



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 12 January 2011

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**EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE**

**1<sup>st</sup> Meeting 2011, 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:**

Mark Ballard (Barnardo's Scotland)

Kevin Dunion (Scottish Information Commissioner)

Nancy Fancott (Scottish Council for Voluntary Organisations)

Jon Harris (Convention of Scottish Local Authorities)

Karen Indoo (Barnardo's Scotland)

Claire Monaghan (Society of Local Authority Chief Executives and Senior Managers)

Dr Irene O'Brien (Scottish Council on Archives)

Dr Gerry Slater (Scottish Council on Archives)

**CLERK TO THE COMMITTEE**

Eugene Windsor

**LOCATION**

Committee Room 2



# Scottish Parliament

## Education, Lifelong Learning and Culture Committee

*Wednesday 12 January 2011*

[The Convener opened the meeting at 10:01]

### Public Records (Scotland) Bill: Stage 1

**The Convener (Karen Whitefield):** Good morning. I open the first meeting of the Education, Lifelong Learning and Culture Committee in 2011. I hope that everyone had a good festive break, enjoyed Christmas and new year, and is looking forward to the final weeks of Parliament before dissolution.

I remind all those present that mobile phones and BlackBerrys should be switched off for the duration of this morning's committee deliberations.

We have apologies from Kenneth Gibson and Christina McKelvie, who are both unable to attend committee this morning. I am pleased to welcome Dave Thompson, who is attending as a substitute member. I understand that Liz Smith is running a little late, and Ken Macintosh will join us at approximately 10.30 as he has business at the Local Government and Communities Committee.

The first agenda item is evidence on the Public Records (Scotland) Bill. I am pleased to welcome Kevin Dunion, the Scottish information commissioner, and Dr Irene O'Brien, the chair, and Dr Gerry Slater, policy adviser, from the Scottish Council on Archives. I thank you for your attendance this morning and for your written submissions to the committee in advance of our evidence session.

I begin by asking for your views on whether the legislation is required. I ask the question because there has been considerable debate around whether a voluntary scheme would do exactly the same as legislation in ensuring that information is properly kept and accessible. Who starts with that is entirely up to you.

**Dr Irene O'Brien (Scottish Council on Archives):** The Scottish Council on Archives is very strongly of the opinion that we need a legislative framework to ensure that we improve record keeping in public authorities. We believe that we will be able to do that in a collaborative way, and we will work with the National Archives of Scotland to ensure that we assist public authorities and take them forward.

It is not a quick solution; we will undertake a programme that will lead to a large-scale improvement, which will take place over time. People should not expect that it will happen right away. We need the strength of legislation, but we realise that we must work together to ensure that we take into account individual circumstances in the general framework and that there is a long-term improvement.

We all know that we have to deliver better record keeping—we know how the need has arisen and we know that we have to address it. The legislative framework provides security that we ensure that we do that.

**Kevin Dunion (Scottish Information Commissioner):** What we currently have in Scotland as an adjunct to the freedom of information legislation is a code of practice on records management. One might say that that would be sufficient, but the reality is that it is not. The code of practice can lead only to practice recommendations that are issued by me in conjunction with the Keeper of the Records of Scotland. I have no ability to enforce that code of practice as it currently stands. If authorities observed a code of practice, they would probably observe the good practice that the keeper would like to see in a records management plan, but that is not the case currently.

Even prior to the FOI legislation coming into force, when I was asked by the then Scottish Executive to look at the search that it had made for the records that it held on looked-after children in care, it was like looking for a needle in a haystack. There was no records management plan that was sufficient to allow us even to target the search, and what we found was extremely disappointing to the survivors of abuse in care homes. We could find laundry lists, but no records of discipline or even the names of individual children who had been there. Therefore, in the context of the Shaw report, it is true that we need something better than we currently have. More broadly, it would make authorities far more efficient. When I was carrying out a practice assessment I came across one local authority alone that had more than 200 separate records management systems. That will simply not be possible if we have the statutory framework of a records management plan.

Sometimes really significant pieces of information cannot be recovered. In relation to a major private finance initiative contract for a hospital in Scotland, the authority could not produce the whole contract for me until several months into my investigation. That is simply not acceptable, and again it would not be possible under a proper statutory framework.

**Dr Gerry Slater (Scottish Council on Archives):** I am of the view that a voluntary scheme would be rather like new year's resolutions: we all start off with genuine enthusiasm and then gradually, as other things emerge, the enthusiasm wanes. That is the reality of life.

We need a statutory framework as a fall-back position. It is particularly important because we are not just talking about traditional paper records; myriad electronic records systems—if I can call them systems—are emerging.

It is important that there is more standardisation across the public sector. I am aware of that from the situation in Northern Ireland, where we decided to face up to that particular problem. If we do not have that standardisation, practical difficulties will arise in terms of access and—above all—cost.

**The Convener:** Thank you, that has been helpful in explaining why you think that legislation is a more appropriate vehicle than a voluntary scheme.

The committee has received a number of submissions from organisations that argue that a voluntary scheme would be better. They argue that legislation may well be appropriate in some cases, but they suggest that the schedule that is attached to the bill, which lists the organisations that would be covered by the scheme and required to keep records, is too extensive and may place unnecessary burdens on organisations.

Two of the organisations that have made such suggestions to the committee are the National Museums Scotland and the General Teaching Council for Scotland. As small organisations, they think that the administrative requirements that will be placed on them will be too burdensome. Do you have a view on that? How would you seek to address their concerns?

**Dr O'Brien:** There was an argument that the schedule was not broad enough in terms of the archives and records sector, but we are broadly happy with it. Organisations must manage their records no matter how small they are. We must ensure that we have a scheme that meets the minimal needs of such organisations. It should not be a huge issue, but it is something that they must do for their own management and efficiency. Smaller organisations should be encouraged to see that they should do records management anyway, so that their organisation works well and efficiently. They are public authorities, and the public deserve to know that the records that are kept on their behalf are kept appropriately and managed well. Ultimately, any citizen may need access to such records at some time. It is important to emphasise that no matter how small

an organisation is, it has a responsibility to manage its records. Doing so should not be regarded as an excessive burden.

**Kevin Dunion:** As I said in my submission, it would be helpful if the schedule attached to the bill was the same as that attached to the Freedom of Information (Scotland) Act 2002, which covers all public authorities in Scotland. They already have to observe the code of practice on records management, so it is important that the same bodies should be subject to the provisions of this bill, which is by and large what is happening.

Irene O'Brien made an important point that the keeper has emphasised repeatedly, which is that it is up to authorities to produce their records management plan, respecting the keeper's guidance on a model plan. The burden should not be onerous, unless the body has no records management plan whatever, which would not be good enough for a public authority in any case. The remedy is in the hands of the authorities, which must identify what fits their needs and establish with the keeper that what they have in place is sufficient to meet the requirements of the eventual act.

**Dr Slater:** I certainly endorse what the commissioner has said. I strongly emphasise the partnership and co-operative approach, because this is not about trying to catch people out—that is not the intention—but about ensuring that basic systems are in place. I am sure that assistance will be offered by the National Archives of Scotland and that guidance will be available.

**The Convener:** The National Museums Scotland suggested that the bill covers two categories of organisation: those which it considers to be high risk because they maintain and have access to very detailed personal information about individuals; and lower-risk organisations, such as NMS, which do not have access to very much personal information and collect information that is of a very different nature. Should there be different categories of organisation in the bill's schedule, or should all organisations be treated exactly the same?

**Kevin Dunion:** My view is that it is much simpler just to say, "Here is the statutory framework and the guidance." Of course, subsequently, when the keeper carries out any inspections or assessments, I would expect him to focus on the higher-risk organisations, as I do. Nevertheless, a common high standard should be expected across all Scotland's public authorities. As I understand it, we are not talking solely about records of children in care or, indeed, children or vulnerable groups; we are talking about a public records bill that may need to be called upon in relation to issues of accountability, governance and financial expenditure as much as for anything

else. Therefore I do not think that we should say that the bill is solely for one purpose and should focus on some organisations alone.

**Dr O'Brien:** I agree with that. The bill arose out of an issue relating to personnel files in the historic abuse inquiry, but the bill's provisions are about managing records and about organisations' accountability, both for how they spend public money and how they perform. It is important that we broaden our view of the bill in that regard. The personnel files were the issue, but there will be other issues in the future if we do not manage records appropriately throughout the public sector. It is important that we look forward and ensure that we have a system that manages records appropriately, whatever the public organisation, otherwise we could be hit by another problem in an area that we have not covered or that we decided was low risk.

It is important that we impose a framework that is helpful in giving people guidance on how to manage their records, regardless of how small or big their collection is. It will be helpful for the public to have the security of knowing that they can find the information that they require because every organisation is working within an acceptable framework of professional standards.

10:15

**Dr Slater:** All organisations, regardless of their function, create records and information and want to have access to them. On grounds of efficiency, it is in their interests to have a basic system in place that ensures that they can access their records as efficiently as possible. Efficiency in record keeping is no different from efficiency in any other function that an organisation carries out.

**Claire Baker (Mid Scotland and Fife) (Lab):** I want to turn to the obligation on contractors. Local voluntary sector organisations have raised concerns with us that the proposed system will place an unfair burden on them. Those concerns arise from their interpretation of the relationship that will exist between them and the local authorities that they contract their services to. Does the panel have any comments on how the system will work in practice? Do you understand the voluntary sector's concerns?

**Dr Slater:** I certainly understand the concerns, which it is entirely appropriate for it to have expressed. However, under the bill, the responsibility will rest with the public authority, which will have a contractual relationship with the body that receives funding. If we have the collaborative approach that is central to implementing the bill's proposals, there will not be a conflict of interests. It will not be a case of one

body dictating to another. I see no sign of that in the bill. There will be guidance and collaboration.

**Claire Baker:** The use of the word "collaboration" is important. A contractor might feel that there is a difficulty in reaching agreement with the local authority on how its records should be managed. The voluntary sector is concerned that there is an expectation that organisations will have to change the way in which they manage their records. Given that they might work with a number of local authorities, that would be an unfair burden on their limited resources. If difficulty was experienced in reaching an understanding on what was expected of the contractor, to whom would it be appropriate to turn to find a resolution?

**Dr O'Brien:** If everyone works to a framework, there is less chance that different local authorities will expect different things of a voluntary body. I think that that is less likely than it is now.

It is important that we work with local authorities and other public sector bodies, and that they work with their contractors, to ensure that there are no burdensome requirements. The responsibility will rest with the local authority or public body. Everyone in the sector needs to work together collaboratively to ensure that the guidance meets people's needs, is written in such a way that no one is put off and reaches out to everyone because it is in plain English and does not use technical jargon. We must ensure that everything is done in a way that makes it easy rather than difficult for people to comply.

We should concentrate on taking positive, collaborative steps so that we make the process easy for people. That is our intention. The intention of the sector is that the bill's proposals should not be difficult to implement. We want to make things as easy and as understandable as possible for everyone. Given that all the local authorities will be working to similar guidelines, people should not be asked for different things by different local authorities. The important thing for us is to work through the system to ensure that we all ask people to do similar things and that what they are being asked to do is extremely clear and not overly burdensome.

**Kevin Dunion:** Obviously, I have read the submissions that have been made on behalf of a number of organisations, and Mark Ballard, Nancy Fancott and others will speak after us on behalf of voluntary organisations in general and from their own perspective. I take their concerns seriously.

On what our records management plan would look like, we have no model yet, but the code of practice on records management gives a fair indication of what the keeper might require, given that it was drawn up by the keeper for the Freedom of Information (Scotland) Act 2002

coming into effect in 2005. I imagine that the plan will be built on that.

I do not think that we know enough yet about what any obligations on contracting voluntary organisations or any other party will look like downstream. I understand their concerns about creeping obligations or some public authorities requiring voluntary sector overcompliance—things certainly have to be ironed out—but to say that that is sufficient to lead us to say that the bill should not come into effect for the bulk of public authorities in Scotland is probably a step too far. I think that the concerns can be addressed.

A lot of the contracting may not be done by voluntary organisations; it may be done by the new breed of charities, such as local authority trusts. The same expectations that are placed on the City of Edinburgh Council should be placed on bodies such as Edinburgh Leisure. I would hate to throw the baby out with the bath water in addressing such concerns.

**Claire Baker:** There is a need to achieve the correct balance for local organisations and the voluntary sector. You have talked about trusts and other organisations that work as contractors. We need to ensure that there is not an unfair burden. At the same time, we expect them to play a greater role in delivering some public services as services are developed, and we need to ensure that they are tied into the system.

**Kevin Dunion:** The point is that if it is passed, the bill will place an onus on the keeper to be actively engaged in discussions on such matters, to provide guidance, to meet the voluntary sector and public authorities and to mediate between them on sensible requirements to place on contracting bodies. I will let the voluntary sector speak for itself, but I think that there is particular concern about programmes being funded by several public authorities that have separate records management plans. It is clear from the bill that there is nothing to stop there being a common plan that spans a number of bodies.

I will give a parallel. Every single public authority in Scotland must have a publication scheme approved by me, but we are increasingly moving towards model publication schemes for sectors and a single publication scheme for the whole of Scotland. We are trying to cut down burdensome or differential impacts on organisations as a result of the legislation, and I expect the keeper to take an active role in that as well.

**Alasdair Allan (Western Isles) (SNP):** From what the panel has said, it seems to support the principles behind the bill, but will you say more about how you envisage the bill working in practice? Will you put on the record other examples of what you think would be improved?

**Kevin Dunion:** If a person makes a request for information in Scotland, the first question that the authority must answer is whether it holds that information and whether it can locate and retrieve it. Some authorities have good records management systems and are able to get information efficiently and produce it to the applicant within 20 working days, but other authorities have very poor records management systems. They do not know what they hold or where it is. Their answer to a request will therefore be, "We don't know." The applicant will then say, "But surely you must hold it." The case will then end up as an appeal to me, and my staff will have to work expensively with the authority to find out whether it holds the information. The authority could provide partial information, but not guarantee that that is all of it.

The key issue is that the creation, storage and disposal of records in Scotland will be improved. As Gerry Slater has pointed out, many records are now electronic, so there is no physical impediment to holding millions of records that people would never have to consult, but which must be trawled through to answer questions. In general, I think that the bill will improve records management and information recovery in Scotland to answer questions.

There are often internal inefficiencies, as I have pointed out. Authorities have silos even in carrying out their own business. Information is sometimes held solely on the computer of an individual member of staff, and nobody else knows what is there until that person goes off sick. That is not anecdotal; we came across that in a major Scottish public authority. All the information was held in somebody's Outlook box. That was remedied, but only by my going in with my staff and carrying out an extensive assessment. Costs are attached to such cases. It would be much better to go upstream and try to fix things at the outset.

**Dr O'Brien:** I endorse everything that has been said. Good record keeping improves business efficiency in the day-to-day running of organisations and helps with stakeholder accountability, because it is important that citizens are able to access information when they need it. It also helps with compliance with legislation such as the freedom of information and data protection legislation. It is a protection for everyone, including the authorities. We sometimes see it as a negative, but it supports and helps authorities to do their jobs better and it ensures that citizens can exercise their rights of access. They know that the information is there—it may be stored as cheaply as possible, but it is there for them to access when they need it.



Often, people are not interested in records until they need them. At that point, they need to know that they are there. The important thing is that the citizen has the security of knowing that public authorities have records that are properly managed and preserved, and that they are disposed of when they are no longer required.

**Alasdair Allan:** Dr Slater, you mentioned that record keeping must be more than a new year's resolution and must have some kind of legislative backing. Will you or anyone on the panel say more about the name-and-shame power in the legislation? Does it provide a sufficient incentive for people to adhere to the legislation?

**Dr Slater:** There is a basic cultural question. My personal view is that we do not get people to take records management seriously by taking them out and whipping them every now and then. It is correct to have in the legislation what I will call a default position for cases in which somebody simply does not do the job and is absolutely recalcitrant. To be honest, I cannot imagine a situation in which that would arise, but it might.

The Scottish Council on Archives is much more interested in the positive approach. The bill gives an opportunity to win people's interest, permanently, in records management. It is there to help them, not to name and shame them. That power is, as I say, in reserve, but I would not see it as being up front in the legislation.

**Alasdair Allan:** Does anyone want to add to that?

**Kevin Dunion:** As well as determining that information should be disclosed in respect of specific information requests, I look at authorities' compliance in general with the FOI act. I have the power to issue practice recommendations and to carry out enforcement actions, thereby naming and shaming, so there are some teeth attached to the powers. However, in my experience, even in what I would regard as weak authorities or bodies, I have had the support of the elected members of the authority or the members of the board and the senior staff in every instance so far. I have helped them to focus on the issue and have come up with a voluntary action plan that has been implemented within a reasonable period of time, so significant improvements have been made.

In one authority, more than 30 per cent of requests were not answered within the due time. That reduced to 0.3 per cent after the assessment was carried out and the recommendations were put into effect. With the compliance reviews, the keeper would expect to get voluntary compliance in the vast majority of cases. He has the capacity to issue warning notices and to name and shame, but that should be relatively rare.

**Dr O'Brien:** The tenor of the legislation tends to be about working to support authorities, and that is how we should see it. As Gerry Slater said, naming and shaming is a last resort. We are looking at working together with authorities and assisting them to make improvements. They cannot go from the bottom right to the top quickly, so we see it as a measured process in which we assist them to improve over time.

**Elizabeth Smith (Mid Scotland and Fife) (Con):** I apologise for being late, convener. I had some transport problems this morning.

Mr Dunion, will you give us a little more detail on how you see the proposed memorandum of understanding with the keeper?

**Kevin Dunion:** Between me and the keeper?

**Elizabeth Smith:** Yes.

10:30

**Kevin Dunion:** Currently, we have a memorandum of understanding with the keeper, so that if I determine that one of the failings of a public authority is its records management as opposed to any other failing and I want to carry out a practice assessment and make a practice recommendation, I have to do so in conjunction with the keeper, and consult the keeper. The MOU that we have currently is focused on that. I am suggesting that, without having to amend my legislation in respect of the code of practice of records management, we have an MOU between me and the keeper that would enable me to alert him to any failures in records management that I came across in the course of my work and invite him to carry out a compliance review. There would have to be some agreement about what would trigger that. That is consistent with what I currently do in relation to, for example, failings in a public authority that I think should be brought to the attention of the Scottish Public Services Ombudsman or, in respect of data protection compliance, the United Kingdom information commissioner. Given the extensive number of cases that I deal with, I could act as a watchdog for the keeper.

The MOU would also ensure that the keeper and I were given notice of practice assessments and compliance reviews that either of us intended to carry out in relation to an authority, which would mean that the tasks could be carried out jointly.

**Elizabeth Smith:** Do you envisage that arising and you having to do a lot of checking of such matters in a lot of circumstances?

**Kevin Dunion:** Frequently, problems arise in relation to front-line bodies that deal with information requests. One of their failings is that they often argue that certain information is not

held or cannot be found. I expect to have frequent engagement with the keeper to tell him of my experiences in that regard and to discuss whether that warrants an assessment or—more likely, under this legislation—a compliance review being carried out, which would be done by the keeper, supported by me. Currently, an assessment would be carried out by me, supported by the keeper.

**Elizabeth Smith:** So the main motive behind the suggested amendment is to achieve a better basis for communication, rather than to troubleshoot existing problems.

**Kevin Dunion:** The purpose of the communication would be, first of all, to draw certain things to the keeper's attention and to discuss with the expert on records management whether a failing was sufficiently bad to warrant a team being sent in. Secondly, it would take advantage of the fact that the bill is stronger than the legislation that created my post and of the opportunity to turn upside down what currently happens and create a situation in which we look to the keeper to take the lead and support him by providing the evidence and, if necessary, the staff necessary to carry out the compliance review. Currently, we take the lead and the keeper supports us in carrying out an assessment, which is weaker than a compliance review.

**Dave Thompson (Highlands and Islands) (SNP):** The financial memorandum states that the estimated costs for those local authorities and public authorities that already have records management plans is likely to be minimal but that, for those authorities that do not have RMPs, there might be some additional costs. The memorandum also says that it is not possible to identify the exact cost to each public authority. A number of submissions highlight concerns that drafting, submitting for approval and maintaining an RMP would require additional resources. Will you comment on the costs?

**Dr Slater:** The starting point is that organisations should have sufficient information on their records to enable them to produce a records management plan. That is not an onerous task, unless an organisation is literally starting from scratch, and I cannot imagine that circumstance arising. Therefore, they have a head start.

As for other elements of the legislation, such as compliance reviews, again, unless something extraordinary is happening, I cannot see the burden being excessive. If an organisation has to review a records management plan, it will have staff who are dealing with records every day and so will know what is required, and they are the ones who will act on that requirement.

The issue is simply part of the day-to-day working of organisations. There is a terrible

danger that we see records management as being somehow divorced from the operation of an organisation. It is not. It is central to the day-to-day functioning of any organisation.

**Dr O'Brien:** One thing that we would say is that if we work together, collaborate, share good practice and provide templates for reports and various guidance notes, that will help. In the Scottish Council on Archives we believe strongly in doing something once for everyone rather than asking everyone to keep doing the same thing. We assist by providing documentation that is a template so that public sector and other bodies do not have to keep doing the same work themselves.

That is a good method of working—helping out by providing guidance and templates for all the public sector and other authorities so that they do not have to keep doing everything themselves. It is a way of reducing the onerous nature of the work that is done.

Gerry Slater is right: record keeping is something that people are doing and should be doing. It should assist them and make things better. I hope that, if we get record keeping right over the longer term, freedom of information will become less of an issue because there will be fewer cases in which people do not comply. If we have a mechanism that drives improvements in public record keeping in Scotland, that will serve everyone well and, I hope, mean fewer issues for the freedom of information regime too.

**Kevin Dunion:** I agree with that, but it is important not to discount the possibility of costs arising from the legislation—not from complying with the requirement to come up with a records management plan but in implementing the plan to remedy any deficiencies that are discovered during the preparation of the plan. If we are simply asking for a plan and we do not expect anything to change underneath, it is bureaucratic. The expectation is that the plan will focus the attention of authorities on good records management and require senior management and governing bodies to implement the necessary measures to make good any failings, which may involve costs.

The point from the Shaw report and what the bill says is that the expectation must be that public authorities will put their house in order. We cannot simply keep putting our heads in the sand about the deficiencies and wait for some other crisis to come about.

**Dr O'Brien:** The other point is that records management is not just a cost; it can provide savings and efficiencies as well. We should not always look at it on the debit side. Records management is sometimes on the credit side

because driving efficiency assists public authorities in reducing their costs.

**Dave Thompson:** Would it be fair to say that if a body has poor records management, that might be costing it money and that putting that right and getting records management in line with the plan might cost the body a little in the initial stages, but there will be long-term savings? Is that what you are saying?

**Dr O'Brien:** Yes.

**The Convener:** That concludes our questions to you this morning. Thank you for your attendance and for answering our questions.

The committee will suspend briefly to allow our witnesses to leave and our second panel to join us.

10:37

*Meeting suspended.*

10:39

*On resuming—*

**The Convener:** I am pleased to welcome the second panel of the morning. We have been joined by Jon Harris, who is the strategic director at the Convention of Scottish Local Authorities; and Claire Monaghan, head of policy, performance and communication at South Ayrshire Council, who is representing the Society of Local Authority Chief Executives. Jon Harris and Claire Monaghan represent the local authorities' perspective on the bill. To represent the voluntary sector, we have been joined by Mark Ballard, head of policy, and Karen Indoo, management information officer, at Barnardo's Scotland; and Nancy Fancott, policy officer at the Scottish Council for Voluntary Organisations.

Thank you all for your written submissions in advance of this morning's meeting. You will probably find this slightly easier than members of the first panel did because you sat in on their evidence and will have an idea of what we will ask you. You had a chance to rehearse your answers as you listened.

I start by asking whether the legislation is required or whether a voluntary scheme would be more appropriate. The previous panel was straightforward in its support for the legislation. Do you share that view?

**Jon Harris (Convention of Scottish Local Authorities):** When we were in early discussions about the legislation with the keeper, we suggested that the consultation should include a voluntary proposal to benchmark against the statutory proposal. We were keen to see this being

picked up through the best value 2 arrangements and the local area agreements, which do risk assessments for each of the local authorities, so that there would not be duplication. That option was not progressed. We would have preferred it to be included so that we could have measured whether the scheme could have been done on a voluntary basis.

**Claire Monaghan (Society of Local Authority Chief Executives and Senior Managers):** I apologise for not being here at the start of the meeting, which was due to traffic problems.

I completely agree with Jon Harris. I did not disagree with anything that I heard from the earlier panel on the benefits, efficiencies and reassurance to the public of proper public records management. What I did not hear was a compelling case for legislation at this time, particularly given the burdens on local authorities and the consequences that legislation could have for third sector organisations. A voluntary scheme could give you all of the benefits of legislation without legislating.

The word "collaboration" was used frequently, but collaboration can be generated much more willingly without a legislative rod, particularly with the potential for naming and shaming. I am not sure what benefits you would get from legislating as opposed to taking a softer route. When we consider the origins of the bill, and the Shaw report and the Kerelaw inquiry, no one would disagree that something needs to be done. It is clear that we need to take all reasonable steps to address the deficiencies that led to the problems and to avoid those deficiencies more generally in other areas that are not yet identified. However, we have a bill that is much more wide ranging than that, which is where the potential for disproportionality comes in. My instinct is that legislation—or at least the wide-ranging, disproportionate legislation that is represented by the bill—is not merited at present.

**The Convener:** The case that Mr Slater in particular made to the committee this morning was that he has no doubt that most of the people and organisations that would be affected by the legislation at the moment would be willing to engage voluntarily in keeping records. However, even with the best will in the world, human nature is such that, when other pressures and demands arise and require our attention, when the issue is no longer quite so high up our list of priorities and when the lessons learned from the Shaw report and the inquiry into historical abuse at Kerelaw are not so much at the forefront of policy makers' minds, our good intentions will sometimes slip. If we have legislation, that cannot happen, because organisations will always be required to keep those records.

10:45

**Claire Monaghan:** That is where the benefit of the link with best value and the risk assessment in the audit and assurance plans that are produced for councils comes in. If the aim is to ask authorities and public sector bodies to make progress in that respect, I should point out that, instead of creating something new and more wide ranging, the bill will simply extend slightly a mechanism that is already in place. I do not think that many authorities would respond to a voluntary scheme in the way that you suggest. Of course there is a theoretical risk of variance in the extent to which authorities and public sector bodies would participate fully but, by building all this into the best value 2 process, one could close off the risk of someone simply saying, "Och, I'm too busy to do that. I'll do it next week," when next week never actually comes.

**Mark Ballard (Barnardo's Scotland):** For Barnardo's and the other large service-providing children's charities in Scotland, the bottom line must be the welfare of children. We would support legislative or voluntary proposals of any kind if we were certain that they would improve the child's welfare, but we are concerned that the bill will not work towards that aim and act as enabling legislation. Indeed, it might well undermine our work in this area by creating a culture of anxiety, overcompliance and confusion.

All of us, particularly those in the voluntary sector, recognise the care sector's failings in this area, and we have taken great steps to transform how we keep and manage records along the lines recommended in various reviews, including the Shaw review, and are working closely with colleagues in local authorities, health and other public authorities to improve records management in a way that is centred on the principle of the child's welfare and the getting it right for every child model. The idea of having a single child's plan is one of the key ways of implementing better records management and having to adhere to a system of multiple record management plans that are all slightly different and all held by local authorities, health boards, central Government and police will distract our staff from the central focus on the child's welfare. As a result, we feel that the bill is centred not on standards or quality but on a compliance regime that we think will prove unhelpful to a service such as ours in the way that it is implemented at the front line.

**Nancy Fancott (Scottish Council for Voluntary Organisations):** I have a couple of more general points about the voluntary sector's engagement with the bill. In our submissions to the committee, we have expressed concern about the consultation process itself. The fact is that, having realised after the fact the bill's potential impact on

the sector, we have not been involved to the extent that we should have been in the debate over whether a legislative framework or a voluntary system will work. That said, the bill team has been incredibly generous with its time in working with us following the bill's introduction, and I do not in any way criticise its recent engagement with us. However, we are still struggling to get the whole voluntary sector to think properly about the bill's potential impact on us. Given that potential, the issue must be properly considered.

The other general point is that, if we go for a legislative framework, it will clearly apply significantly to the voluntary sector, but we are a different beast from the public sector. Our concern is that the bill, or any legislation, for that matter, must carefully consider the impact on our sector and the issues that arise with a piece of legislation that is designed to apply to the public sector but in practice affects our sector. There must be some recognition of the differences between the two sectors.

**The Convener:** Before we go on to the detail of how the bill will affect you, I will play devil's advocate. Is it not the case that if any Government comes up with any legislation that will place a new burden on local authorities, they will always argue against it and say that, in fact, they could achieve the same goal by another means and that the legislation is not required, and the voluntary sector will always say, "Our priority is the policy area that we work in and delivery to service users that we engage with, so any additional burden that you place on us will run counter to that." Will the bill really frustrate you and cause difficulties in the delivery of the services that your organisations provide, or is it just that it will give you something extra to do that you would rather not do if you did not have to, but it will not be the end of the world if you do?

**Jon Harris:** We are saying that we already have a legislative framework that assesses risk and drives improvement, so, rather than setting up another framework, that one could be used.

If we are not going to use the existing framework, we need to be much clearer on what the role of the keeper is in connection with this and how it fits with that of the other regulatory bodies, such as Social Care and Social Work Improvement Scotland. We do not yet have that sort of connection. Even if we do not go down the best-value route, we still have to address the issue of how the legislation fits within the regulatory environment, because we are currently not clear on that. We do not want people to be regulated by two different bodies on the same issue.

**Claire Monaghan:** In one regard it is not a new burden, because we have a responsibility to have

good governance, to have good housekeeping and to manage our records appropriately. The Freedom of Information (Scotland) Act 2002 has crystallised that for authorities and we have all become much better at it.

What is in question is turning another few pages and legislating in this particular area, which, as Jon Harris says, links into other areas, when the linkages and the potential impacts have not yet been fully bottomed out. On one level, it is not a new burden as such, but it is a new legislative burden on authorities. That is the issue, particularly given that the consequences for the third sector seem disproportionate to the problem that is being addressed.

**Mark Ballard:** On the wider question about the voluntary sector and legislation, I draw a parallel with the Protection of Vulnerable Groups (Scotland) Act 2007, which will be burdensome for Barnardo's but is legislation that is designed around the welfare of children and vulnerable groups. We accept that burden and we have lobbied for it, because we can see that it will advance the protection of the groups that we work with. That is an example of the voluntary sector lobbying for something even though it recognised that it would place a burden on the sector; however, that was the right burden because it was a well-designed burden.

I will hand over to my colleague Karen Indoo to talk about the unnecessary burdens that would be placed on an organisation such as Barnardo's. We are one among 45,000 voluntary organisations, but what we say will illustrate some of the issues for a voluntary organisation.

**Karen Indoo (Barnardo's Scotland):** I reiterate Claire Monaghan's point that we already have a record keeping burden—we already have a responsibility to manage and keep records appropriately. As an organisation, we are mindful of the failings of the past and have worked hard to put those right. We are engaged in a programme of continuous improvement, for which I am responsible in Scotland. Our organisation is committed to continuing to improve the quality of our record keeping and records management.

The organisation is concerned about something that I see every day. I work with 71 services across Scotland on their information management. We see the unintended consequences of legislation every day. One of the most frequent examples is the Data Protection Act 1998, which was intended to be an enabling act that would allow professionals to understand more clearly where they could and could not share information, and how they could best protect personal information. However, there is still a significant amount of confusion about that and, as it is framed, the bill is not sufficiently clear about the

standards to which we would be asking people to adhere.

Having 32 different local authorities with 32 different records management schemes could create further confusion that would lead to a much more risk-averse culture. In our organisation and others that I have worked with in the care sector over the years, professionals would become focused on ensuring that they are keeping those records appropriately. I can see the potential for front-line staff to be spending more and more time ensuring that they are meeting all the various requirements of the records management policies, and less and less time doing direct work. That would lead to poorer outcomes for the vulnerable people to which the care sector is providing services, rather than improving outcomes, which is the intention of the bill.

Although we are not necessarily saying that legislation is not required, we are saying that, as it is framed, the bill is wrongly focused.

**Nancy Fancott:** Risk aversion is one of our central concerns. The bill is not happening in a vacuum; it is going to be applied in a cultural, political and operational context. I do not think that anyone would deny that the voluntary sector has a culture of risk aversion that, unfortunately, distorts the original intention of a lot of legislation.

The other point is that the legislation and the records management plan may all seem to be quite clear, reasonable and proportionate at a senior level, but how things play out operationally as they filter down through a public authority's structures means that the application of the legislation can often get quite distorted. The culture of risk aversion plays a significant role in that distortion. I guess that that is what we are concerned about.

It is not about scrapping the bill entirely but about crafting it so that it takes the practical realities into consideration and provides a framework that is a bit clearer and more defined, so that it limits the potential for that kind of distortion to occur as the practical application of the law plays out.

**The Convener:** This is probably a good point at which to allow Claire Baker to ask her questions about contractors and obligations.

**Claire Baker:** First, it might be helpful if the panel could let us know how the current contractual arrangements for records management plans operate between contractors and local authorities. I am looking for the third sector's point of view as well as that of the local authorities. What are the typical arrangements for that at present? How will the bill change those arrangements?

11:00

**Karen Indoo:** Barnardo's has a four-nations approach to records management—we have a comprehensive records management policy in place. When we tender for new services, we tend to make a submission to the local authority for its approval, and we negotiate on whether there is a need for any additional policy relating to each individual contract. Our records management policy has usually been more than sufficient—any change to it would be very unusual.

We are concerned that, if every authority that we contract with has a slightly different records management policy, we need to tie that up with our organisational policy and to manage it across all our services. It is unusual, but our Scotland-wide advice and support service works with about 12 different public authorities. We will potentially work with a large number of different records management plans, and we will have to balance those needs within quite a small team. That is just not workable, so we said to the keeper of the records at an early stage that there is a need to work towards a consistent records management policy across Scotland.

I echo the views that the Information Commissioner expressed earlier: if we are considering a records management plan for Scotland, we should look towards having a single plan. I recognise that it is difficult to achieve that with a high level of consistency yet in a way that still allows authorities to manage their records in a manner that is appropriate to their local context, but I suggest that we should be working towards that.

**Claire Baker:** Is the way in which Barnardo's engages with local authorities typical? Would we expect there to be discussions about what kind of record keeping organisations have?

**Jon Harris:** We met the keeper and the minister yesterday, and we are willing to work together to address some of these issues. That means examining best practice, although not in isolation—we need to involve the third sector and the private sector in the process. That would send the right message: that we can work on record keeping in partnership—and the language that we use should be that of partnership.

That is not to say that we will not achieve a resolution if things do not go right. If the best-value test is failed, there are consequences. Let us come at it from a context where we all have something to offer, through our knowledge and through how we work in practice. Let us use that and examine the guidance, the best practice and the evidence on costs and so on. That would be of considerable value.

**Claire Monaghan:** One of the key issues is getting a proportionate response and ensuring that what comes out of the process is fit for purpose and appropriate. The current arrangements vary hugely among contractors, depending on the contract and on the situation. When contracting with an organisation, if that organisation's approach to record keeping is relevant, it should be taken into account under due diligence as part of the contracting process.

Comments were made earlier about what the bill does with regard to responsibility resting with the public body, but to comply with that responsibility it is necessary to push the record keeping on to the contractors. That is right and proper in relation to the care of vulnerable children and other vulnerable people, but not in relation to everything else. That is where the disproportionality potentially arises. The founding principle here has to be the protection of young people and other vulnerable groups. Where that is the relevant factor, that approach with contractors regarding record keeping is absolutely appropriate but, because the bill is so broad ranging, it applies across the board in other contracts. That is where the unease arises.

**Nancy Fancott:** I echo that point regarding concerns over proportionality. The bill says that public records are anything and everything—any kind of information that an organisation holds in connection with its operation of a public function. We are talking about an incredibly broad scope.

The heart of our concern is that that will mean that all sorts of voluntary sector organisations that are not involved in working with vulnerable children or vulnerable groups in general will all of a sudden—theoretically, anyway—have this obligation. I do not see how that is a proportionate response to the original problems. Obviously, the SCVO and other intermediary national voluntary sector bodies do a tremendous amount of work with the voluntary sector as a whole on issues of governance and development, part of which concerns the proper management of records, which is a key element of a properly run organisation. However, having that imposed from the top down in a context in which public authorities might misunderstand the scope of the bill, because of its broad drafting, makes us very concerned.

**Claire Baker:** When we took evidence from the bill team and the keeper, we raised these issues with those witnesses. The policy memorandum states that the bill

“does not impose new and unreasonable burdens”

on contractor organisations, and the keeper spoke of the concerns being based on

"a misinterpretation of the relationship that voluntary sector bodies have with the local authority."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 8 December 2010; c 4447.]

Although they do not sound particularly comforting, I think that those statements were meant to provide reassurance that the bill will not impose such burdens and that part of the issue may be local authorities' interpretation of the bill. The evidence that we received from COSLA stated that local authorities think that it is reasonable to expect the burdens to be passed on.

There seems to be a strong difference of opinion on how contractors and third sector organisations will be affected. I appreciate that you are having discussions with the bill team on some of the issues, but how do you respond to the comments that the bill team and the keeper made to the committee?

**Mark Ballard:** For the purposes of clarification, the bill team recently put up on the National Archives of Scotland website a list of frequently asked questions from the voluntary sector. I will quote one of them as an example of a useful clarification. The fourth question is, "What is a record?" The response is:

"For the purposes of the bill, a 'record' is anything in which information is recorded in any form. 'Public records' are all records created in carrying out the functions of the public authorities listed in the Bill, whether directly by a public authority or through a contractual relationship with a voluntary organisation or business.

All these 'public records' would need to be covered by an authority's records management plan. A small proportion of these 'public records' may need to be retained by the voluntary body or transferred to the commissioning authority for long term retention or preservation under the terms of the Records Management Plan."

My feeling is that there is, at times, insufficient recognition by the bill team of the situation that voluntary organisations face. As Karen Indoo has described, we have a service that would have to work with a dozen different records management plans. Our staff would have to check all the information of any kind that they created as a result of carrying out that function against those records management plans. That would be a major burden. The situation is quite different from that in which a service is delivered by a local authority, in which staff would have to be mindful of only one records management plan—the local authority's own. At a time when an increasing number of contracted services are being delivered by voluntary organisations or by private sector organisations, there is a failure to recognise the difficulties of translating to a voluntary organisation what was a logical scheme for a local authority, a health board or a police board.

The second example that I will give is a question that comes to me at Barnardo's regarding a different piece of legislation. It is the question whether parents are allowed to take photographs at pantomimes, children's nativity performances and things such as that. No matter how many times Kevin Dunion says that it is fine for parents to take photos of other people's children at primary school Christmas nativity shows, there is still a concern about that among headteachers and there are still examples of that being banned in schools on the basis of a complete misunderstanding of the legislation.

If Kevin Dunion were still here, I am sure that he would tell you how many times he has had to make that point, but the legislation is still not interpreted in that way on the ground. Because of the breadth of what is covered, there is a danger of misinterpretation, which creates a potential burden for voluntary organisations.

**Nancy Fancott:** The bill team is placing a lot of emphasis on the importance of the model records management plan and the influence that it will have on the development of the individual records management plans that all public authorities will have to establish. It is a bit difficult for us to assess fully the potential impact, because we do not know what the model records management plan looks like, how public authorities will respond to the guidance that it provides and to what extent they will follow it.

There is a further layer. Once each public authority has established a plan, how will that translate in contractual terms to its relationships with every voluntary sector organisation and the relevance of those organisations keeping records for their type of work? It is tricky for us to figure out exactly how things will play out. We are concerned that, in some cases, there has been a practice of overzealousness in relation to previous legislation. Rightly or wrongly, local authorities want to protect themselves, so they may take a proactive approach that may be counterproductive.

**Karen Indoo:** Within the business and regulatory impact assessment that the keeper has produced, it is stated clearly that at present there is no way of determining what the costs and implications for the voluntary sector will be, because there is such a wide range of organisations in the sector and currently we do not know the status of each of those organisations. That is at odds with the evidence that the keeper has presented to the committee.

**Claire Monaghan:** One of the consequences of taking a legislative approach is that authorities are more likely to be a bit more cautious, although I am not sure that I would use the word "zealous". If authorities are required to do something by legislation, they will be very careful to ensure that

they comply with that in every sense. That is more likely to push us towards overinterpreting the requirements and, where we contract, especially with the voluntary sector, placing burdens everywhere external to the organisation. It goes back to the dilemma of whether to take a legislative approach or to have a voluntary scheme. A voluntary scheme would allow more development of the approach on an iterative basis. That would enable us to see where the tension points are and allow them to be explored. If it did not work, you could legislate, but a legislative approach is more likely to lead authorities to be extra cautious.

**Alasdair Allan:** How do you think that the bill would work in practice? Given what you have just said, I will put the question in another way. Why do you not think that it would work in practice? If it were to work, what would it have to say that would nonetheless deal with some of the failings by local authorities that the previous panel identified?

**Jon Harris:** One issue that we have raised with the minister and the keeper is that we do not know the risk assessment or the costs of developing records management plans. We have been given a commitment that there will be guidance. Rather than have individual sectors speak to the keeper, I am keen for us to begin to look at the issue collectively. We need to get a feel for it, because every time we come to it people ask what the costs are, how we will assess risk and how we can ensure that the bill does not compromise our position in relation to other regulatory bodies. All those issues remain. COSLA is willing to address them and to be part of that process, but that has not happened yet. Perhaps we need to do that before stage 2. We have been asked about such issues—about what the proposal will mean in practice, how it will be measured and how it will fit with all the other frameworks that we must deliver.

11:15

**Karen Indoo:** I will suggest three key points that would make the bill work much more effectively. The first and most important is that we need to tighten significantly the definition of a public record. As it stands, it is so broad that it is all-encompassing—it could mean anything that we ever produce. That needs to be balanced with future proofing legislation and thinking about how the situation might change, but the definition of a public record needs to be tightened significantly.

Another point that goes a long way towards making the bill more effective relates to the fact that, although developing practice-based standards legislation is fantastic, it does not on its own improve practice. The bill does not set out clear standards, but we need clear standards in the bill to which practitioners are asked to adhere

and a means of inspecting compliance with standards, preferably via existing inspection agencies and with the keeper's contribution.

We need to be mindful that significant legislative developments have improved record keeping since the Shaw report was issued. The Freedom of Information (Scotland) Act 2002 and the records management policies that are part of that act have significantly improved record keeping in the public sector and, by extension, the private and voluntary sectors. We need to think more about how the Scottish information commissioner and the keeper could work within existing legislation and a potential extension of that to improve record keeping and how they could use legislation, processes and policies that are in place, instead of additional legislation that is created.

**Mark Ballard:** Everything that Karen Indoo has described links in with what Jon Harris said. As an organisation, we strive continually to increase the quality of the records that we hold and to maintain a balance between openness and the appropriate checks for confidentiality. We work to do that in conjunction with partners in local authorities, national Government and health boards.

The conversation needs to centre on how we improve quality. All sides are willing to engage in that debate. However, as Karen Indoo said, the bill starts from a slightly different place, which might not help in ensuring that the debate is always about the quality of records and, by extension, the welfare of children and vulnerable groups. We are keen to be part of that conversation with Government partners, because that is part of our mission and their mission.

**Nancy Fancott:** Implicit in what Mark Ballard says is the fact that the bill and the framework will not of themselves improve quality; resources that are put into that will improve quality. Our concern is that another regulatory framework is being created that will have an impact on the voluntary sector and that it is not at all clear that provision will be made for resources to allow the voluntary sector to step up to the plate when that is necessary. In the current financial climate, and given the stresses on local government in particular, we will not win the fight when we ask for additional resources for small and medium-sized voluntary sector organisations to pay proper attention to such a framework. That will be a difficult argument to make.

I am concerned that, even though that may not of itself push public authorities towards dealing more with large voluntary sector organisations that may have more resources, it will create one more pressure on them to do that. By contrast, we think that it is important to encourage a range of voluntary sector organisations to become engaged in providing public services. We need to think



carefully about whether such a pressure would be one of the unintended consequences of imposing such regulation without considering the resource implications for everyone, not only directly affected public authorities.

**Alasdair Allan:** The previous panel of witnesses seemed to feel that the power in the bill for the keeper of the records to name and shame organisations would be a useful backstop. Is that the current witnesses' view?

**Claire Monaghan:** It depends. If you are going to legislate, there needs to be some sanction for not complying with the legislation. It is not a particularly strong sanction to name and shame an organisation, because most authorities will not be driven by the prospect of being named and shamed.

**Alasdair Allan:** Are they shameless?

**Claire Monaghan:** They should be driven by the prospect of improving their records management because of the potential business benefits and the consequences to service users.

In one regard, the provision is not particularly problematic. The issue is what happens up above. Is legislation the right approach and is the broad-ranging approach in the bill right? If you are going to go down that route, the power to name and shame is not a huge issue.

**Jon Harris:** We can consider the matter in terms of best value. At one point, best value was about the punishment for not doing something, but now it is about a common commitment to deliver improvement. In records management, the focus should be on doing that before we name and shame.

What if a particular council that the keeper had named and shamed challenged that sanction in the courts? We do not know what the standards will be under the bill and we have not evidenced the cost of implementing it. We have not examined how risk assessment will work and how the bill sits with all the other regulatory functions that we have. We would need to cover a range of issues before we could say what we could do with a council or other body if naming and shaming did not work. We have a clear idea of what that means in practice. We can name and shame, but that does not take us far.

**Karen Indoo:** I agree that naming and shaming is not a particularly strong sanction, but there was a lot of discussion this morning, and there has been a lot of discussion with the keeper, about the bill being supportive. It is about working in partnership and continuous improvement in quality. We need to focus on those aspects rather than naming and shaming.

How do we work in partnership to learn, individually and from one another, in order to improve practice, which will improve outcomes for the people who use our services? If we go down the legislative route, sanctions will be needed, but a power to name and shame is quite toothless. It also feels a bit contrary to the bill's stated intentions on partnership working and improving quality.

**Mark Ballard:** Further to that, as we have highlighted, one of our concerns about the bill is that a culture anxiety, overinterpretation and gold plating may arise.

We are concerned that the fact that the keeper may come after a public authority with a big stick if it does not keep to its records management plan may lead to a culture of local authority officers overextending the bill to ensure that their backs are covered, because nobody would want to be responsible for the local authority being named and shamed. Although a records management plan may be appropriate at local authority level, the power to name and shame may drive the interpretation of that plan in a contractual relationship to go beyond what is needed and create unnecessary burdens because of the fear of failing to comply.

**Alasdair Allan:** The thing that I cannot quite reconcile is that Mr Ballard talks about the name and shame power as a big stick, yet others say that it would not be a meaningful threat. Which is it?

**Mark Ballard:** As Karen Indoo, Jon Harris and Claire Monaghan said, the reality is that, at local authority level, it is not necessarily a particularly strong sanction. I am talking about the perception of that power at officer level and contractual level, which might aid in the misinterpretation of the legislation. I agree that the relationships between local authorities and the keeper are different. So both statements are true, because we are talking about the perception and interpretation by different groups of individuals in different places in organisations.

**The Convener:** Before we move on to the final question, I ask Barnardo's whether any local authorities by which it is currently contracted have indicated that they require to have a dialogue with Barnardo's about changing the current record keeping system as a result of the proposed legislation.

**Karen Indoo:** Not to our knowledge. As yet, none of our service managers or operational assistant directors has been approached to have such dialogue with local authorities.

**Claire Monaghan:** A consequence of the truncated consultation period is that awareness of the bill among local authorities is generally low.

**Karen Indoo:** That is possibly true in the voluntary sector, too.

**Dave Thompson:** We have touched on costs. The previous panel took the view that poor records management can be expensive and that, although a bit of change will require additional costs, there will be long-term savings. The keeper argued that

“Good records management is not free, but it is cheaper than bad records management or no records management.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 8 December 2010; c 4453.]

Of course, the contrary view is that there will be extra costs, and we have heard about some of them. COSLA has argued that the bill might have a

“disproportionate cost to all public bodies and third sector partners”,

because of the wide definition of the term “public records”. Karen Indoo elaborated a wee bit on that. Who is right on that?

**Karen Indoo:** It is not as simple as right or wrong. As someone who is responsible for information and performance management in our organisation and as an information professional, I agree with the keeper that good records management is cost and business effective. It supports sound business decisions, improves quality and leads to continuous improving and learning. So I completely agree, as does Barnardo's, that we need to continue to improve our record keeping, records management and management of information more generally to enable us to deliver the best possible services.

My personal view is that the bill as framed will not necessarily support that, because it is not specific enough. For an organisation starting from a low base, costs will be involved in getting where it needs to be. Across the voluntary sector, there are many different organisations of different sizes and in different places, so the issue is that we have absolutely no way of knowing what the overall cost would be. For Barnardo's, I do not know how big the cost would be. We have a good records management policy that currently fits with all the policy and legislation in the four UK nations, but we have no way of knowing how it will fit with the records management plans that are to be developed by the public authorities with which we work, or what the cost of that will be. That is our big issue at the moment.

11:30

**Claire Monaghan:** It is absolutely correct to say that, in practice, poor records cost you more money than good records, given the quite high level of business and service inefficiencies that can flow from that. However, the uncertainty about

what is required to deliver the bill opens up further uncertainty about costs. Moreover, if all this is done on a legislative basis, compliance will have to happen at a very pressurised time for local government, and the provisions cannot necessarily be introduced incrementally. As a result, you would remove the option for authorities to implement the legislation in a planned and measured way that fits in with their own financial cycles. As I said, I do not think that any authority will disagree that good records management is efficient and cost effective but there is also uncertainty about what the legislation will mean for contractors and the adjustments that will need to be made to existing systems to ensure full compliance.

**Dave Thompson:** Could that uncertainty be resolved simply by changing the definition? Would it be possible to refine the definition and make it more specific?

**Claire Monaghan:** This is a really complex web of issues and I am not sure that we can resolve matters simply by fixing one element. For this to work, all the elements will need to be examined and connected together sensibly. I am sorry that I cannot give you a more helpful answer.

**Mark Ballard:** SCVO has suggested that the bill be withdrawn to allow our sector to be consulted further. Barnardo's is on this particular panel because, as a result of our work with survivors of historical systemic abuse, we became aware of the bill quite early on and have been involved in the process. As the largest children's service-providing charity in Scotland, we are in quite a different situation to that of other organisations, and we have benefited from the opportunity of discussing some of our concerns with the bill team. However, that situation has not been replicated across the voluntary sector. I do not know what engagement there has been with the private sector, which, as contractors, will also be subject to the bill's requirements, and I am very aware of the tight timescale for getting legislation through before the Parliament's dissolution.

The area is complex and there are many different organisations that have different perspectives on it. We are very keen to work with our public authority partners, including COSLA and the health boards, as well as the Scottish Government and the bill team on this issue, but I am concerned about the complexity of the issues, how the bill will affect organisations and that very tight timescale for resolving matters. I can speak for Barnardo's because, given our work with children and the bill's roots in the Shaw report, there are particular issues of interest to us; however, the issues for other organisations, particularly business organisations, might be entirely different.

**The Convener:** That concludes the committee's questions. I thank the witnesses for their attendance and evidence.

11:33

*Meeting suspended.*

11:43

*On resuming—*

## **Subordinate Legislation**

### **Regulation of Care (Social Service Workers) (Scotland) Amendment Order 2010 (SSI 2010/442)**

### **Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No 2) Amendment Regulations 2010 (SSI 2010/443)**

**The Convener:** The second item on the agenda is consideration of two negative Scottish statutory instruments. No motions to annul have been lodged on either instrument and, at its meeting on 21 December, the Subordinate Legislation Committee did not highlight any issues for our attention.

If members have no comments on these instruments—they are straightforward and simply extend a particular scheme—are we content to make no recommendations to the Parliament?

**Members** *indicated agreement.*

## **Decision on Taking Business in Private**

*Meeting closed at 11:45.*

11:45

**The Convener:** The third item is to decide whether to consider in private at future meetings the committee's draft report concluding its work on local authority funding of education and children's services. This follows the committee's decision on 22 September to compile a short report to conclude the scoping exercise. Although it called for the report, the committee has not yet decided whether to publish it. Are members content to consider the matter in private?

**Members** *indicated agreement.*

**The Convener:** That concludes the meeting.

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