



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 19 January 2011

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2011

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:
licensing@ogps.gov.uk.

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
RR Donnelley.

Wednesday 19 January 2011

CONTENTS

	Col.
PUBLIC RECORDS (SCOTLAND) BILL: STAGE 1	4541
DECISION ON TAKING BUSINESS IN PRIVATE	4574

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
2nd 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:

Fiona Hyslop (Minister for Culture and External Affairs)

George MacKenzie (National Archives of Scotland)

Lorna Patterson (In Care Survivors Service Scotland)

Tom Shaw (Scottish Government Directorate for Health and Social Care Integration)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 2

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 19 January 2011

[The Convener opened the meeting at 10:00]

Public Records (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): Good morning, and welcome to the second meeting in 2011 of the Education, Lifelong Learning and Culture Committee. We have received apologies from Christina McKelvie, who is unable to join us, and we are joined by Dave Thompson, who is Ms McKelvie's substitute on the committee. I remind all those present that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

Under agenda item 1, we continue to take evidence on the Public Records (Scotland) Bill. Our first panel of witnesses represents the interests of survivors of childhood abuse. Members will recall that recommendations arising from the investigation into historical abuse gave rise to the bill. I am pleased to welcome Tom Shaw, who conducted the historical abuse systemic review, and Lorna Patterson, who is the project manager for the in care survivors service Scotland. I thank you for your attendance today. *[Interruption.]*—I am not sure who has their phone on, but I ask that it is switched off, please.

Both witnesses have been involved in this field for some time. Perhaps it would be helpful if you were to give the committee some information on why you believe that the bill is necessary and, in particular, on the difficulties that the survivors of childhood sexual abuse have experienced in accessing their records.

Lorna Patterson (In Care Survivors Service Scotland): The in care survivors service Scotland has worked with about 20 per cent of the client group who have accessed their records; we are talking about more than 80 people so far. Of those 80 people, survivors are not looking to access their records from only one place. As you can imagine, some records might be held in social work and there might also be medical records, school records and so on.

We believe that the bill is necessary because, in our experience of supporting survivors, records have, in the main, not been available to them. Typically, there will be either no records at all or very limited records, and there might just be a

chronology. When survivors access and receive their records, it causes a lot of distress to them if some records are missing or there are no records at all. Survivors may have gone into care when they were very young. They have no idea who their parents are and why they went into care. Generally, they cannot remember, often because of the trauma, what happened to them, how they did at school and what events they participated in. That all forms part of a very important identity for survivors of abuse, so we believe that legislation to improve the way in which records are managed is important to fill in gaps, fill in missing pieces of the jigsaw and give the survivor a sense of who they were as a child.

As Tom Shaw has said previously, people often do not access their records until they are in their 30s or 40s. They may have left care at 16 and become homeless, and they may have survived in various different ways. It is not until they become older that they start to wonder about their time in care. They may have memories and they may talk to their peers, who talk about schools that they have been to, whereas survivors do not know what schools they have been to or who people were. The historical side of things, and documenting the story of someone's life and what happened to them, is therefore fundamental.

Tom Shaw (Scottish Government Directorate for Health and Social Care Integration): I echo what Lorna Patterson has said. Five years ago, I was asked to conduct a review of the legislation and provisions that were designed to protect children in care from 1950 to 1995. To do that, I felt that I had to look at records and, while it was possible to research the legislation and establish what it was and what its provisions were, we needed evidence of how things had worked in practice. Therefore, we contacted all the local authorities and all the voluntary organisations and institutions in Scotland that had provided residential care over the period concerned. We did that as far as we could, given that there was no central database of all the providers; that was another problem that we faced at that stage.

As we made our inquiries, it became clear that there was a good deal of confusion about what records existed, where they were, what they contained and, indeed, how they might be accessed. Although I am concerned not to be insensitive in saying this, in some measure our experience in trying to find the records reflected—I think—something of the experience of the former residents and survivors.

There were other issues around those records that we found, because they indicated evidence of poor record keeping. That is not part of the ambit of the bill, but I am confident that the bill's requirement for the proper management of records

and for the planning of that management will contribute to the raising of standards in the keeping of records.

One of the biggest problems—Lorna Patterson echoed this—for a former resident or survivor who is looking for their records is being told, “This is all we’ve got.” Very often, when they look at it, they do not know whether, in fact, that is all that exists. Secondly, if that is all there is, is it all that there ever was? Have things been removed, destroyed or lost? That creates a huge problem for individual survivors, who feel very discouraged and disheartened whenever they see incomplete pictures of places that, after all, even given their experiences there, were their homes. Many people who have not been in residential care find it difficult to identify with that problem. We all had a family home, with all that that meant to us. However, for individuals who lived in an institution for 10, 14 or 15 years and sometimes longer, that was where their home was. They look in the records for evidence of the sort of thing that a family would have, such as photographs, letters and correspondence, as well as for the official contents.

Our review identified a range of weaknesses, gaps and inconsistencies in records, which it seems to me the Public Records (Scotland) Bill has the potential to bring to an end. Former residents also face the difficulty that, depending on where they lived in Scotland or where they were cared for, different approaches were taken to managing and planning records and, indeed, to what is held in the files. Some people were in care in a range of places; they were not in one place for the whole time. As a result, they get different responses to their requests in different authorities and settings. The bill has the potential to introduce, appropriately, consistency of standards and practice across Scotland, which would be in the interests of future former residents of care, of whatever form that care might be, as well as of those who were in care in the past.

The Convener: What was the most important finding of your research? How will the bill address your findings to ensure that the mistakes that we made for that period in time are not repeated and that people who grow up in care do not find themselves in the same difficulties in the future?

Tom Shaw: One of the key findings was that it is absolutely essential to listen to people, take them seriously and respect them, and to give them the opportunity to say what they want to say and ask what they want to ask about their past experience.

Another fundamental outcome of our review is the need for those who make records to recognise that it is not a bureaucratic chore but, in fact, a proper way of recording the life experience and

circumstances of an individual and that it becomes, in due course, an invaluable means of monitoring and evaluating the effectiveness of the provision that is being made. How else can an internal assessment of that effectiveness be performed if you do not have records giving examples of the outcomes of the policies and practices that you had in place?

Too often, I am afraid, we found little evidence of records being regarded in that way; very often, records were aggregated into large volumes of documents and were regarded as little more than a storage problem. Decisions would be made about where to put them or how to get them off the premises. Facilities managers might decide that records had to go into secure storage somewhere. That is fine, from my lay point of view—provided that it is known what the contents are, that the records have been properly catalogued and classified, and that people have a means of getting access to them when required.

We have to engage with survivors in order to understand what is important from their perspective. We must then take heed of that and allow it to inform policy and practice. I see records as valuable memory banks for the individuals, as valuable means of monitoring and evaluation for the institution or organisation, and as invaluable resources for the evaluation of policy and practice in local authorities, in Government, in university research or wherever. They are also important in the understanding of the social history of a nation.

Lorna Patterson: As Tom suggested, a few key points have come out of our experience of helping people to access records from various organisations. When a person is in their 40s, 50s or beyond, their records have obviously been either archived or destroyed. It can be very difficult to find out where records have been archived. Someone might phone an organisation—voluntary or statutory, the result is the same—and find that no one seems to know what might have happened to the records, or where they might have been archived. It is very important to have documentation on where records have gone to.

Survivors often tell us that their record was about them and for them, so they should have had a choice over what was kept or given to them. Things such as photographs or records of family visits may have been destroyed by a worker in the organisation but survivors are saying that it was their information and, if you like, a photograph of their life. They would have liked to have the option of keeping their records before someone decided to destroy them.

Another important point that we have found is that it does not seem as if the child’s or the young person’s views have been recorded; it is often the professionals’ views that have been recorded—

their views of the child's behaviour. With survivors of in-care abuse, it might be documented that the child has been delusional, but there will be no information on what the child has said, why the child has felt angry, or why the child has had distressing behaviour. A huge amount of information is missing. As Tom said, others can turn to their families and ask, "What was I like when I was five? What was my first day at school like?" None of those things is documented; there is a massive gap.

I re-emphasise that the paper trail is hugely important. Many of the survivors we work with have not been in just one care home; some have been in at least 18 homes, or in a secure unit from the age of four. A question would arise instantly in that person's mind: "Why did I go to a secure unit when I was four years old?" There are no answers.

10:15

The Convener: Mr Shaw said that you wanted the bill to ensure that the keeping of records is no longer viewed as a bureaucratic chore. That is a rather interesting perspective. The committee has already heard evidence from some of the key stakeholders from the voluntary sector and local government, and I am not convinced that they yet understand that record keeping is not just a bureaucratic chore. How do we ensure that the new legislation does not just change how people go about doing their job—it is not as if those in the organisations concerned do not want to assist people in doing so—but instigates a culture change, so that it is not just a matter of ticking boxes and keeping records? The importance of information to individuals also needs to be recognised.

Lorna Patterson: It is a matter of getting home the point about the impact that records can have. When someone is writing or typing something about an individual, that might indeed be part of their job and their company policy, but a way should be found for them to connect with survivors and to understand the impacts. Various organisations such as the in care survivors service and the Scottish Government could play a part in spreading the message about the impact on people of full records not being kept for them.

Tom Shaw: I can fully relate to that concern. The cultural issue is the big problem—it is difficult for legislation to establish a culture in practice, because that is the responsibility of the professionals and the providers who operate within the terms of the legislation. That is part of what they are accountable for.

The bill seems to have a real strength, in that it is truly enabling. It is written in such a way as to

allow a developmental process, which involves the providers, the local authorities and anyone else who is in the business of making records to be part of the development. The annual records management plan and its internal review, and its subsequent external evaluation by the keeper, form an iterative process. Over time, that allows the prospect of continuing practice improvement. It allows people better to understand the nature and purpose of the records. The best way of persuading someone that a record is worth making is to demonstrate to them that it is used, and used for a purpose that benefits the person who receives the service, as well as the person who provides the service.

The issue is not just one of survivors and former residents; it is also about the people who deliver the services. It is vital to have a bonding of identification with the purpose of keeping records. Local authorities and others have a big responsibility to continue to work at that. It involves developing an understanding of records among staff and highlighting the use of records by staff for the purposes of reporting in due course to the Parliament, not least, about how well investment in the sector concerned has been delivering.

Elizabeth Smith (Mid Scotland and Fife) (Con): The committee's focus is on deciding whether we need new legislation. You have both made a powerful case this morning as to why you think we should proceed. Other groups have put it to us that new legislation is not required and that, if we ensured that the existing legislation worked properly, there would not be a need for any more. Can you give us an example of a loophole or a way in which the existing legislation does not work, whether that involves freedom of information or some other problem with the existing law?

Tom Shaw: I can talk about problems that we have faced whenever we have tried to get information about records. Our initial inquiries did not even involve asking for records, in fact—they were requests for information about what records existed. We sent a questionnaire to every local authority and voluntary organisation. In the majority of responses, replies to various parts of the questionnaire were, "We don't know," "We haven't got that information," or "We don't know what's in those records."

The researcher who worked with me visited several archives, stores and other locations where records were held. I do not want to be melodramatic, and one instance does not necessarily prove the case, but on several occasions, my researcher was taken to—it sounds Dickensian—dusty storerooms where cardboard boxes that appeared not to have been opened for a long time sat. Whenever people were asked

what was in the boxes, the answer was in effect, "We don't know—would you like to have a look?" I do not want to be melodramatic but, strictly speaking, somebody who is undertaking a research project should not be given free access to have a look. Issues relate to what the boxes contain. If the records are personal, they are private and confidential to the named individuals about whom they are written.

In that way, existing practice has failed. We could say that, in the best possible circumstances, all the work would be done, but it has not been done. My major concern is that the longer it takes to do it, the more records will be lost and the more people who never access what is held on them will pass through the system.

Elizabeth Smith: In your opinion, was the situation unsatisfactory in more than half the institutions that you surveyed?

Tom Shaw: Yes—arrangements were unsatisfactory in more than half the institutions.

Elizabeth Smith: I will take up the convener's point that, although we can have all the legislation in the world, if best practice is not followed, issues can remain. What needs to happen for a better culture of communication to be developed?

Tom Shaw: That goes back to what the record that is being kept is for. What is it designed to do? Is it designed to have just a single purpose—to have something on the record? Alternatively, is it part of the collection of information that will allow an overview to be taken over time of aspects of provision and outcome, which can inform decisions about changing practice or provision?

The question is difficult, because a record must be for an individual—such as a former resident—a fairly comprehensive description of what they experienced. I will illustrate that with an example. Some people vividly remember being punished. In its time, such punishment was not necessarily outside the law, but the law required the punishment to be recorded. We were frequently unable to find the punishment books, which would be expected to be part of any backlog or archive that people wanted to keep. That is a very big issue for a former resident, who will ask why the book is not there and what is being covered up, although the reason might be poor practice, carelessness, ineptness or casualness—who knows? Many reasons might apply, but we do not know the reason, because the books are not there.

Elizabeth Smith: I say with respect that that is what happened in the past. I am driving at the fact that, in some people's opinion—perhaps not yours—more recent legislation has improved the situation. You still argue that we need the bill because arrangements are unsatisfactory now.

Tom Shaw: I argue that the bill will close the circle. It will acknowledge and respect the other Government legislation on what goes into records and on access and ownership of records, but it will recognise that records have not been collectively managed in an agreed plan to agreed standards that ensure that the same approach to keeping records is taken in every provider's domain.

Alasdair Allan (Western Isles) (SNP): From hearing your evidence, I suspect that committee members will be of one view—that some pretty terrible failures of record keeping have occurred in the past. How do you respond to evidence that we have received on proportionality? Barnardo's and others have put it to us that some measures in the bill might represent an undue burden on smaller organisations. What is your view on those concerns?

Tom Shaw: As I understand the terms of the bill and the way in which it will operate, if it is implemented, there will be an opportunity for engagement with the providers in the development of the scope and nature of the model records management plan that would be made available. That will allow organisations big or small to engage with the keeper and the National Archives of Scotland in debate, discussion and decisions about how the plan can be shaped in a way that takes note of whether those are real and genuine concerns.

The bottom line is that the organisations should be keeping the records and managing them anyway. In that sense, it is not an imposition; it is, rather, a reduction in the optionality whereby people are allowed to decide whether to do it. The bill will make it an obligation to which people can be held accountable. As I understand the terms of the bill, the nature, detail and content of the records can be agreed, developed, managed and moderated over time.

Lorna Patterson: There is an obligation on organisations to keep records that are useful to them, bearing in mind the fact that a person on whom records are kept may come along and read those records. I have worked in both small and large organisations and my personal view is that the process is not laborious. It is part of the care that is offered to a person when they are provided with a service.

In terms of culture, the obligation to meet policies is one thing but the attitude of staff is another. I believe that taking accurate, useful notes and recordings about a person is part of the care package. I sometimes worry that people are taking records just to keep themselves straight, which is understandable, when there is someone else at the end of the process—a child, young person or vulnerable adult. It is not about keeping

records just to tick a box; it is about keeping records for a purpose.

Alasdair Allan: The evidence that we have received has shown more consensus on the need to change the law as it relates to your sector, dealing with vulnerable children or adults, than on the need for a record-keeping regime that would apply to other sectors. I do not expect you to comment in detail on other sectors, but how do you respond to the criticism that one size does not fit all—that other areas of public life should not be subjected to the new legislation on records?

Tom Shaw: I very much appreciate your acknowledgement. I am not an expert in every field of public service delivery. However, I understand the bill to be written in generic terms that allow interpretation and the development of the records management planning process in a way that takes account of the nature and character of the service that is involved.

I will give you the nearest that I can to an example that we came across of things that were not simply in the field of child care. Whenever we were tracing, the experiences were reported to us by some former residents, and one of the things that they spoke about was running away. They were often picked up by someone else in the community—a policeman or a neighbour who understood where they had come from and how to get them back there. Whatever the situation was, we thought that we might be able to trace records of where the children who had run away had been found. However, we faced the problem that there appeared to be difficulties in managing the records regarding the children. For example, we asked for records on aspects of the children's health, which were held separately, and there were difficulties in accessing that information.

I do not want to exaggerate our insight into that, but we felt that there was evidence of the need for better retention schedules, records management planning and understanding of the nature and purpose of the records across sectors, not just within the sector on which we had a specific focus.

10:30

Claire Baker (Mid Scotland and Fife) (Lab): I want to pursue the issue of record keeping in the third sector and in other organisations whose services are contracted to local authorities. We have talked about the concerns that have been expressed by the sector. It is not so much that people do not recognise the importance of record keeping—a lot of work has been done in recent years and there has been a huge improvement in the records that are kept, but the main concern is that they might have to change how they currently keep records. They feel that, although they have

very good record-keeping systems that have been approved by the local authority with which they have a relationship, if that local authority introduces a different RMP they might be required to change their record keeping. They feel that there might also be difficulties if they work with several local authorities—a number of organisations now have multiple contracts. It has been suggested that there should be a single or common RMP, rather than the flexibility that the bill allows. Do you have a view on the concerns that have been raised on that issue?

Lorna Patterson: The in-care survivors service Scotland is part of the voluntary sector and we cover the whole of Scotland. I would fully support the view that if future funding were to come from individual local authorities and each asked us to keep records differently, that would be completely unmanageable for the third sector, especially for national organisations. It is clear to me that one size does not fit all. However, there could be a simple template for what should be kept and how it should be kept—which is another issue, because how records are kept varies among organisations. It would be a logistical nightmare if each local authority had its own guidelines on what it expects from voluntary organisations.

Claire Baker: Do you want to comment, Mr Shaw?

Tom Shaw: I echo Lorna Patterson's comments. I understand that the bill would ultimately lead to a records management planning template with associated guidance and a set of agreed standards, which would inform the provision for records management in many different organisations and the agencies that might be contracted to work with them. It can only be good to have a common set of principles and standards—I do not see a problem in that.

As I said earlier, in the past I have been concerned about how different individuals going to different places get different things. It would be valuable for them to receive broadly similar responses to their requests wherever they went. The planning principle and the standards that I hope can be developed will overcome some of that. I would like to see much greater consistency.

Lorna Patterson: It is really important to have common principles. For example, when I have approached other voluntary sector organisations, there has been great confusion about how long they are supposed to keep records for. Some think that it is for one year, some think that it is for five years and some think that it is for seven years. Clear common principles would help.

There is also the issue of how much it costs for someone to get copies of their records, which varies from nothing to £100. The amount of

records that are kept has no bearing on the cost. In addition, there should be common principles about how a person gets to see their records. Some statutory organisations invite the person in to look through their records, but that would be far too traumatic for survivors of abuse. It would be too much information for them to take in, so they are entitled to have legible copies of those records. The situation varies.

Those are the kind of things that we could streamline and make clear. That would help all organisations, including those in the third sector, to be clear about what they needed to do and for how long.

Claire Baker: That is helpful.

The other issue that the third sector has raised is the definition of “public record”. In a joint submission, children’s charities argued that it would

“mean that every document, minute or email we produce discussing in any way the delivery of a service for a public authority would be deemed a public record and could therefore be subject to the provisions of this bill.”

It goes back to the issue that Alasdair Allan raised of whether the bill should distinguish between high risk and low risk. The charities argue that, because the current definition of “public record” is very broad, they will have to maintain every item that is relevant to any service that they deliver, regardless of whether that service involves working with vulnerable groups. Do you see the current definition as creating difficulties for organisations? Could there be improvements in that area?

Lorna Patterson: This is where things become complex. I agree that it would be difficult, challenging, time consuming and costly for organisations to record absolutely everything. The question is, what do you keep and what do you not keep? Some organisations record telephone calls on their system, to indicate that a client has contacted them. That may or may not be relevant information. There needs to be some debate about, or guidelines on, what is classed as important and as having an impact. I imagine that health records, consultations, financial records, chronologies of where people went, for how long and why, and information about behaviours would be included.

Tom Shaw: My perspective is that by defining “public record” broadly, you allow for development of an agreed subset of understandings, guidance, practice and indicators that make the system both manageable and sensible. The definition must be wide.

Again, the issue relates to some of the more historical work in which I was engaged. We were interested to find that some records were highly

significant in understanding more about life for someone who was in care in the 1950s. Those included records of people’s diet. Whenever people thought about their records, they thought about people records, but all aspects of provision—including decisions about sleeping accommodation, the standard of caretaking and management of facilities to ensure that they were secure—are covered. It is necessary to have an all-embracing definition to ensure that a range of relevant information can be drawn on. The key is to discuss what is relevant and how that can best be developed or, as I said earlier, moderated over time. The current definition allows that to happen.

Ken Macintosh (Eastwood) (Lab): You say that we should have one form, so that different voluntary organisations are not subject to different demands in their contact with different local authorities. However, National Museums Scotland says that the bill will apply to it, too, even though it does not hold personal or sensitive information. I cannot quite work out how the system will work. It is impossible not to be moved by the evidence that you have given, which relates to organisations that deal with highly vulnerable groups, but it is difficult to see how applying the bill to organisations such as National Museums Scotland will help anyone.

Tom Shaw: I do not wish to pretend to have any expertise with regard to the work of National Museums Scotland, but as I said in my submission, good record keeping and records management are the essence of good governance. I think that any organisation in the public sphere that is in receipt of public funds has to pay attention to its governance procedures and the means by which it manages its records, so that appropriate interests can ask questions and audit its practices and operations and so on—the normal thing that happens all the time. In that sense, I cannot envisage the kinds of records that might be accumulated as a result of the bill being significantly different from what is kept at present as data that are used to evaluate the provision, quality and appropriateness of services.

Ken Macintosh: I am sure that National Museums Scotland has good record-keeping practices—that must be the case, given the nature of the job that it does. However, the suggestion is that we are going to place a legislative duty on it and issue standardised guidance that it must abide by, which might be framed by your evidence, which is all about protecting people’s records and sensitive personal information. That clearly applies to people’s health records and social work records, but it is hard to see how it applies to information of the sort that is held by National Museums Scotland. I cannot quite see why we should impose national standard guidance by legislation on an organisation that holds information that is different to the information that

is held by, for example, health and social work bodies, and whose remit and purpose are totally different. Can you comment on that?

Tom Shaw: I can say only that I presume that it will, within the realm of the negotiations about the records management plan—the template that will be eventually developed and introduced—and the guidance that is issued with it, be possible to differentiate between the particular circumstances of various bodies. Again, I do not know about the work of National Museums Scotland, but I appreciate that it will be involved in a different sort of service delivery to that which I have been talking about. However, I presume that it provides services that it wants members of the public to use, and will therefore have to have provision for child protection and have an appropriate overview of the operations, activity, training and qualifications of its staff—things that I am sure are provided for within other Scottish legislation. I presume that it would be such things that its plan would draw on.

I do not want to fall into the trap of trying to anticipate that which is yet to be developed. I expect, from the terms of the bill, that development of the guidance would be a co-operative activity, and that there would be a lot of interaction between various kinds of service, which would allow appropriate moderations or adjustments to the format. I realise that I am indulging in speculation when I say that. However, I appreciate that the breadth of the bill is due to the terms in which it is written.

The Convener: Thank you for answering our questions.

I suspend the committee while our witnesses leave and the minister joins us.

10:43

Meeting suspended.

10:50

On resuming—

The Convener: We return to the first item on the agenda, with our second panel of witnesses on the Public Records (Scotland) Bill. I am pleased to welcome the Minister for Culture and External Affairs, Fiona Hyslop, who is joined by George MacKenzie, keeper of the records of Scotland; Bruno Longmore, the bill team leader from the National Archives of Scotland; and Lindsey Henderson, a legal officer for the Scottish Government. Minister, I understand that you have a short opening statement.

Fiona Hyslop (Minister for Culture and External Affairs): Yes, I have. I thank you for the

opportunity to get some things on the record that I think will be helpful for the committee in its deliberations on the bill.

The Public Records (Scotland) Bill is about improving the management of records by public authorities, but it also has—as I think you have heard this morning—an important moral dimension. Tom Shaw's compelling report and his evidence to the committee show starkly how vulnerable children were not looked after properly while in care and that records about them were not looked after, either.

Some have argued that the problems that the Shaw report uncovered were put right with the Children (Scotland) Act 1995, but the Kerelaw inquiry showed otherwise. It found many instances of poor record keeping; for example, some records of senior management meetings between Kerelaw and council departments could not be traced, other files were difficult to find and there were problems accessing older electronic records. A proper records management plan would help in avoiding many of those problems. The Looked After Children (Scotland) Regulations 2009 state that authorities must ensure the safe-keeping of case files and say for how long they will be retained, but they do not address wider issues of records management.

I am sure that many members of the committee will, like me, have heard harrowing first-hand accounts from constituents who have been in care and whose earlier lives are a worrying blank because the records about that time are disjointed, deficient or have disappeared. The reasons are various, but to put it simply, no one took responsibility for managing the records properly. The moral argument for the bill is powerful, but ultimately the bill is about good governance and improving efficiency across public services. Records are crucial to organisations, particularly in this information age: reliable information depends on good records. At a time when public bodies are looking at ways of increasing efficiency, they need to manage their records and information better than they do now. Some already do it very well, but everyone agrees that there is room for improvement.

I know that the committee has heard evidence that our proposals might be disproportionate. I disagree: we have taken a light-touch approach, compared to other countries, and our proposals went through a systematic scrutiny check, as was recommended by the Crerar report. The bill does not prescribe what records are to be created or how long they are to be kept; those are matters for individual authorities and existing regulatory bodies.

The bill does not give the keeper any powers to dictate the content of records. Authorities will draft

plans setting out how they intend to manage the records that they create, and the keeper's responsibilities are about approving those plans and helping to ensure that they are implemented. I understand, however, that the language of the bill has given some people the impression that the keeper will assume a prescriptive and directive role. I have therefore asked my officials to look at the bill's wording with a view to lodging appropriate amendments at stage 2.

Some evidence that has been submitted to the committee has pointed to increased costs. Certainly, good record keeping is not without cost, but in the longer term the costs are much lower than they are for poor record keeping or, indeed, for no record keeping. Where authorities already manage records well, there will be minimal costs.

The definition of "public records" in the bill is intentionally broad to make it future proof, so that it will catch paper records, electronic records and records that will be created in other future formats, depending on technological change. It covers records of private and voluntary sector organisations, which will be "public records" where they relate to functions that are performed on behalf of a public authority. The only consequence of defining a record as "public" is that it must be covered by a records management plan. Indeed, the definition only has reference to this bill.

Importantly, the definition "public" does not make the records public property, publicly accessible or publicly owned. The bill does not create new rights of access to information or compromise confidentiality. Access rights are already dealt with in Scottish and United Kingdom legislation and the bill will not alter those rights or responsibilities in any way.

Records that are created by the voluntary sector on behalf of public authorities must be covered because the Shaw report found in such cases that records frequently disappeared when the service ended or the voluntary organisation dissolved. However, the responsibility in the bill is with the public authority: it will not put any direct responsibility on the private sector or voluntary sector.

The bill requires the keeper to issue a model records management plan and guidance. He will continue to work closely with authorities and the voluntary sector in drawing those up. Voluntary sector concerns about dealing with different records management systems in different authorities will largely be met through common records management plans and the generic work that is already being done by local authority records managers.

Some argue that the proposed scrutiny function and sanctions are contrary to Crerar, but the main

focus of the bill is not about scrutiny but about making consistent and durable improvements. To do that, a degree of scrutiny is essential, but that has been kept to a minimum in relation to the records management plan. I reassure the committee that the keeper has neither the intention nor the resources to carry out blanket inspections, but will react to specific problems and assist public authorities in improving their record keeping.

Others argue that we can improve public record keeping by voluntary means. I appreciate the good intentions and genuine desire to get records right this time, but I firmly believe that the only way to ensure consistent and lasting improvement is by an act of this Parliament.

In legal terms, the bill is extremely tightly drawn and does not cover content or access. A number of matters have been raised by the Convention of Scottish Local Authorities and the voluntary sector dealing with children's issues. As the process of the bill continues, it is my intention to work closely with both on their separate but sometimes related issues to ensure that when the bill is enacted, issues of content, policy and scrutiny of service delivery remain firmly in the hands of the specialist authorities and agencies.

On the narrower scope of the bill on public records management, I will ensure that the keeper works in strong partnership with bodies such as COSLA, and with local government officers, other public authorities and representatives of the voluntary sector to develop and implement guidance and ensure tangible benefits from the legislation. A partnership approach and ethos of joint working underpins that intent.

To sum up, the bill cannot put right what went wrong in the past, but it can help us to avoid the same problems in the future. We owe it to former care residents and survivors of abuse—indeed to all future generations in this country—to make the necessary improvements to the way that public authorities deal with records, to safeguard their rights and their identities as individuals and to secure our collective memory.

Elizabeth Smith: Thank you, minister. You gave us a comprehensive report, and your remarks were very helpful, if I may say so. Obviously it is the committee's decision as to whether legislation is required. You have made a very powerful case, as Tom Shaw did before you, for why it is needed. You are right to say that other groups and associations have said that they do not think that legislation is required because they think that some of the existing legislation deals better with the problems that they face. It has been put to us that a lot of the very emotional concerns in relation to child abuse were about problems of the past, rather than of the present, and that some

of the recommendations could be taken up in more of a voluntary way, because the existing legislation is satisfactory. Can you confirm that you think that the bill will take on board everybody's concerns about record keeping?

11:00

Fiona Hyslop: Yes. I can assure you that we will make every effort to do that. On whether I can guarantee that, the proof will be in the delivery. The genesis of the bill is in the Shaw report, the recommendation of which was to look at all public records. Clearly, the records that are probably the most emotive and concerning are those that relate to children. There are other areas of concern, however. The areas that the bill covers are comprehensive—they include any public function that receives taxpayer money.

Obviously, there will be different model records management plans for different sectors. There is not a one-size-fits-all model; plans will have to be proportionate to the interests and needs of different areas. If I am asked questions on information from public authorities—which happens frequently, as it does to my colleagues—I say that it is important to have in place decent records management systems so that people can obtain the information that they seek. We are talking about information that, at times, can be from the previous 10 or so years. Plans have to be proportionate.

The current legislation is the Public Records (Scotland) Act 1937, which is obviously quite dated. In a modern age—an information age—when a lot of information is electronic, we need to become better at how we deal with records. The act says that, before a local authority enters

“into any arrangements ... to which ...section 56 of the 1973 Act (arrangements for discharge of functions by local authorities) applies with regard to the preservation and management of any records”

it

“shall consult the Keeper.”

The result of that is the voluntary code that we have just now. Had it been effective, we would not have had the recent problems. Adam Ingram led on the Kerelaw inquiry, but I dealt with the matter as the then minister with responsibility for children. At the time, I was very conscious that, if improvements had been made to records management, and had the voluntary arrangements been in place, the inquiry would not have found what it found. That example is important on the voluntary side of things.

The level of record keeping is different for different areas; it depends on content and subject matter. For example, the health service was covered in

the original bill, but the police were not. Police authorities asked to be included.

As the committee knows, many public organisations do very good record keeping and the people who maintain those records can evidence it. The bill may make little difference to how they carry out their duties, but we want to ensure that all those areas are covered. The duty on local authorities to consult the keeper is in the Local Government etc (Scotland) Act 1994—I think I said earlier that I was quoting the 1937 act. The 1937 act covers public records in general, but the issue around the current voluntary code comes under the 1994 act. Had that been successful, we would not have had the result of the Shaw report or, indeed, the Kerelaw inquiry.

Elizabeth Smith: I understand the points that you make, minister. In the modern age, freedom of information requests and the better-quality information that is general to modern society have led bodies to improve as a matter of course. That is where they are coming from. They feel that the process is, in itself, enough and that they do not need extra legislation because their culture is now one in which they know that they have to keep better records. The question remains: can the process be enhanced by forcing everybody down this route?

Fiona Hyslop: It is interesting to note that the majority of people who will be affected think that the bill is common sense and that it is straightforward. I suppose that the issue is how to ensure that the model records management plan for a particular sector reflects the interests of that sector. That is why it is important that the keeper take advice from the sector on the degree of importance that the records contain. No more records will be kept as a result of the bill, but the records that are already there will be better kept.

You are correct in saying that experience of FOI and data protection has led to improvements. However, the improvements are in relation to the contents. People know what has to be kept because of the types of request that come in. It is not the “what?” of the records that are being kept, but the “where and how?” Obviously, the experience that the keeper has can also be shared more widely. I think that it is generally recognised that a statutory provision that is light in its touch and that provides for relationships with specialist areas to dictate the content is enough. The issue remains: could we trundle along without the bill because the direction and pressures of FOI and data protection are enough? By and large, the view is that much of the bill is common sense—indeed, I think that 14 of the local authorities that responded said that they were very supportive. I hope that the bill will relieve some of the pressures.

One of the biggest challenges is to decide what to keep and what not to keep. In a situation in which everything is kept, it can be harder to find the stuff that is really needed. An effective records management plan would allow people not to keep some records. Once an overall strategy and the criteria are in place, people will be able to recognise which records they do not need to keep and get rid of them. That is important.

With regard to electronic record keeping, it is important—as members will know—to modernise what we do so that systems can talk to each other. The bill is a modernising efficiency—the moral dimension has led to it, as I said, but that will be the impact.

Alasdair Allan: As we heard in previous evidence, there have clearly been failures of record keeping in the past, but some of the witnesses have questioned whether the bill will place undue burdens on smaller organisations. Can you comment on that?

Fiona Hyslop: I listened to the earlier evidence session, and I make the point that just because an organisation is small, that does not mean that record keeping is not important. Very small organisations do very important work in looking after children, for example, and they should not be negated in terms of what they keep.

From its other responsibilities in relation to child protection the committee will be aware that, in the development of social care and social work improvement Scotland and the work on getting it right for every child, there is a far more joined-up and child-centred approach to service delivery and, therefore, to record keeping. That is helpful, but we are conscious of the suggestion that, if a small organisation deals with different local authorities, the bill might be a burden. We need to change the culture. We keep records because they are important, especially to individuals. We need to find ways to make it easier for small organisations to be confident that they know what to keep. A model records management plan will help small organisations because it will give them confidence in working in the sector.

A lot of this, understandably, is concentrated on children, but I am keen to ensure—as I discussed with the Convention of Scottish Local Authorities recently—that groups such as COSLA, SCSWIS and all the people in the voluntary sector who work with children's issues help to advise on what should be in the records management plan. That is precisely to help the small organisations, so that they can put forward their views as to what goes in the plan. The organisations, rather than the keeper, will determine that, although they can always take advice from the keeper, whom we would expect to be involved in the process. For a

small organisation, what to keep should be determined by the profession.

The how is also important. Are the records kept in a cupboard? Have you got the dates? Is there an overall plan that tells you where the records are and when or whether they can be destroyed? What happens if the records are moved? The keeper will be involved in that overall management stuff, as opposed to the burdens of small organisations going about their service delivery for children.

Alasdair Allan: Tom Shaw mentioned in his evidence that there might be the opportunity for guidance to clarify which organisations would have to follow which type of plan for their records, depending on whether it was felt that they were dealing with vulnerable people. Is that a relevant issue?

Fiona Hyslop: Yes, it is. We should perhaps mutually clarify the issue, convener, with regard to where we are going at stage 2. We are quite clear that the bill is very tightly drawn—it is about the management of records, not about their content. However, guidance on the question that Alasdair Allan has just asked—about what should and should not be in the plan—is precisely what the professionals should be able to give us. Relevant professionals can advise us on the content of guidance for child protection matters, for health and for policing matters. We will work closely with the keeper on that, but it is for the professionals to determine the content.

The issue is whether the guidance is statutory or not—I am looking to my legal support on my right. I suspect that there is an issue in that statutory guidance in relation to the bill must be about the terms of the bill. Guidance on what records can be kept, and how and when they are kept for children, can be issued at any time. In that instance we would work with Adam Ingram, for example, because guidance is constantly being issued in relation to those issues. The professionals will inform that work; I would not expect the keeper to take a lead on it. My point about scope is another issue on which the convener might want to reflect.

Alasdair Allan: The Scottish Information Commissioner has suggested that the list of bodies in the schedule to the bill should mirror the list of bodies that are covered by freedom of information legislation. Is that a reasonable comparison to make?

Fiona Hyslop: I will reflect on that point and get back to the committee on it. There have been recent moves to extend the scope of the freedom of information legislation, but the bill is about the management of records. I suspect that there is a narrower definition in the freedom of information legislation, which I understand to be more

restrictive. Perhaps the keeper might want to comment on that point. The bill is about public authorities carrying out public functions, which I suspect goes wider than the freedom of information legislation.

George MacKenzie (National Archives of Scotland): The schedule to the bill is not the same as the schedule to the Freedom of Information (Scotland) Act 2002. That is deliberate. The schedule to the FOISA is drawn extremely widely. Part of our light-touch and proportionate approach was to narrow the list down to those organisations that we think are most significant in terms of the records that they produce.

Fiona Hyslop: So that we are not talking at cross-purposes, I point out that the bill relates to public functions, whereas the FOISA can go wider in many ways because it covers different organisations, including organisations that are not defined in the bill as public authorities. However, in some areas, the scope of the FOISA is narrower than the scope of the bill. The two pieces of legislation are intended to serve different purposes, which reflects the answer to Liz Smith's question that they do not necessarily operate in parallel. We cannot rely just on freedom of information legislation, as it may not cover the areas that we want to cover in the bill. You will see that there is scope in the bill to amend the schedule by order so that if, in the future, the committee thinks that other organisations should be included, the Government or the committee can identify that and the schedule can be amended.

Kenneth Gibson (Cunninghame North) (SNP): The Scottish Information Commissioner has recommended that the memorandum of understanding between the commissioner and the keeper should be adapted so that joint audits result in joint recommendations and that, when there are records management failures, the commissioner can ask the keeper to undertake a compliance review. What is your opinion of that proposal?

Fiona Hyslop: The Scottish Information Commissioner, who has oversight of the information system, will know from appeals in which areas there is a problem in accessing information. There can be different reasons why he cannot access information, one of which could relate to poor records management planning. A record might be there but it just cannot be found. He will be able to flag up to the keeper areas or authorities where he thinks that there is a problem with repeat FOI rejections. There might be lots of different reasons why FOI requests are rejected, but if there is a systemic issue with the way in which information is being recorded, kept and managed, he will be able to deal with that under

the memorandum of understanding. Similarly, the Accounts Commission, which looks for specific information, could also identify where it cannot get information, either because the information has not been recorded or because it just cannot be found, which would highlight the fact that closer work needed to be done with a specific local authority.

It is about the improvement agenda. This is not just about scrutiny; it is about trying to make improvements. I do not expect the keeper to be able to go round doing blanket inspections all the time—that will not happen. However, we will know, using these provisions, where there are failings. You can probably identify from your own case load organisations with which there are issues. The reason may not be poor records management, but at least the system that the bill proposes would allow records management to be addressed. If there are any problems in the future in relation to data protection or freedom of information, records management will not be the problem, as we will have improved records management.

Kenneth Gibson: Okay. Should the commissioner act as a watchdog, alerting the National Archives of Scotland to any problems with an organisation's approach to record keeping?

11:15

Fiona Hyslop: That is what I tried to address in my previous answer. Yes, the issues will be flagged up.

Everybody is involved in a process of continuous improvement and self-assessment is important. The compliance review that is cited in the bill is not about the keeper ensuring compliance with something else; it is about ensuring that a local authority is complying with its own records management plan—ensuring that it is not just saying that it is doing something, but that it is actually doing it. There are parallels with the self-assessment that takes place in public authorities and councils, which, increasingly, leads to improvement.

There is also the statutory role of the keeper, who has expertise in the field and whom the best people will ask, because they know to ask. The issue is that some people either do not have records management plans at all, which is very worrying, or they have them but pay only lip service to them. We must try to change that. It should improve under the bill. I am not saying that the bill will save money immediately but, if organisations do not have to keep lots of archives of information, that will be an improvement for local authorities.

The Convener: Minister, you touched on the issue of the existing freedom of information legislation. The committee has heard concerns from the voluntary sector that it could be argued that the bill will extend the freedom of information regime to voluntary organisations that are not covered by it. At the moment, a public authority can contract a voluntary organisation to undertake a piece of work without that voluntary organisation being subject to freedom of information legislation. The voluntary sector is concerned that the bill will introduce the provisions of that legislation by the back door. Do you agree with those concerns?

Fiona Hyslop: No, I do not. We have spent a great deal of time, especially recently, in discussing that issue with the voluntary sector in order to reassure it. I hope that I made it clear in my opening statement that the bill is not about access issues, which are the focus of the freedom of information legislation, or confidentiality. Indeed, the Looked After Children (Scotland) Regulations 2009 make it clear that there is a responsibility for the safekeeping and confidentiality of records. That still stands—the bill does not affect it. We might have put something in the bill to say that the keeper would not have responsibility for access or confidentiality, as those issues are not covered by the bill, but we think that the bill is so tightly drawn that it would not be possible to include those issues in its scope. We will continue to make efforts to ensure that that is clear, so that the interpretation of the bill is clear.

The bill deals only with the management of public records; access and confidentiality issues are still governed by the relevant legislation dealing with freedom of information, data protection, looked-after children and—in health—patient confidentiality. I suspect that, if there was an issue with confidentiality regarding the bill, similar concerns would have been raised by the health service. The fact that the health service has not raised such concerns shows that its understanding of the bill is the same as ours—that it is about records management only, not access and confidentiality.

Margaret Smith (Edinburgh West) (LD): Another concern that the voluntary sector has raised with the committee is how the records management plans will fit among their existing obligations to various regulatory bodies. Do you have any thoughts on that aspect? Do you see any potential conflict with requests for information that voluntary sector organisations already receive from regulatory bodies?

Fiona Hyslop: They should be complementary and mutually supportive. Many of the regulatory responsibilities are about the content of what is kept. The bill should help with how the records are kept, so that the regulatory aspects can be

evident. It was interesting to hear, in Tom Shaw's evidence to the committee, that part of it is about being able to evidence that an organisation's service has delivered to individuals what it was intended to deliver. The bill is about the evidence side of things, not the content. The guidance will be helpful, whether it is part of the bill or general guidance in relation to other specialist organisations.

It will be the professional organisations such as SCSWIS, including the HMIE children's services that SCSWIS will take over, working with the voluntary sector, the children's organisations and COSLA that will determine the what. This should be complementary to that, rather than displacing it. The only thing that will be new is the records management plan, which will be drafted to take account of any sector specific records management requirements. The keeper will provide advice about what should be in a model records management plan for children's homes, for instance, and the contents of that plan—what should be kept and how—will be informed by a working partnership with sector specific specialists. That means health specialists for the health service or SCSWIS in relation to child protection—that is how it should be. Such partnerships should be complementary and should involve the management of the how, as opposed to determining the content of what is kept.

Perhaps I am labouring the point, but in the development of the bill that distinction is probably the most difficult aspect to discuss, in what is quite a technical area.

Ken Macintosh: Suppose that one children's home keeps receipts for expenditure over 10 years as a matter of course, but another home does not. Say that the model plan suggests that receipts should be kept. I cannot work out how things would work. What happens to a care home that does not keep receipts? What happens once the model plan is produced?

Fiona Hyslop: I stand to be corrected by my colleagues if I get this wrong, but my perspective, and the bill's perspective, is that what a voluntary organisation that runs a care home keeps, for example, will not be directed by the bill; that will be directed with regard to the organisation's relationship with the authority for which it is carrying out its public function—and that is the key driver. That voluntary organisation's public function is the care of children, not the administration of the care home in terms of pounds, shillings and pence.

We have provided answers on this, which we gave to the committee last week. The admin costs or functions of a voluntary organisation in carrying out its business—rental, receipts and so on—are for the organisation itself, and they would not need

to be covered by the records management plan. What would need to be covered is the function that the organisation is carrying out for the public authority—that is, the care of children. We would not expect receipts for the expenditure of a voluntary organisation that is involved in the care of children to require to be itemised as one of the things that the records management plan should cover.

George MacKenzie: Responsibility lies firmly with the public authority, rather than the voluntary sector body. Anything that the voluntary sector body does by way of looking after its records would be in relation to the plan from the authority. It is the relationship between those two organisations that would regulate that.

I suppose that it would be possible for local authorities to have different requirements for care homes in relation to their records management plans—it would be up to each authority to determine that. Part of the guidance that the keeper will produce, and part of the work of local authority record managers, involves moving towards developing generic approaches to managing records. I expect there to be a definite convergence of record-keeping practice, so the likelihood of there being quite different forms of record keeping among children's homes would probably dwindle over time. Essentially, the voluntary sector body would make its decision with regard to its relationship with the public authority.

Ken Macintosh: I wish to clarify one further issue. Let us say that one care home keeps a record of every time that a child in the care home visits hospital or a doctor. Another care home, in the same local authority, does not do that, on the basis that records are kept by the doctor or the hospital—the child has a medical record, and the home does not need to duplicate it. I am just making this up—I have no idea whether this would happen in practice. In one case, a home keeps a health record; in another case, the home does not, as it is kept somewhere else. The organisation that runs one of those two services also operates in another local authority area. How would the new RMP impose on all three of those cases? Would you expect one home to stop keeping such records, or one to start keeping them? Would you expect the situation to be the same in the other local authority?

Fiona Hyslop: I will bring in George MacKenzie in a second. As far as children are concerned, that is precisely the area that needs to be determined. In the past, there was a danger that somebody might assume that someone else was keeping such records. Details about hospital visits, for example, should most definitely be kept. The committee will know from previous child protection

inquiries that that is exactly what has been missing in the past.

There are two ways of approaching the issue. The content of a record that is kept about a child is not determined by the bill. The bill is about how a record is kept. Whether a record of hospital visits—to use that hypothetical example—should be kept will be determined by specialist organisations, such as SCSWIS. Undoubtedly, the view will be that that record should be kept, and the bill will kick in on the question of how it should be kept.

There is a challenge around the single records for children under GIRFEC. The management of that process should be far more effective with regard to professional working in the children's sector in general. However, the decision about what is kept by people concerns advice that should come in guidance from the child protection and health areas. It is the decision about how it is kept that will come from us.

The creation of the records is not covered by the bill. It is important to state that the bill is not about the creation of records. Some people in the voluntary sector are concerned that the bill is about creating new records. However, section 12(1) says:

“‘management’, in relation to public records, includes keeping, storage, securing, archiving, preservation, destruction or other disposal”.

It says nothing about the creation of the content of the records. It is the specialist organisations that will say what sort of things are to be kept. The more standardised the situation, the clearer that guidance about what should be kept will be, which is helpful.

It might be useful to consider the issue as having two aspects. The first aspect is about managing records once they are in place. Under the bill, the keeper determines that model and will take advice from various specialist bodies on that, as there are different management plans for different sectors. There is an issue about whether we can lodge an amendment at stage 2 to make that clear.

The second aspect is about what is kept. That is not determined by the bill, but it is clear that there are better ways of ensuring that people know what to keep. I absolutely agree that there have been improvements along the way in that regard. At that point, the keeper will advise on the issues that are involved; he will not facilitate or co-ordinate that work.

You are right to identify the fact that there is a need for guidance on that second aspect. As I said earlier, such guidance will reflect what the existing regulatory authorities require to be kept, and I am

fairly confident that hospital visits will be part of that.

I know that that was quite a long explanation, but I hope that it was helpful.

Ken Macintosh: I do not have an example to hand, but I am sure that you have come across examples of care homes that keep certain records and other care homes that keep other records. Although the bill does not require them to change, you expect them to change—either one will keep more records or the other will keep less, until they become standardised. That situation is not created by the bill, but it is what you expect will happen. Is that correct?

Fiona Hyslop: I expect the change in what is kept to be driven by the specialist regulatory authorities that already exist. If anything, the bill will allow unnecessary things not to be kept.

Ken Macintosh: And it will encourage others to keep things—

Fiona Hyslop: Yes, but I think that, over the piece, there will be more convergence.

Ken Macintosh: The bill does not require the creation of more records but, in some cases, it will end up creating more records, because that will be good practice. In other cases, there will be fewer records, because that will be good practice in those circumstances.

Fiona Hyslop: The issue is about making record keeping more efficient.

Claire Baker: We have touched on the contractor relationships that third sector providers and private providers have with public authorities and local authorities. Earlier, the minister spoke positively about the fact that the form of RMPs would be left up to local authorities, and said that that would give flexibility to the arrangement. However, the voluntary sector has expressed concerns about that. As you will be aware, voluntary organisations work with a number of authorities, so they might have to try to meet demands from different authorities whose RMPs vary considerably. Voluntary organisations might have to change their existing systems not only once but several times. Will such concerns be addressed mainly through guidance, or do we need to consider doing that in the bill?

11:30

Fiona Hyslop: It will be done more through guidance than in the bill. I can understand the concerns about the issue, but the commonsense approach—which I know is already being taken—is that the voluntary sector and COSLA will discuss what will be best practice contractually, which is not determined by the bill. If RMPs were

so disparate that they would put unbearable pressures on the voluntary sector, that would not be efficient public service delivery, anyway. The keeper could maybe flag that up.

We will encourage a more generic RMP for different sectors that will reflect the character of the services provided and must undoubtedly have input from the people who deliver the services. We do not envisage that a national voluntary organisation that provides services to, say, 12 different local authorities will have 12 different systems to work with—that would not be common sense for anybody. COSLA recognises the importance of working with the voluntary sector to standardise best practice. That is good policy making in practice, and does not necessarily need legislation to effect it. However, Claire Baker has correctly identified an issue of concern.

As I have said, in implementing the bill's provisions, it is important that the Government facilitates discussions between the voluntary sector and COSLA to ensure that a commonsense approach is taken. The bill will not affect contractual relationships between local authorities and care homes, for example. Some of the issues that have been raised already exist in terms of the interpretation of statutory functions that have nothing to do with the bill, whether in relation to the provision of services or whatever. The concerns that the voluntary sector has raised are mostly relevant to relationships between it and COSLA, rather than to the bill.

Claire Baker: Another point that the third sector raised last week was that smaller voluntary organisations might interpret the bill in an unnecessarily risk-averse way and overimplement RMPs, which would result in increased bureaucracy for organisations. Also on risk aversion and its implications, they referred to the example of parents' confusion over local authorities' positions on whether they can photograph their children in nativity plays and so on. They said that because there were many questions about the relevant legislation, it was interpreted differently by different authorities. The third sector therefore has concerns about the ability of smaller organisations to engage fully with the bill's provisions and about whether they are proportionate for such organisations.

Fiona Hyslop: Again, we anticipate that the bill's implementation will be about the management of existing records rather than the introduction of something new. Records management is about how you manage the content of what has already been recorded. Issues such as the volume of records and the importance of different records will be involved. For example, an organisation might decide that records of hospital visits are a high priority and ensure that

they are accessible and so on, but decide that other records have a lower level of importance. Again, the regulatory authorities rather than the records keeper will indicate what records need to be kept.

I agree that there are issues about the relationship between the voluntary sector and local authorities in terms of keeping records, but there are probably similar issues around all the services that the voluntary sector provides to local government. There should be a commonsense, practical records management plan that sets out what needs to be kept and what led to that decision. For example, an organisation could say that it had consulted SCSWIS and that it agreed that a certain type of record should be kept until whatever year and be accessible by particular means. There is a particular issue with electronic records, though. We should not underestimate the challenges in trying to retrieve electronic records, particularly five or 10 years down the line. Obviously, technology will change a great deal, which is why the bill's definition in that regard is quite broad.

I suppose the general issue is the perception by an organisation that a risk-averse council's records management plan is increasing the organisation's burden of bureaucracy. If a voluntary sector organisation felt pressure from the plan, I would advise it to inform the keeper. He could then, in his role, work with local authorities and say, "Look, we need a more generic plan. You are asking for receipts when there is no need. You have to work out whether that is a public function."

Just as the Scottish Information Commissioner and Audit Scotland can flag up concerns about record keeping by local authorities, those who carry out public functions can flag up issues and say, "This is getting a bit bureaucratic. How do we ensure, in terms of the guidance issued by the keeper, that there is more proportionality?" There are checks and balances to allow that to happen.

Claire Baker: Would your reply about the role of the keeper address the voluntary sector's concerns about the broad definition of the term "public record"? Some organisations have suggested that a public record can be anything from an e-mail to a letter, and they have asked for the definition to be narrowed, as the current definition is too broad. Does that come down to how the relationship between the contractor and the local authority is defined, with the keeper always there as someone to whom the organisation can turn for advice on streamlining the process and making it as effective as possible?

Fiona Hyslop: Yes. The term "public record" is defined only for the purposes of the bill. I asked for a report on where else the term "public record"

appears. There is a piece of legislation in England, but the only reference to "public record" in Scotland relates to what the UK is not allowed to do because it is an issue for Scotland. The term "public record" does not appear in other legislation in Scotland, and it can be used in any shape or form. The definition is just for the purposes of the bill. The bill is not about the creation, content or confidentiality of or access to records; it is only about how people keep and manage them.

Ken Macintosh: I have a couple of questions on costs and consultation. A number of organisations—particularly COSLA—are concerned about the potential costs of the legislation. What efforts have you made, or what discussions have you had, with COSLA to bottom out those concerns?

Fiona Hyslop: If a public authority—it is not just local councils; other bodies are in there—already has records managers who are carrying out the functions, there will be no additional cost because they will not need to employ anybody else. If they do have to employ somebody because they do not have anyone doing the job, that will lead to the question of how they have been managing their records to date if they do not have someone whose job it is to do that. However, that will be a minimal cost of one salary, and it is unlikely to be required for most local authorities, because they already have someone who performs that function. You may have already had evidence from the organisation that works with the public records managers of local authorities, which I think has been quite supportive of what the bill requires.

Nationally, we anticipate that there will be two additional positions at the National Archives of Scotland, but we are keeping those within existing costs, so that there is no added burden from the bill. Where things are being done well, additional posts should not be necessary to carry out the functions in the bill.

Smaller local authorities may require to set up pooling arrangements to share expertise with other local authorities. That is already happening in various areas, and records management is perhaps an ideal area in which it can work. We do not anticipate that the changes will produce excessive costs, but there is a cost in not making the changes. If people keep records that they do not need to keep, that can in the longer term cost money in space and storage. I also come back to the moral argument that the cost of not keeping records can impact not only on professional scrutiny, but on people's lives, which is the type of cost that the committee heard about in the evidence earlier today.

Having gone through a parliamentary session in which we began to receive the concerns of the survivors of abuse in care homes, we have a

responsibility and a duty as a Parliament to help to resolve that issue. Sometimes, such things are priceless. There is a moral aspect to talking to a constituent who cannot find information about what happened in the first part of their life. It is not just about the monetary cost, as I am sure the committee appreciates.

Ken Macintosh: Indeed, and we heard very powerful evidence earlier for that aspect being the key motive behind the bill. I am sure that we all have a great deal of sympathy with and support for that.

The difficulty is that the bill is a practical measure. If we start from the basis that the bill is needed because records are not being kept properly, and we want the bill to improve record keeping, that implies a level of expenditure and activity that we do not currently have. The key issue is whether we can even begin to attempt to cost the proposals.

A number of respondents to the committee's call for evidence were critical about the lack of consultation. The bill was consulted on for only six weeks during the summer. There is also more general concern in the voluntary sector. Children's organisations were taken by surprise when they heard about the bill and think that some organisations will not know much about it. There is a lack of awareness. Could more be done to bottom out the costs that might be involved, to reassure people, and to consult the voluntary and other organisations that will be affected?

Fiona Hyslop: The answer to your last question is yes. In my opening remarks, I talked about working with the voluntary sector and COSLA, in particular. There are issues that will be dealt with not by amending the bill but in operational guidance in some shape or form.

The consultation period was not ideal. You will be aware that, in the context of the parliamentary cycle, announcements about bills are often made around May and June of the final year of a parliamentary session, and a bill then has to be consulted on and introduced. I know that the committee has been under pressure from the amount of legislation that is in its work programme—it can be difficult.

Barnardo's was sent the bill directly when it was introduced, as I think were five other children's organisations. The consultation period was curtailed, but the bill did not come out of nowhere. The Shaw report, the recommendations of which were accepted by the previous Administration, included the recommendation that the keeper of the records of Scotland be asked to assess record keeping across public authorities and make recommendations in that regard. The keeper was carrying out his assessment before the

consultation on the bill took place. Anyone who was working in the children's sector would have known that at some point recommendations would be made about the need for legislation on better record keeping, which had been flagged up some years ago. The bill did not come out of the blue.

I have tried to emphasise the point about differentiating between content, which is not covered by the bill, and operation—how things are managed—which is covered. The continuing uncertainty in the voluntary sector makes it incumbent on us to continue to engage, answer questions and reassure the sector. We will continue that dialogue, because we must get things right.

From work on the Protection of Vulnerable Groups (Scotland) Bill in the previous session of the Parliament and more recently on the Children's Hearings (Scotland) Bill, I know that it is important that when resource is available for public services, in relation to children, for example, it should go to services that meet children's needs and not to the bureaucracy that surrounds them. However, the bureaucracy, regulation and all the rest of it is necessary to deliver the service. If we make public records management more efficient, I hope that that will release time, effort and resources for what really matters: service delivery.

The Convener: My final question might well fall outwith the scope of the bill. The committee has been lobbied about the need to require local authorities to keep a register of common goods. Has the issue been raised with the Government? Is there scope to amend the bill to provide for the introduction of such a register?

11:45

Fiona Hyslop: I have also been lobbied about this issue. It is, rightly, an emotive issue for constituents, as people are concerned about common assets.

As I said earlier, the bill is not about the content of what should be kept. That should be determined by the public authorities and by regulation and so on. However, there is a common expectation that records of common good assets should be kept. We might be able to discuss that with the committee and your clerks, with regard to the scope of the bill. However, even if the proposals were desirable, I do not know whether the situation could be amended through the bill, because the bill is about how records are managed.

However, you raise an outstanding issue, in relation to reassuring the public that such important records need to be kept. We could think creatively about who should determine and give advice on what should be kept—whether it should

be done by departments, regulatory bodies, ministers, local government or someone else—and we could recommend that, in the interests of public service, common good assets registers should be kept. We can certainly influence how they should be kept.

We will probably have to resolve the issue ourselves, in case you need to determine the admissibility of something that comes forward, convener.

George MacKenzie: The point has been handled well. The issue is a detail for public authorities. As keeper, I would expect the authorities to go through the process of identifying what records are most important to them and putting them into their records management plan. However, I am concerned only with that process, not with the details that are put into the records.

Fiona Hyslop: Of course, the committee could, in its stage 1 report, touch on issues that might not be reflected in amendments to the bill and express a view about how they might be managed. I know that the issue means a lot to many people, so it might be useful for you to express a view in a parliamentary report, even if it is not possible to lodge a relevant amendment.

The Convener: You are right to say that there is a feeling that the issue has been neglected for some time, particularly because, since the reorganisation of local government, we have lost some local assets and people do not know who is accountable or responsible for certain local assets. It appears that many organisations want the issue to be addressed. The bill might not be the avenue whereby that can happen, but the issue will not go away until we address it.

Fiona Hyslop: If the bill had been in force at the time of the reorganisation of local government and authorities had had effective records management plans that itemised their important assets, the problem that we now face might not have arisen. The solution to the problem at this stage, however, might require something else to be done.

Where records of common good assets have been created by public authorities, they will be public records and will need to be managed under the bill. In cases where those records do not exist, further work would need to be done to identify the common good assets. I think that you could use your stage 1 report to flag up recommendations about how that might be done.

The Convener: That concludes our questions. The committee will suspend briefly to allow the minister and her officials to leave.

11:49

Meeting suspended.

11:50

On resuming—

Decision on Taking Business in Private

The Convener: Under the second item on our agenda, I ask the committee to agree to consider its draft report on the Public Records (Scotland) Bill in private at future meetings. Do we agree to do so?

Members indicated agreement.

The Convener: That concludes this meeting of the Education, Lifelong Learning and Culture Committee.

Meeting closed at 11:50.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

Members who wish to suggest corrections for the revised e-format edition should mark them clearly in the report or send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by RR Donnelley and is available from:

Scottish Parliament

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille, large print or audio), please contact:

Public Information Service

The Scottish Parliament
Edinburgh EH99 1SP

Telephone: 0131 348 5000

Fòn: 0131 348 5395 (Gàidhlig)

Textphone users may contact us on **0800 092 7100**.

We also welcome calls using the Text Relay service.

Fax: 0131 348 5601

E-mail: sp.info@scottish.parliament.uk

We welcome written correspondence in any language.

Blackwell's Scottish Parliament Documentation

Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries

0131 622 8283 or

0131 622 8258

Fax orders

0131 557 8149

E-mail orders, subscriptions and standing orders
business.edinburgh@blackwell.co.uk

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:

243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Accredited Agents

(see Yellow Pages)

and through other good booksellers

e-format first available
ISBN 978-0-85758-438-0

Revised e-format available
ISBN 978-0-85758-451-9