken Macintosh: I have a couple of questions on SSI 2010/381, SSI 2010/382 and SSI 2010/383.

Paragraph 18 on page 4 of the Executive note for SSI 2010/381 relates to the provision for an organisation outside the United Kingdom to apply for information that is held by Disclosure Scotland. It states:

> "the use of such disclosure records is *entirely discretionary*".

What are the limits of that discretion? Would it be exercised by Disclosure Scotland?

Andrew Mott: Suppose, for example, that a Scottish organisation is recruiting a Scottish individual as a ski instructor to teach children how to ski on the Italian Alps. That activity of teaching and instructing would have been regulated work if it had been done in the Cairngorms but, without the provision in SSI 2010/381, there would be no way of accessing the disclosure records for someone who is doing that work in Italy. The provision allows an organisation that recruits the individual to access a PVG disclosure record, but there is no requirement for it to do so—it is entirely up to the organisation whether it does that. Also, it would have to be for an activity under schedule 2 or 3; the provision could not be used for just any purpose.

12:45

Ken Macintosh: I suppose that, if the activity was taking place in this country, there would have to be a disclosure anyway. If a foreign company or organisation were in the same situation, employing Scottish people who might or might not need to be checked, would it be able to apply for disclosure, or would the provision apply only to Scottish organisations abroad?

Andrew Mott: There is nothing to specify that it must be a Scottish organisation although, to access the PVG disclosure records, it would need to be a registered body. The organisation would have to register either with Disclosure Scotland or with an umbrella body. An organisation that was based in France, for example, that recruited Scottish individuals to work in the French Alps would be able to access that information as long as it met the registration conditions.

Ken Macintosh: I understand that SSI 2010/382 has been introduced because England and Wales are not progressing with the necessary arrangements for disclosure of cases that are under consideration. No progress will be made until after the 2007 act has been implemented. Can you bring us up to date with that? What will happen after the 2007 act goes live? What will happen to cases that are under consideration in England and Wales?

Andrew Mott: It is important to stress that the vast majority of cases that are under consideration will be Scottish cases that Disclosure Scotland is considering. Nevertheless, there is potentially a small gap regarding the cases that are being considered by the Independent Safeguarding Authority. When an application is made for PVG disclosure, Disclosure Scotland will not know that the person is under consideration by the ISA, so that will not be disclosed. The UK Government is reviewing its vetting and barring scheme, and the outcome of the review is due at some point early next year. It is hard to make any prediction until that is published. From our go-live, we will disclose Scottish consideration on disclosure, but we cannot disclose ISA consideration.

Ken Macintosh: Why bother repealing the provision? Why not just wait until we know what is happening down south? Surely, you might need to reintroduce it.

Andrew Mott: You are right. The provision was originally inserted into the Police Act 1997 by the PVG act because we believed, at that time, that all the arrangements would be sorted out. The problem is that it places a duty on the Scottish ministers to disclose the information, and that is a duty that the Scottish ministers cannot comply with because they do not have the information. The provision needs to be removed for that reason.

Nevertheless, you are right to say that we might eventually come back to insert a similar provision. We would need to make amendments anyway, as the provision in the PVG act dealt only with English and Welsh cases, not with Northern Irish cases. We would need to come back to it in any case.

Ken Macintosh: Let us turn finally to SSI 2010/383. This is a new measure, is it not? It introduces a register that did not previously exist.

Andrew Mott: No, that is not the case. There are registration regulations in force at the moment, and organisations that want the higher forms of disclosure must be registered with Disclosure Scotland. An awful lot of the provision in these regulations is taken from existing regulations that are already in force, which have been consolidated with subsequent amendments. The main point of interest in these regulations is the new charging regime, which comes into force on 1 April 2011.

Ken Macintosh: I wanted to ask about that. You describe the charge somewhere as minimal, but it is £150 initially and then £75 annually after that.

Andrew Mott: The £150 is the charge under the current regime.

Ken Macintosh: Currently, everybody pays £150.

Andrew Mott: Yes. An organisation that wants to register with Disclosure Scotland currently pays £150 plus £10 for every additional countersignatory. That is a one-off payment. The proposal for the future, which applies to registration applications after April 2011, is that organisations will pay a £75 charge every year, and that will include up to four countersignatories, with an additional charge for additional countersignatories. Organisations that are currently registered will move to the new regime over a period of a year. We will be migrating those organisations. That is the change.

Ken Macintosh: They have already paid a one-off charge, but they will have subsequent annual charges.

Andrew Mott: Yes.

Ken Macintosh: How much of a difference will that make in income? How much money will be brought in?

Andrew Mott: It is a very modest amount. I do not have the exact amount, although I can get it for the committee, but it is modest and much smaller than the amount raised through the disclosure fees.

Ken Macintosh: Is it in the tens of thousands of pounds or the hundreds of thousands?

Andrew Mott: I think that it is in the hundreds of thousands, but I will check that.

The Convener: As members have no further questions, I thank Mr Mott for attending.

Item 3 is the committee’s formal consideration of the statutory instruments that have just been discussed under item 2. No motion to annul has been lodged in respect of the statutory instruments. When the Subordinate Legislation Committee considered the instruments at its meeting yesterday, it did not highlight any issue for our attention. As members have no comments, do we agree that the committee has no recommendation to make on SSI 2010/378, SSI 2010/379, SSI 2010/380, SSI 2010/381, SSI 2010/382 and SSI 2010/383?

Members *indicated agreement.*

Meeting closed at 12:53.

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