

# **EDUCATION, CULTURE AND SPORT COMMITTEE**

Tuesday 24 September 2002  
(*Afternoon*)

Session 1

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## EDUCATION, CULTURE AND SPORT COMMITTEE

### 24<sup>th</sup> Meeting 2002, Session 1

#### CONVENER

\*Karen Gillon (Clydesdale) (Lab)

#### DEPUTY CONVENER

\*Cathy Peattie (Falkirk East) (Lab)

#### COMMITTEE MEMBERS

\*Jackie Baillie (Dumbarton) (Lab)  
\*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)  
\*Irene McGugan (North-East Scotland) (SNP)  
\*Mr Brian Monteith (Mid Scotland and Fife) (Con)  
\*Michael Russell (South of Scotland) (SNP)

#### COMMITTEE SUBSTITUTES

Murdo Fraser (Mid Scotland and Fife) (Con)  
Fiona McLeod (West of Scotland) (SNP)  
Karen Whitefield (Airdrie and Shotts) (Lab)

\*attended

#### WITNESSES

Susan Aitken (The NHS Confederation)  
Thomas Lyons (Oakgrove Primary School)  
Tricia McConalogue (Glasgow Braendarn Link)  
Rosemarie McIlwhan (Scottish Human Rights Centre)  
Alison McLeod (Disclosure Scotland)  
Hilary Robertson (The NHS Confederation)  
Alana Ross (Educational Institute of Scotland)  
Mary Senior (Unison)  
John Stevenson (Unison)  
Dr Joanne Beaumont (Hillhead Primary and Secondary School Boards)  
Tracey White (Scottish Trades Union Congress)

#### CLERK TO THE COMMITTEE

Martin Verity

#### SENIOR ASSISTANT CLERK

Susan Duffy

#### ASSISTANT CLERK

Ian Cowan

#### LOCATION

City Chambers, Glasgow



## Scottish Parliament

### Education, Culture and Sport Committee

*Tuesday 24 September 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:15*]

**The Convener (Karen Gillon):** Good afternoon. I welcome everyone to today's meeting of the Education, Culture and Sport Committee in Glasgow. I remind everyone to turn off their mobile phones and pagers.

On behalf of the committee and the Parliament, I express sincere thanks to Glasgow City Council for arranging the room and for helping us with this evening's witnesses from the wider parent community. We will have a full discussion this evening and the committee is most anxious to see scrutiny of the Protection of Children (Scotland) Bill.

### Item in Private

**The Convener:** Agenda item 1 is to invite the committee to discuss item 3 in private because it is discussion of a draft committee report. Are members agreed?

**Members** *indicated agreement.*

## Protection of Children (Scotland) Bill: Stage 1

**The Convener:** The committee is taking oral evidence on the general principles of the Protection of Children (Scotland) Bill at stage 1. Members have in front of them the covering note on the submissions and various items of written evidence. I invite Alison McLeod of Disclosure Scotland to give her evidence.

Alison, would you like to make any introductory comments or shall we just go to questions?

**Alison McLeod (Disclosure Scotland):** I will make a brief statement. The committee has a written submission from Disclosure Scotland.

Disclosure Scotland supports the bill. We see it as extending the service that we provide—which is to protect the vulnerable through safer recruitment—particularly if there is a reciprocal agreement with the lists that are held in England and Wales so that we have access to those lists. The only issues that we have with the bill are minor and procedural and I am sure that they can be resolved.

**The Convener:** Thank you. I open up for questions from members.

**Cathy Peattie (Falkirk East) (Lab):** Good afternoon. What discussions have you had with the Executive during the development of the bill? What were those discussions about?

**Alison McLeod:** We had a meeting with Jan Raitt of the Scottish Executive. That meeting was held on 6 September, during the week prior to the bill's being published. She took us through the sections of the bill that would relate to Disclosure Scotland. The bill will amend part V of the Police Act 1997, which will allow Disclosure Scotland to have access to the lists that I mentioned and to disclose the fact that someone is on those lists. That was the basis of our discussions.

**Cathy Peattie:** Do you anticipate any problems with the time scale that has been laid down by the bill?

**Alison McLeod:** I do not anticipate significant problems. One of our minor procedural questions is how we will gain access to the information. Will it be held electronically? Will access be immediate? How often will the lists be updated?

We have a service level agreement to produce 90 per cent of all disclosure applications within 10 working days. We are currently meeting that target. How access to the information is facilitated might have an impact on our service level agreement. I hope that if the information is held electronically and online, the time scales will not have a significant impact.

**Cathy Peattie:** Would you prefer the information to be held electronically and regularly available online?

**Alison McLeod:** Yes; we would like the information to be updated a minimum of every 24 hours.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** Point 2 of your submission asks whether the existence of a Scottish list would facilitate access to the lists that are held in England and Wales, such as list 99 and the Department of Health list. That implies that you do not have access to those lists but I understood that, under the Police Act 1997, you do.

**Alison McLeod:** We do not have access to the Department of Health list or to list 99 as things stand.

**Ian Jenkins:** How do you anticipate getting access to the list 99 information?

**Alison McLeod:** I was not involved in the initial negotiations, but I understand that one of the reasons that we do not have access to list 99 is because we do not have a list in Scotland that England and Wales can access through a reciprocal agreement. My understanding is that once Scotland has its own list, we might have a reciprocal agreement through which we can access their lists, they can access ours and we will be able to share information.

**Michael Russell (South of Scotland) (SNP):** Given that there are limits to the information that you can provide to organisations—for example, when you are unable to undertake a check because a person is from abroad—do you explain that to an organisation? What procedures would you have to introduce to continue that process under the bill?

**Alison McLeod:** We explain to organisations that we have no access to overseas information. We do not refuse to do a disclosure check on anybody coming from abroad because if they have lived in the United Kingdom at any point, there might be held on central records information that we could disclose. However, we make each organisation that registers with us fully aware that we cannot access information other than from the central records, which consist of the criminal history system in Scotland and the police national computer in England and Wales. Local information is held by police forces. Organisations, however, are aware that we cannot provide information on foreign applicants.

**Michael Russell:** To what percentage of people do those limitations apply?

**Alison McLeod:** I do not have exact figures on that, but it is a small percentage. Just over 1,000 companies are registered with us and we have

had inquiries from perhaps six or seven with regard to foreign applicants. We advise companies to put the onus on the individual who is coming from a foreign country to provide from the appropriate authority in that country a letter about their criminal history.

**Michael Russell:** One area in the bill that worries some people is the static nature of the information: once named, always named. I presume that you have no current way of recording whether an individual has had treatment for sex offending, although there are several registered programmes. The bill will make that situation even more stringent, which many of us support, but is there room for recording whether individuals have had treatment or have undertaken programmes to alter their behaviour?

**Alison McLeod:** Yes, I believe that there is room for that sort of improvement. Fife police recently instigated a reporting mechanism for people who are undergoing drugs treatment. We now have access to that on the criminal history system. You are right that we should have something along the same lines for sex offences.

**Michael Russell:** You would support such a move.

**Alison McLeod:** Absolutely.

**Irene McGugan (North-East Scotland) (SNP):** It is fair to say that your current responsibilities and, indeed, your organisation are fairly new and that things are still bedding down under the terms of the Criminal Justice and Police Act 2001. You are being asked to do more at an early stage. How will the bill impact on the services that you currently provide?

**Alison McLeod:** I do not think that the bill would have a significant impact. The people who offer jobs working with children would apply to Disclosure Scotland for standard or enhanced disclosures anyway. The bill would mean that we would have to take only one extra step to complete such a disclosure. If our operational mechanism to access the list is straightforward and simple, I do not envisage the bill impacting significantly on our work load or the time scale.

**Jackie Baillie (Dumbarton) (Lab):** There is a slight debate about whether voluntary sector organisations such as Girlguiding UK and the Scout Association should be included under the terms of the bill. Do you have a view on that? Would that be difficult to do operationally? I am aware that Volunteer Development Scotland has a unit that provides guidance on interpreting the information that Disclosure Scotland gives. Do you provide that guidance generally to organisations for which you currently provide a service?

**Alison McLeod:** I will answer the second question first. It is not part of Disclosure Scotland's remit to provide advice and guidance, but we do so as a rule. We would not turn anybody away. If somebody contacts us, we provide that information, and we will continue to do so unless it becomes onerous and gets in the way of day-to-day operational procedures.

Volunteers could be included in the legislation and it is important that they are. The majority of people who work with children and vulnerable adults are in the voluntary sector, which is a sector that has been neglected for a long time. Part 5 of the Police Act 1997 has made great steps forward by including the sector in disclosure and access to criminal records, and I suggest that that should be taken further in the Protection of Children (Scotland) Bill.

**Jackie Baillie:** Would that cause you any operational difficulties?

**Alison McLeod:** It would cause us no more difficulties than any other disclosures. The voluntary sector already applies to Disclosure Scotland for disclosures. As I said, the arrangements are similar to those for people in paid employment, so I do not anticipate a significant impact.

**Cathy Peattie:** I am interested in the voluntary sector. Jackie Baillie is right to say that the sector is important. You say that you already work with the volunteering sector. What percentage of your work involves that sector?

**Alison McLeod:** At the moment, it is a lot less than we had anticipated. We had anticipated that the volunteer sector would account for about 50 per cent of our work load, but at the moment it accounts for about 10 per cent. That has a lot to do with the voluntary sector getting to grips with the legislation and what needs to be done. Voluntary bodies are now organising themselves to register with Volunteer Development Scotland, the central registration body. They are getting the applications filled in and sending them out to us, but a lot of volunteer organisations have national centres and centres spread around the country, so the process is an operational nightmare for them.

**Cathy Peattie:** Does that 10 per cent involve volunteers who are involved in the statutory sector, such as those who work with local authorities in child care or those who volunteer in the health service?

**Alison McLeod:** No. I am talking purely about people in the voluntary sector.

**Ian Jenkins:** Do you see any potential problems with provisional registration? What difficulties might arise if there is information on people who work with children that relates to jobs that are only partially to do with children?

**Alison McLeod:** As I said in my written submission, we would seek clarification on provisional inclusion on the list and on the stage at which we will have the authority to disclose whether someone is on the list.

**Ian Jenkins:** Your submission mentions the difficulty that might arise if you are not quite clear about the position that someone is applying for. Could you expand on that?

**Alison McLeod:** The Disclosure Scotland application form asks just for the position that is being applied for. That could be a generic position, such as a carer. The spirit of the bill is obviously that we should be creating a list of adults who are not suitable to work with children specifically, but we also deal with vulnerable adults. We would have to consider revising our application form, or at least the notes that accompany it, so that people state whether the position that they are applying for involves working with children, rather than with vulnerable adults or a combination of the two.

14:30

**The Convener:** I would like to ask about the kind of checks that you can carry out in relation to people from Northern Ireland. How does that work in practice?

**Alison McLeod:** Northern Ireland is treated as part of the UK as far as our checks are concerned. We have access to criminal history in Northern Ireland and we contact the police service of Northern Ireland if the police have any local information for an enhanced disclosure.

**Cathy Peattie:** You have spoken to the Executive, but I was surprised to hear that that was only a week before the bill was introduced. Would it have been easier for you if the Executive had spoken to you earlier?

**Alison McLeod:** I do not believe that that had a huge impact on Disclosure Scotland. It might have been nicer to have a few months' notice, but the time scale was not greatly detrimental to the progress of the bill.

**The Convener:** As there are no further questions, I thank you very much for your time this afternoon. If other issues arise, we will be back in touch.

**Alison McLeod:** Thank you.

**The Convener:** We will now hear evidence from The NHS Confederation. I welcome Susan Aitken and Hilary Robertson to the committee. Susan and I go back a long way, so it is nice to see her here. Would you like to make any introductory comments?

**Hilary Robertson (The NHS Confederation):**

The committee has received our written submission, and we thank you for inviting us to give evidence today. We support the overall aims of the bill, which is to increase protection for children and to prevent people who are banned from working in one part of the UK from working in another.

**Ian Jenkins:** What is the current situation? Does the NHS carry out checks on its staff? If so, on whom does it carry them out? In what way would the bill extend your responsibility to carry out such checks?

**Hilary Robertson:** The NHS does carry out checks—for example, all nursing staff are checked before they are in post. The bill would extend that to include checks against referrals to the list. We have a number of concerns about how that would work in practice.

Disclosure Scotland hopes that, if it has quick access to information, there will be no increase in time scales. We do not expect that the bill would require a longer time for checks on our members, but we cannot be sure. If the additional requirements mean that checks will take longer, posts might remain vacant while the checks are carried out.

**Michael Russell:** In your submission, you talk about the definitions of risk and harm for things that fall short of being a criminal offence. Will you give us examples?

**Susan Aitken (The NHS Confederation):** It is clear that the bill intends to cover more than just people who have gone through the criminal justice system and been convicted. However, it will sometimes be left to employers' judgment to determine what constitutes sufficient risk or harm to merit referral to the list. We cannot give examples at the moment because the bill will have to be made much clearer. Different employers would give different examples. Risk and harm will have to be defined very clearly in the bill to ensure that there are no discrepancies. It should not be left to the judgment of individuals or employers. There will have to be consistency in how the terms are applied.

With the criminal justice process, there is certainty—or protection, if you like—because it is clear that a crime has been committed and a charge has been made, leading to conviction or acquittal; however, when there has been no crime, such matters are left to individuals' judgment.

**Michael Russell:** Quite rightly, you are presenting us with a range of difficulties with the bill that we will have to tackle. Another problem for employers will be the risk of running into difficulty with industrial tribunals over the question of whether a dismissal is fair or unfair when

somebody has no charge against them but is dismissed because of a referral under the register. Have you considered that?

**Hilary Robertson:** Yes. That would present some difficulties. In NHS organisations, it would be good practice to move somebody out of a child care position if an allegation was made or if there was a suspicion that they had either harmed a child or put a child at risk. As the bill is drafted, that would trigger a referral to the list. The employer may not have definite proof; therefore, charges may not be brought even if they would be appropriate should evidence be available. Employers must judge whether to refer people. The danger—apart from any subsequent action against the employer for unfair dismissal if an individual is dismissed rather than just transferred—is that employers might be deterred from moving people and, therefore, from referring them to the list if they do not have substantial evidence against them. That would mean leaving in a child care position an individual who might go on to harm a child or put a child at risk, which would leave the employer open to action.

**Michael Russell:** We will probe that issue much more deeply in our consideration of the bill.

Although I am sympathetic to its intentions, one of the problems that I have with the bill is the permanence of the arrangements even in cases of suspicion. I am interested in exploring with witnesses the idea of recording somewhere the treatment that a convicted offender, for instance, has received to try to alter their behaviour. Do you think that that information would be useful for employers?

**Hilary Robertson:** Yes, it probably would be useful. I am not certain what information on such individuals is available to employers. We will have to look into that and get back to the committee.

**Michael Russell:** Do you think that that idea might be worth exploring?

**Hilary Robertson:** Yes.

**Irene McGugan:** The final paragraph of your submission points out where there might be confusion about the parts of the NHS that are covered by the bill, because different expressions such as "child care organisation" and "child care position" are used. Where will problems arise in relation to that, and what ought to be included in the bill?

**Hilary Robertson:** The phrase "child care organisation" is clearly defined as being any body that provides services for children. That would encompass pretty much all organisations and individuals working in the NHS. What is less clear is the definition of a "child care position". The bill restricts the definition to the specific setting of

hospitals, although children can be treated in out-patient clinics, in health centres, by general practitioners, in accident and emergency departments and by the Scottish Ambulance Service. Therefore, the definition does not fit with the description of the organisation. It should be wider and encompass anybody who provides services to a child, whether in the Royal hospital for sick children or anywhere else.

**Irene McGugan:** Would you like the definition to be widened to include every GP surgery?

**Hilary Robertson:** The definition should cover every setting in which health care services are provided to children.

**Susan Aitken:** The issue in the NHS is the setting rather than the specific child care position. Although people in paediatrics who work directly with children will be in child care positions, there is a range of positions in the NHS through which people come into contact with children and treat them as part of their day-to-day work. Those positions would not necessarily be defined as child care positions, because the work is much more varied than that. It is therefore the setting that is pertinent for NHS employers, rather than the position.

**Jackie Baillie:** Let us develop that point in the context of volunteers. A huge amount of voluntary effort goes into the NHS, whether through the traditional route of the Women's Royal Voluntary Service or through something more imaginative such as creative programmes for children or adults. How do you deal currently with volunteers, and how will the bill impact on what you do in future? Some of the volunteers will also come into contact with children.

**Hilary Robertson:** As the de facto employer, the voluntary organisation—rather than the NHS organisation within which, or on whose behalf, the service was being provided—would be responsible for making any referrals to the list if there was evidence to suggest that that was needed. We are concerned about independent contractors and agency staff, which might include voluntary organisations. Although the NHS organisation would not be the actual employer, it would have a moral duty—if not a legal duty—of care to the patients. As drafted, the bill will require the agency, rather than the NHS organisation, to make a referral. However, we feel that the responsibility for ensuring that referrals are made should be shared or divided in some way. We would like the bill to include a provision that would allow professional bodies such as the British Medical Association and the British Dental Association to make referrals for independent contractors. We have not considered specifically the case of the voluntary sector; however, those concerns apply equally to the voluntary sector.

**Jackie Baillie:** Are you looking for a mechanism that would enable you to check that others have applied for referrals?

**Hilary Robertson:** Yes.

**The Deputy Convener (Cathy Peattie):** If a situation arose in which the NHS used agency staff and something went wrong that led to talk of liability, would the agency or the NHS be responsible for whatever went wrong?

**Hilary Robertson:** That would depend on the circumstances. Our concern is that the bill as drafted will require the agency to make the referral. However, it would be the organisation in which the agency nurse, for example, was working that would have the information about what had happened and, therefore, the evidence about what had gone wrong. It does not seem consistent to require the agency to make the referral, because the NHS organisation would be the body that would have the information that might lead to a referral and the duty of care to the individual who could have been harmed in those circumstances.

**The Deputy Convener:** There are no further questions. I thank the witnesses for coming along this afternoon. We are running ahead of time a wee bit, and we are still waiting for our next panel of witnesses. I therefore suspend the meeting for about 10 minutes.

14:44

*Meeting suspended.*

15:07

*On resuming—*

**The Convener:** Before we take the final set of witnesses, we will deal with item 3, which is to agree our first report on stage 1 of the Public Appointments and Public Bodies etc (Scotland) Bill, so we move into private session.

15:07

*Meeting continued in private.*

15:28

*Meeting continued in public.*

**The Convener:** We continue item 2 to take evidence from the Scottish Trades Union Congress on stage 1 of the Protection of Children (Scotland) Bill. We are joined by Tracey White from the STUC; Alana Ross from the Educational Institute of Scotland; and Mary Senior and John Stevenson from Unison. Do any of our witnesses have any introductory comments?

**Tracey White (Scottish Trades Union Congress):** I will make some brief comments. The convener has stolen my thunder by introducing my colleagues for me. I am grateful to her for doing so.

We very much welcome the opportunity to give our views on the principles of the bill. We also welcome the bill's objectives, because we all share the same wish to protect children in Scotland. However, we are concerned about the application of some of the bill's provisions, and those concerns will no doubt emerge during questions.

We should perhaps flag up our concern about the reliance on the integrity of the employer in the bill's application—and, for that matter, on the integrity of employers' systems for determining whether someone should be referred to the list that the bill proposes to establish. We will no doubt discuss the detail of that later.

With me today are colleagues from Unison and the EIS, which is the largest teachers' union in Scotland. As members can imagine, I have concerns about the application of the provisions of the bill and any subsequent act to teachers. Specifically, I am concerned about how the legislation will fit in with existing arrangements for vetting people in schools.

Unison has a broader perspective and represents a range of employees in different professional disciplines: local government, child care and the voluntary sector. My colleagues will give more detailed information on their concerns about the bill.

15:30

**The Convener:** Thank you. I register my interest as a member of Unison and a former member of the Scottish Trades Union Congress general council. If any member has a similar declaration to make, they should please make it.

**Ian Jenkins:** I am a member of the EIS.

**Michael Russell:** I have no declaration to make.

**Cathy Peattie:** I am a member of Unison and MSF, the manufacturing, science and finance union.

**Jackie Baillie:** I am a member of Unison and the Transport and General Workers Union.

**Michael Russell:** I shall declare that my wife is a member of Unison.

**Tracey White:** We all carry membership forms in our briefcases for circumstances such as these. If Michael Russell wants to talk to us later, he will be welcome.

**Michael Russell:** Earlier, we talked to representatives from The NHS confederation and I want to raise with you the same point that I raised with them. The bill makes it an offence for listed persons to continue employment in a child care position. Those persons might not have been convicted and might have been moved from positions on suspicion. Do you note any implications for current employment legislation, particularly in relation to what could be construed as unfair dismissal?

**John Stevenson (Unison):** All our members readily accept that there is a need to dilute some of their civil rights to protect children properly. If they are going to accept that, they must be satisfied that there is fairness and accountability on the other side. At the moment, the bill is silent on when a dismissal takes place—is it when an employer decides to dismiss or is it at the end of employment tribunal proceedings? When someone is convicted of an offence, it is clearer that the appeal processes must be exhausted before the referral is made to the list, but it is not clear when someone is referred by an employer. A court can decide that a person is unlikely to commit such an offence again and so not refer them to the list, whereas an employer does not have that option because there is a much lower standard of proof.

There must be more clarity on the point at which someone is referred and what an employer means when they say that they would have dismissed. Does it mean that the process is completed, that they have carried out an investigation and that they have presented the evidence? What does suspension mean? At the moment, when a complaint is made against one of our members that they may have harmed a child, they will often be suspended as a precaution while an investigation takes place. Does the bill refer to that kind of suspension or to a disciplinary suspension? None of that is clear.

We would be more satisfied if that area of the bill were tightened up, and if there were a hearing before someone went on the list. It appears that ministers will take a view on whether someone should go on the list based on written observations from either side. Only then—a considerable way down the line—would a person be able to appeal, through a sheriff, which can be expensive. To reassure people about the process, there should be a hearing to uncover any problems before a case is referred to ministers.

**Michael Russell:** There must be a worry that employment law and the legislation will be out of sync and that the grounds on which a dismissal is deemed to be fair will be different from the grounds on which a registration will take place. During the passage of the bill, we will have to

tease out the difficulties of bringing things into sync.

I want to ask a question that I have asked of each of the witnesses. Like you, I accept that the bill is necessary and desirable, but I worry about the permanence of the listings. No indication is given that change will be possible. There is a range of well-known and effective treatment programmes aimed at behavioural change, especially for sex offenders, but nothing in the bill allows information on such programmes to be attached to the individuals on the register so that at least something says that the individual's behaviour has changed or is changing. Others have been in favour of attaching such information; would you be?

**John Stevenson:** I admit that I have not thought about that in detail. I can think of a comparable circumstance. There is a great deal of difference between a nursery nurse being found guilty of an offence against a three-year-old child, and someone who works in a unit with five or six violent 16 or 17-year-olds having to use restraining measures to protect themselves or other young people. I can imagine someone being injured in such circumstances, but that would be very different from a premeditated sexual assault on a young child. Therefore, I would want there to be recognition of the nature of the job. Many people who work in secure units have complaints made against them every time they restrain a young person. I hope that most places now have a level of staffing that allows for safe caring, but situations will often blow up.

Different types of harm can be done. We have asked ourselves how harm should be defined in the bill. It talks of a 10-year period before a case can be reviewed; but if someone has assaulted someone, wrongly—of course—but in the middle of a riot, 10 years might be over the top.

**Tracey White:** Before we came to give evidence, we discussed the ways in which people might find themselves on the list. Issues arise over when a person's case can be reviewed.

As drafted, the bill does not appear to offer us comfort that an employer who recommends that a person be put on the list has gone through the adequate procedure before making that recommendation. If there were such adequate procedures, the facts surrounding the kind of case that John Stevenson spoke about could be taken into account before the fact rather than after the fact.

**Cathy Peattie:** In its submission, Unison welcomes the bill because of its effect on children's rights. You clearly also believe in adults' rights. How can we strike a balance between adults' rights, employment rights and children's rights?

**Mary Senior (Unison):** When we put together our submission, the right to a fair hearing was of prime concern to us. Michael Russell has mentioned possible contradictions between employment law and the bill. We feel that the bill may contradict the European convention on human rights, the Human Rights Act 1998 and the Scotland Act 1998. All we are asking is that there should be a fair hearing for people. That is what would happen in an employment situation. We are concerned that the bill does not make it clear that people should have a fair hearing.

We also feel that there is no room for trade union representation. It seems that someone is just referred to the list and they do not have a right to reply.

We have also mentioned challenging inclusion on the list. A person has to go through a sheriff court and that does not seem fair. A lot of people might not have a job at that point. Will they be able to get legal aid? It is quite a long and distressing procedure and there has to be balance and fairness.

**Cathy Peattie:** I am interested in the view of the EIS.

**Alana Ross (Educational Institute of Scotland):** One of the problems that we foresee is how the system will sit with the General Teaching Council, which is the statutory body that decides who is fit to teach in schools and who is not. It appears that the GTC could say that someone is fit to be in a classroom, but there is another issue on the side that is not so clear. Mike Russell raised a point about the amount of time that someone can be on a list. I do not know how common the knowledge is, but even if someone is struck off by the GTC, they can apply to be readmitted to the register at a later date. I am not sure exactly how long that takes but it is a lot less than 10 years. Somehow, those two issues will have to be brought together better.

We also have serious concerns about provisional listing. In many schools, if an accusation is made against a teacher, the person gets a precautionary suspension without any investigation taking place. It is deemed to be better that the person is not in the school while the investigation is taking place. We are deeply concerned that a person could be put on a provisional list without any evidence.

**Cathy Peattie:** Mary Senior expressed concern that there is nothing in the bill about trade union representation. How do you see trade unions having a role in ensuring that someone is not libelled, told that they are unfit to work with kids and placed on the list? What role should the bill give to trade union representation?

**Alana Ross:** The bill makes it look as if there is one person against an organisation; that one person will need the backing of a trade union or something similar. Maybe it is just the way that I have read the bill, but it appears to me that everything will be done on paper, which might not be the best way to conduct such a case. Often, you have to hear what the other side is saying in order to make a proper response. Any member who is involved in such a case would probably want the backing of their trade union.

**Irene McGugan:** You are saying that there is a lack of guidance for employers, that there is no real procedure and that such cases will proceed without evidence. Is not some of that covered by current good practice? A person cannot be put on the list unless there is such concern about the risk of their harming children that the organisation is going to dismiss the person. Surely an employer would have gone through the process of warnings, written warnings, disciplinary procedures, enhanced training or whatever individual organisations do to address concerns at an early stage. If matters escalate so much that the employer is considering dismissal—it is only at that point that a person would be referred to the list—there would be a lot of evidence by that stage.

**Tracey White:** You would think that that would be true and, in ideal circumstances and with good and reasonable employers, you are right that that would be the case. Procedures would have been followed and people would have had the opportunity to make their case and be represented at various stages in an appropriate disciplinary procedure in the workplace. However, it is sadly not the case that all employers have in place fair and reasonable procedures. Our concern is that people do not appear to have much right of redress if their employer, for whatever reason, wants, or decides that it is appropriate, to refer them for inclusion on the list.

I note in passing that only referrals that are considered not to be frivolous or vexatious will be eligible for inclusion on the list. However, it is not clear to me how one will determine whether referrals are frivolous or vexatious. If there is an appropriate discipline and grievance procedure in the workplace that is followed in practice, anything frivolous or vexatious will be weeded out at the appropriate stage. However, where that is not the case, there are no guarantees in the bill that people will have any comfort and security.

15:45

**Alana Ross:** We think that it is unlikely that a vexatious or frivolous accusation would be made against our members in the state sector, because an education authority would presumably have to

bring the accusation. However, we must keep it in mind that some small private schools perhaps do not have the same robust procedures as local authorities have.

**Irene McGugan:** Is not it the case that poor practices and the lack of procedures are the problems that must be tackled? The bill's provisions should not be criticised, because they are trying to do something positive. I accept that that attempt might fail, but should not we tackle poor practices and procedures, rather than simply identify reasons why the bill will not work or give people equal rights?

**John Stevenson:** There is an issue there. I have a brief example of a case from some time ago in which I represented someone from a private school. An untrained woman, on £10,000 a year, in her third or fourth week of employment was sent on a trip with six young men, one of whom fell in a river. She was sacked for causing harm. We eventually took the case to a tribunal. Technically, she had caused harm, but one wonders whether her employer should have been referred given its practices.

Not all employers are good employers. I suppose that whether employers have good disciplinary systems and all the rest is an issue. The bill will hand responsibility to employers without ensuring that disciplinary systems are in place. Therefore, it appears that the bill will give much power and no discretion to employers. That is what worries us, rather than how powers are granted to the court system.

**Tracey White:** Our point is not that the bill should not try to address the issues that it is trying to address, but that the current work circumstances of a number of people—far more than we would want—must be recognised. Our view is that it is incumbent on those drafting the bill to take account of that situation and ensure that there are adequate safeguards in the bill. One safeguard that could be considered is to give an individual a right to a hearing before they are listed.

**Jackie Baillie:** I will follow up that point. As you know, there is often a balance to be struck between what is included in a bill and what goes into guidance. It is difficult to prescribe in the bill a procedure that would fit every employer. I wonder whether some of your points could be captured in the guidance that is likely to accompany the bill. That might provide you with the necessary reassurance.

Rather than approaching the issue from the employer's end, we could approach it in guidance on the level of evidence that the Executive would require in the various steps and stages before a referral on to the list is even considered. That

might be a more helpful, potentially deliverable approach. I would support that. Is that the kind of direction in which you are going?

The point that Mary Senior made is valid: access to the sheriff court and the appeal mechanism will be constrained by people's ability to pay for and access legal aid. When someone loses their job, the normal route of appeal is a tribunal, but that would not necessarily be the route for someone who wanted to appeal a listing. What alternative is there to the sheriff court? Do you have one?

**Mary Senior:** We welcome what you say about guidance. However, people have the right to a hearing and are innocent until they are proven guilty. I presume that, if a hearing took place, in a lot of cases it would not be necessary for the case to go before a sheriff. At such hearings, people could be represented by their trade unions or other appropriate individuals, which might obviate the need for sheriff court proceedings.

**Tracey White:** Although it would be great if the committee or the Scottish Executive could require employers to have appropriate procedures in place that they would follow in spirit and to the letter, that is not going to happen. The approach that you describe and the safeguards that might be available, such as levels of proof, take us in a direction that gives us some comfort. However, it is not clear whether such safeguards would have to be in the bill or whether guidance would offer a sufficient safety net. You are the experts on that, not us. Nevertheless, achieving the objective that you describe by the route that you describe is what we want.

**Ian Jenkins:** I am still worried about the definitions of risk and harm. Vexatious complaints are obviously a problem, but the definitions of risk and harm seem to be at the core of our concerns. Jackie Baillie is suggesting something that has happened before in the drafting of bills. Terms have been used that are not easy to define, but the subordinate legislation or guidance that has accompanied the bills has helped to firm them up. Alana, what do you think about the definitions of risk and harm as they apply to teaching?

**Alana Ross:** I made a note on that subject. The wording in the bill is very loose when it concerns an individual who has

"harmed a child or placed a child at risk of harm".

It is hard to define occasions on which someone has put a child "at risk of harm". We would like the bill to make it much clearer what is meant by that. I assume that the situation is okay in local authority schools, but other organisations may not be as robust in their procedures.

**Ian Jenkins:** Life contains risks. A teacher may be in charge of youngsters who come to some

harm, but it may not be the teacher who has put them at risk. Similarly, parents are not able to supervise their kids all the time, but they are not putting them at risk in any normal sense of the word.

**Alana Ross:** Yes. It concerns me that there are already a lot of teachers who do not like taking children away on trips because they feel vulnerable. I would hate to think that the bill would make teachers even less likely to take children away. One of the most fulfilling things for pupils and children is to be away together in different circumstances. The fact that the bill talks about placing a child "at risk of harm" might deter people who would otherwise be happy to take children on trips.

**Ian Jenkins:** That was what I was thinking.

**The Convener:** That impacts on organisations right across the spectrum, including the people whom John Stevenson was talking about, who take part in outdoor activities, and nursery nurses who take kids to the park.

**John Stevenson:** That is right. The bill will receive enormous support from our members if it addresses what happened in Wales and the subject of the Edinburgh inquiry. The abuse in the Edinburgh case came to light because it was reported to a member of staff who reported it on. That underlines the need for staff to have confidence in the system that they use. They would be happy to give up some of their rights as long as they felt that there was fairness and accountability and that they had the right to a hearing.

**Jackie Baillie:** This is not entirely related to what we have been talking about, but I would be grateful for your views. The bill distinguishes between volunteers and people who are employed in the sector. I am conscious of the fact that volunteers impact on virtually every aspect of Scottish life, especially on working with children. Should volunteers be included in the scope of the bill?

**John Stevenson:** We have not discussed that formally. We are aware that there are different practices regarding whether volunteers have their records checked—it sometimes depends on whether they are supervised and constantly with other people. Your suggestion is worth looking into. Thomas Hamilton was a volunteer rather than an employee. There must be some guidelines for our members who supervise volunteers.

**Alana Ross:** The EIS has not discussed the issue. However, if I wanted to do harm to children, I would find it much easier to do so by volunteering to do something than by seeking employment from someone. You should consider the question of volunteers further. We get a lot of volunteers in schools.

**Tracey White:** One bill cannot do everything. It is clear to most serious-thinking people that there are issues around the use of volunteers—not just those who are involved with children, but those who are involved in other areas of society. However, if the aim is to get a piece of workable legislation on to the statute book, the most straightforward way in which to proceed would be to focus the bill on the employment relationship while looking for other mechanisms to regulate volunteers properly. John Stevenson has mentioned the need for guidance and procedures for the supervision of volunteers, although we have not discussed the matter collectively. There is an issue to be addressed, but the bill might not be the place to do that.

**Cathy Peattie:** Some trade union members will be voluntary sector workers in child care, yet the voluntary sector will be treated differently from the statutory sector. I am not talking about volunteers; I am talking about paid members of staff in the voluntary sector. Do you think that the voluntary sector should be included in the context of their responsibilities?

**John Stevenson:** I understood that defined child care organisations such as Barnardo's, Barony Housing Association and NCH would be included in the bill.

**Cathy Peattie:** Do you feel that that is appropriate?

**John Stevenson:** Yes. Many such organisations are delivering core services. They are not fringe services; they are part of the core public service that is provided for a certain age group.

**Tracey White:** It is important to point out that the concern that we have raised that many employers have inadequate procedures in place is especially true of the voluntary sector.

**Cathy Peattie:** That is what I was driving at. Many voluntary sector organisations will not have in place the employment systems that local authorities have in place. Some voluntary organisations may have no grievance procedure or guidance on such procedures as they exist elsewhere. Therefore, there may well be issues for trade union members or other people who work in the voluntary sector.

**Tracey White:** None of what has been said is an argument for not including the voluntary sector. The argument is for getting the legislation right before it is applied.

16:00

**Mary Senior:** We should not just talk about the voluntary sector. The private sector also has many tiny child care nurseries and care organisations.

Again, those organisations and nurseries might not have the same procedures and the employers might not be geared up to respond to the issue, but it is important that they are included if we are to get the legislation right.

**The Convener:** As there are no further questions, I thank you for your evidence. We will be back in touch if we need any clarification.

We will now take evidence from Rosemarie Mcllwhan of the Scottish Human Rights Centre. Thank you for coming, Rosemarie. We have your written evidence. Do you want to make any introductory comments or shall we move straight to questions?

**Rosemarie Mcllwhan (Scottish Human Rights Centre):** I do not think that I sent you any written evidence.

**The Convener:** I thought that we had written evidence.

**Rosemarie Mcllwhan:** I was going to apologise for that. I am afraid that we have been a bit snowed under with criminal justice and mental health matters. Although we welcome the principles of the bill, we have some concerns about the practicalities. I am happy to go straight to questions.

**Cathy Peattie:** How do we balance the rights of adults, such as employment rights, with the rights of children? How do we protect children?

**Rosemarie Mcllwhan:** It is a difficult balancing act, particularly in the current climate of fear and paranoia about protecting children. I do not envy members their job. I suggest that the bill does not strike the right balance. It is essential that a right to a fair trial or hearing be provided. However, from our reading of the bill, it is not provided. Although we can agree that adults need to be placed on the register in order to protect children, we must also go through due process and a fair hearing. The bill does not provide for a fair hearing.

**Cathy Peattie:** How would you improve the bill?

**Rosemarie Mcllwhan:** A number of things must be done. We heard from the trade unions that there is a real need for guidance and support for improving disciplinary procedures. That is a key factor, not only for the voluntary sector, but across the board.

We suggest that it would be better if the initial listing went through a court or tribunal rather than through a minister. That would mean that the decision was not political but factual. There would therefore be no scope for any influence to be brought to bear in the decision. Without saying anything bad about politicians, I believe that there is the potential that a decision might be political

because it is based on public opinion. That is not a fair hearing. We would be more comfortable if the process went through the legal rather than the political system.

**Jackie Baillie:** Obviously the voluntary sector organisations that have a specific interest in child care are within the scope of the bill. However, as you will know, in the voluntary sector little distinction is made between a paid employee and a volunteer. Do you think that volunteers should come within the scope of the bill?

**Rosemarie Mcllwhan:** To keep to the principles of the bill, you would have to include anyone who works in a one-on-one—or other—position of power with children. Yes, the bill should include volunteers.

That comes back to procedures to support the voluntary sector. Although some organisations might have good procedures for child protection, others do not, so there is a need for support. The bill should definitely cover volunteers.

**Michael Russell:** I share your concerns, which we have heard several times this afternoon, about the exact process by which people would enter into the list or register. Your point about tribunals and courts rather than ministers needs to be discussed.

Let me look at the other end of the process and ask a question that I have put to each witness. The bill provides for a 10-year period before a person can appeal to be removed from the list. If the person was a child at the time of inclusion on the list, that period is five years. However, there is nothing to indicate that a convicted offender's willingness to undertake treatment or a course of rehabilitation would be a germane factor in considering his case. Have you reflected on that issue? What would your view be?

**Rosemarie Mcllwhan:** The five or 10-year period seems an arbitrary length of time, which we would disagree with. We would suggest that any rehabilitation that a person has undertaken must be considered, whether they are a convicted offender who has gone through a programme or whether they have addressed offending or abusive behaviour in some other manner—for example, through counselling recommended by their employer.

There should be a consistent review period. Someone should not have to wait 10 years before they can appeal. If they have gone through a rehabilitative process and feel that they are ready, they should be able to go to a panel, subject to meeting various criteria in order to prevent frivolous claims. However, I suggest that 10 years is an arbitrary period. The appeal period should depend on the individual, because some people might never be ready and some might be ready within two, five, six or seven years.

**Ian Jenkins:** There are cases involving allegations of child abuse or child harm when social workers have difficult decisions to make about taking action. There are cases in which it is difficult to obtain hard evidence and in which there is insufficient proof for going to court, but there is strong suspicion. Does your organisation believe that in such cases the person under suspicion should be dismissed or put on a register in order to protect children? I am not giving my view. I am just asking for your view.

**Rosemarie Mcllwhan:** That is a difficult balance to strike. The flip side of the coin is that it is easy for a child to scream "I've been abused!" and for the case to come down to a he-said-she-said argument. That is a difficult situation—a child will say that the adult will always be believed because they are an adult. Real abuse can be missed because people are scared to come forward.

I suggest that it is appropriate for an accusation to go through the court system. We do not agree that cases should be decided on a civil standard of proof rather than on a criminal standard, because the proceeding is a criminal one. However, that issue is for the Parliament to decide. My view is that an accusation of child abuse or child harm must go through the court system.

If cases did not go through the courts, the system would be open to abuse from children or from an employee with a grudge. It is dead easy for someone to say that they are suspicious of a person and say whatever they like about that person. The case then comes down to a he-said-she-said argument. The only way in which one can get to the nitty-gritty of such a situation is through an adversarial court process.

**Ian Jenkins:** So you are against provisional listing.

**Rosemarie Mcllwhan:** I am against provisional listing because of its potential impact on a person—their career could be ruined on the basis of suspicion. Yes, suspend them until disciplinary proceedings have ascertained whether they should be listed, but they should not be put on the list before then. Even if a person is proven innocent of all charges and allegations, mud sticks.

If a person has had their name on the list, they will not get another child care post, regardless of whether their name was cleared. Provisionally putting people's names on the list would mean that they would be presumed guilty, even though they might eventually be proven innocent. That flies in the face of the basis of our society's justice system.

**The Convener:** Assuming someone is suspended, what does one do if they just resign from their job?

**Rosemarie Mcllwhan:** There is provision in the bill for provisionally listing them even if they resign, but that involves striking a difficult balance. I presume that an application for the listing would still be sought, because there is a provision that, if a person resigns, they can still be listed. The process would be gone through as normal, after which that person would be listed or not listed. I presume that your concern is that such a person may get another job in child care and then cause harm before they are listed. There should not be extension after extension, or provisional listings. The listing process should be as fast as possible. If there is adequate information, one would not be accused of rushing the process and so infringing the person's right to a fair trial.

**Cathy Peattie:** So, to be clear, you are suggesting that evidence taking should be done while a person is suspended or has moved on and that there should not be a provisional list.

**Rosemarie Mcllwhan:** That is right.

**Ian Jenkins:** I want to come back to the definition of harm. Someone may be charged with assaulting a child to his or her great harm, and everyone may know that something took place, but it may not be possible to get a criminal conviction. The accused person may have been acquitted and therefore proved innocent, in that sense. Would you want someone such as that to be able to go back to their old job without their employer being able to exercise any discretion?

**Rosemarie Mcllwhan:** Again, that would be a difficult situation. As I said, we may want to consider the standard of proof that is used. We have to protect children, but the definition of harm, as it stands, is not sufficient. There is no clarity—a fundamental part of human rights is that the law must be clear on what is and is not illegal. The definition may need to be tightened up.

In criminal law, there are many examples of what constitutes harm, but there are also many examples, such as the one that you have just given, of things that would come not under the criminal law but under the principles of the bill. It may be that you will have to consider having further examples of what constitutes harm.

**Ian Jenkins:** According to your stance earlier, we would have to create new criminal offences to bring people to trial and perhaps to be proved guilty.

**Rosemarie Mcllwhan:** I did not suggest that such things be taken to trial as criminal offences; I suggested that you should consider the process as a legal one rather than as a political one. You would have the option of making the listing a civil process—we are talking about determining civil rights—as opposed to a criminal process. Employing someone who is listed, or applying for

employment when you are listed, is a criminal offence, but the listing process could be a civil process. That would allow the standard of proof to be the balance of probabilities, as opposed to reasonable doubt.

**Ian Jenkins:** Thank you.

**Michael Russell:** I think that I agree with what you are saying, but I want to be absolutely clear. If we accept that something has to be done, are you saying that we should use the judicial system—either by creating new offences, as Ian Jenkins has suggested, or by using the civil process—to deal with a situation that has not adequately been dealt with? Are you saying that we should do that rather than taking things outside the norms, as we understand them, of the legal system and making the process partly quasi-political and partly one that goes against the norms of the legal system, in the sense that guilt is assumed without proof? You seem to be arguing that we need to do something but that it should be done within the legal system rather than outwith the legal system.

**Rosemarie Mcllwhan:** Because of the implications, the process would have to be within the legal system and would have to respect the person's rights, such as the right to a fair trial.

**Michael Russell:** I am happy with that. Thank you.

**The Convener:** There are no further questions so thank you very much for your evidence. I am sure that we will be back in touch as the bill progresses.

**Rosemarie Mcllwhan:** Thank you.

**The Convener:** We have already had the private part of our meeting on the Public Appointments and Public Bodies etc (Scotland) Bill, so I will now suspend the meeting.

16:14

*Meeting suspended.*

18:40

*On resuming—*

**The Convener:** I call the meeting to order. I thank everyone for coming this evening. Part of the reason for having an evening session on the Protection of Children (Scotland) Bill is to gather information from parents and people who work with parents in the wider community. We asked Glasgow City Council to facilitate the session for us. We hope that the session will be fairly informal, so that we can chat around some of the issues and gather information on your hopes, expectations and perhaps fears about the bill. You should respond as you want to questions that

members put to you. If anyone wants to make introductory remarks to kick off the session, please indicate that you wish to do so.

As you wish to move straight to questions, I will start. What are your expectations of the bill? What do you hope that the bill will achieve?

**Thomas Lyons (Oakgrove Primary School):** I hope that we can put into position something that will safeguard children in the future.

**Dr Joanne Beaumont (Hillhead Primary and Secondary School Boards):** I did not have any expectations of the bill. I observed it keenly and was interested to see what would be introduced, as I wanted to react to what the Executive was thinking.

**Michael Russell:** Mr Lyons said that he wanted to safeguard children for the future. What will the bill do that existing legislation is not doing? In other words, what still needs to be done?

**Thomas Lyons:** The bill will move us away from what we have at present, which is a system in which people who work in schools have to be checked by the Scottish Criminal Record Office, but those who work in youth clubs, community groups and so forth do not. I hope that the bill will put the system on one level.

**Michael Russell:** At present, the bill does not cover the voluntary sector. Is that a weakness?

**Thomas Lyons** *indicated agreement.*

**Michael Russell:** I notice that Dr Beaumont also nodded. Is that a concern for you too?

**Dr Beaumont:** I agree with that, but I am interested in the tension between covering the voluntary sector and the restrictions that that might impose. No detail was given on that, but the fact was alluded to that it was unclear as to how the provisions would affect the voluntary sector. Some of my concerns about the bill are about the way in which it could affect voluntary organisations to their detriment.

**Michael Russell:** You are involved with schools. Mr Lyons indicated that there is already a system that works for those who are employed in schools. The bill would tighten the system considerably. Is that required? From your experience or knowledge, is there anything that would lead you to say that the system should be tightened yet further?

**Thomas Lyons:** No. I am happy with the system that is in place in schools at present.

**Cathy Peattie:** We took evidence earlier today from trade union representatives, who said that they are concerned about employment rights. They were thinking of situations in which someone is accused of something and their name is added

to the provisional list. They talked about the dilemma of balancing adult employment rights and the rights of children. Do you have a view on that?

18:45

**Thomas Lyons:** Children's rights come first and foremost.

**Cathy Peattie:** How do we ensure that children's rights are taken first and foremost, as the most important thing?

**Dr Beaumont:** I do not see provision in the bill for children to make representation. I realise that there are dangers in giving children direct access to—say—an ombudsman. It will be interesting to see existing channels such as ChildLine Scotland helping to shape a system of listening to children.

Children have their own monitors—they know when something is not right. We frequently override children for reasons of convenience or because we are blinkered. Children are often right, but they are not listened to. There should be some mechanism by which children can have input, although we should not endanger employees' rights.

One danger is that the bill will affect employees' rights, particularly in relation to accessing soft information. I am worried about balance because the bill is not very specific on that issue. We all know how difficult it is to be removed from lists such as credit blacklists. There is a potential for the abuse of power because certain people will have junior employees' careers in their hands.

**Cathy Peattie:** Are you concerned that when people who have been placed provisionally on a list are removed from it, the fact that they have been on the list might follow them and affect their future career?

**Dr Beaumont:** Yes. Mud sticks.

**Michael Russell:** You talked about the need for children to be involved in the process. The committee has been committed to that since the beginning. The bill will create specific and fairly narrow means of referral for organisations. Are you suggesting that the bill should go further and create other means of referral so that doubts or suspicions about individuals can be included? That would get us into murky water. If we also take into account the need for children to be involved, the result might be a snoopers' charter.

**Dr Beaumont:** I am not sure that the bill is the way in which to involve children. In response to Cathy Peattie's question, I said that there should be a mechanism for children to be heard. I feel strongly that we need a balance between human rights considerations and having a snoopers' charter. I am concerned about the soft information issue.

**Michael Russell:** How worried do you think parents are about the day-to-day dangers to their children in schools and the community, in Glasgow or elsewhere? Should they think that the bill is an important step forward?

**Dr Beaumont:** There is a tendency for people to be blinkered about how real the dangers are. The Scottish Executive's statistics show that in 2000-01, more than 2000 children were involved in child protection cases, but that more than 77 per cent of those cases involved natural parents. The way in which evidence and issues from high-profile cases fed into the bill has been alluded to. People have panicked about a danger that might not be as big as they think. I think that only 3.5 per cent of those child protection cases involved total strangers.

**Michael Russell:** If one takes the percentage of people involved, not in education, but in the voluntary sector—which the bill does not cover at present—we are talking about a minuscule number.

**Dr Beaumont:** I wonder whether parents' fears are realistic. The bill would not necessarily have made a difference in high-profile cases such as that in Soham or the Thomas Hamilton case.

**Michael Russell:** Many members worry that that is the case.

**Irene McGugan:** I want to continue on that theme. The statistics and examples that Dr Beaumont gave relate specifically to abuse, which is clearly defined. The perpetrators of abuse usually end up in court. However, the bill mentions not abuse but harm and the risk of harm. What is the difference? Is there a definition of harm? Would it be easy for employers to determine what degree of harm is sufficient to refer someone to the list?

**Dr Beaumont:** I hear what you are saying. Those figures relate to a specific circumstance and I used them only as an illustration. I believe that there is a difference between harm and abuse, but you cannot legislate against harm or evil. There are poor teachers who harm children emotionally for years and you will not be able to legislate against that, although it is right and proper that we have a list of unsuitable people.

It could be dangerous to rely on a safety net that has holes in it as it might stop us trying to strengthen safe practice and operation. I would hate people to become complacent. For example, the other day, I heard a head teacher say that, once everyone had been checked by SCRO, everyone could relax.

**Jackie Baillie:** That is a valid point. There is no substitute for robust child protection policies in every organisation. We have a duty to send that clear signal.

Tomorrow in Parliament, we will debate the Education, Culture and Sport Committee's proposal for a children's commissioner. We hope that the establishment of that post will ensure that children's voices are mainstreamed throughout a host of policy areas. I hope that that takes on your point. I agree that putting a young and vulnerable child through all the stages of the bill would be the wrong approach.

You made a comment that I thought was spot on: once a person is on a list, it is incredibly difficult to get off and the stigma attached to being on such a list is enormous. This afternoon, it was suggested to us that, rather than a person having a right of appeal to the sheriff after they have been placed on a list, they should have a right to a hearing before they are placed on the list. Which option do you think should be used? Should both be used, perhaps?

**Dr Beaumont:** A hearing sounds like a useful addition. I was worried about the provisional nature of the list and the length of time involved. It was not clear but, taken with the duty of an employer to remove people from a position in which they cared for a child as soon as they were informed that the person was on the provisional list, I think that people could be taken out of circulation for a long time, which does not seem fair to an employee who was the target of a mischievous or frivolous complaint.

**Jackie Baillie:** I have a question for Tricia McConalogue. The situation is not that voluntary organisations working in the child care sector escape the provision of the bill but that volunteers do. As you work for a voluntary sector project, I am keen to explore with you my perception that, often, there is no ready distinction between volunteers and paid workers. Do you think that the bill should be extended to include volunteers?

**Tricia McConalogue (Glasgow Braendam Link):** Braendam Link works with vulnerable families who live in poverty. I think that volunteers should be included as well as paid staff as they both work with children. As Thomas Lyons said, children come first, whether they are at school or not.

I might be reading the policy memorandum wrongly, but I noticed a loophole. Paragraph 8 says:

"The court must refer to the Scottish Ministers all those aged 18 or over convicted of an offence specified in schedule 1 to the Bill unless they are considered by the court to be unlikely to commit a further offence against a child in the future."

However, people who commit an offence specified under schedule 1 are not always convicted. That is a huge loophole. I know that because I have friends whose kids were abused, but the cases did

not go to court and they ended up with compensation. That was probably because of how the law works, which I do not have a clue about.

My biggest worry, however, is that as in the Soham and Thomas Hamilton cases—I am only echoing someone else's point—the legal loophole in schedule 1 could be an entry for somebody who has abused but never been convicted.

**Jackie Baillie:** The difficulty in the issue that you outlined is whether somebody should be put on a list if a court has found them innocent. Earlier witnesses suggested that the legal system and not Scottish ministers should decide whether someone should go on the list. I do not know whether you have a view on that. The argument is that politicians occasionally behave politically—I am told—and to have a more neutral decision the courts should decide who goes on the list. I have no fixed view on that, but I am curious to know whether any of the three witnesses do.

**Tricia McConalogue:** No.

**Jackie Baillie:** You trust politicians. That is excellent. We must ensure that that is in the *Official Report*.

**The Convener:** There was unanimous trust in politicians.

**Jackie Baillie:** Indeed.

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** I would like to pick up on a question about abuse and harm that Irene McGugan asked Dr Beaumont. I will tease out an example. If there was a case of harm involving a teacher, might one not expect the teacher to be struck off the list of registered teachers rather than to be put on a list? However, in a case of abuse one would expect a prosecution, after which the person would be put on a list. Would we expect professional bodies to take independent action?

19:00

**Dr Beaumont:** The GTC has been mentioned. That body, like Parliament, will also consider the issue of the list. It might be appropriate for professional bodies such as the GTC to consider cases that fall into their specific arena. The hearing that was referred to might be a useful way of going about things. Removing people's qualifications could be done in conjunction with putting them on a list.

I am far less worried about people who fall under the remit of professional bodies than I am about oddball people, who will be crafty if they want to abuse children. We may be concentrating too much on those people in professional bodies who might harm children, who might make up only a small proportion of people who harm children, when there are such people who will not be

covered by the bill. For example, what would you do with private tutors? Many people are worried about standards and target setting, so they employ private tutors. However, the bill does not seem to cover such people. Further, all sorts of other people come into contact and get into positions of trust with children. They are people from the local community who attach themselves to events around the school. I do not know whether they would be covered.

**Michael Russell:** As I understand it, the bill provides a triple locking mechanism. The sex offenders' register means that there is supervision of sex offenders and now lifetime supervision is a possibility. Brian has referred to professional bodies that can take a number of actions. The bill means that a person on the list cannot apply for such a job without committing an offence, and bodies not referring such a person or not taking action would be committing an offence under the corporate offences section of the bill.

Do we need such a triple lock? If we do, is the bill going outwith the normal rule of law? Is it assuming that people are guilty and subjecting them to penalties when there is no proof that they are guilty? That is one of the big issues. The strong and convincing argument for doing those things is that there are individuals who are presently not covered by either the sex offenders' register or by the actions of professional bodies. One of the reasons for the earlier questions about volunteers is that they appear to be written out of the bill and might be written out of at least one of the other two existing locks.

I go back to an earlier point I made that I think is important. Do you know—either from your experience or from your reading of the newspapers or anything else—of circumstances in which we might need such a triple lock? Do you believe that it is essential to make those provisions or is it possible, given the statistics that you have quoted, that the bill is going a step too far in some of its provisions? I am not saying that is true of all of its provisions.

**Dr Beaumont:** I suspect that it might be going too far, in that a bill should be effective and I am not convinced that this bill will be effective in picking up that many more people. I do not feel that I am qualified to comment because I have not had a lot of experience of voluntary groups or of working with children. I come at the problem from an academic point of view and I would not like to answer your question more firmly. My question is whether the bill will be effective and I am not sure that it will.

**Michael Russell:** Tricia, you said that there are people who are acquitted or whose case is found to be not proven. Do you believe that the provisions might make a difference in such circumstances and stop repeated abuse?

**Tricia McConalogue:** I am not sure. As I said, when I looked at paragraph 8 of the policy memorandum, I thought there might be a loophole. That is just from experience of people I know. I am not sure about that.

**Thomas Lyons:** Could you give me a bit more information about paragraph 3 of the policy memorandum where it mentions

"Non-conviction information considered by a chief constable"?

**Michael Russell:** That is part of the present provision under the Police Act 1997. It is about information about non-conviction. In other words, if someone has been charged with an offence but not convicted, that information can be included. Misconduct is not included; that is suspicion that does not lead to a criminal charge.

In a lot of the evidence that we have heard today, there is the question of suspicion. Is suspicion without conviction and without charge enough to deprive someone of their livelihood? The bill would have that effect. Nobody is saying that suspicion is not enough, because we are all worried about children, but the consequences are very serious. The example given to us today by The NHS Confederation stated that someone working with vulnerable young people who is under suspicion is often moved sideways away from that job. If that action were taken, they would automatically go on the register. That might mean that some employers would not move the employee sideways because they did not want such registration to be a consequence. The bill might make things worse. The committee will have to juggle those issues. I do not believe that anyone is against the general principles of the bill, but it is the detail that might become worrying.

**Ian Jenkins:** When Mr Lyons says—I understand why he says so as a first thought—that children's rights always come first, does he acknowledge that it is inherently wrong to take away someone else's human rights to raise children's rights? That judgment is difficult.

**Thomas Lyons:** The matter is difficult. If there is any suspicion, even a 1 per cent or 0.0001 per cent chance of someone offending against a child—whether that is sexual, physical or mental abuse—we must do something. It is up to the individual to prove the case otherwise.

**Ian Jenkins:** That relates to what Tricia McConalogue was talking about. She said that people who are accused of something that cannot be proved get away with that. She feels that although such people are potentially harmful to children, they get away with it. The bill tries to address that, but there are difficulties with the legal process and human rights. Do you stick by the idea that children's rights are more important than others' rights?

**Thomas Lyons:** Yes.

**Cathy Peattie:** I will ask Tricia McConalogue about the voluntary sector. From your description, I assume that your organisation works closely with parents and that you encourage parents to participate in the organisation's work. Does not that make it difficult to adopt a screening process? Would that be a barrier to your work?

**Tricia McConalogue:** I was a family member of the organisation until a year ago, so I am the proof of the pudding that people can get on. Will you repeat the question?

**Cathy Peattie:** I am not surprised that you say that you are the proof of the pudding and that you were involved in the organisation before you worked for it. Many people like you become actively involved in voluntary organisations through the same route. If the child protection legislation were very tight, would it prevent folk like you from volunteering or participating in an organisation's work?

**Tricia McConalogue:** The issue is children's rights. We must protect children. I do not know whether we are on the same wavelength. A bit like Mr Lyons, I do not think that the legislation can go too far. If someone has offended against a child—irrespective of whether that person is a parent or of their background—there should be some kind of mechanism, unless a person has undergone rehabilitation, which the policy memorandum mentions. To be honest, I am not sure what I am saying.

**Cathy Peattie:** What you say is valuable. We must examine the issues that relate to voluntary organisations and to their paid and unpaid workers. I am sure that you are aware of that. I have been there myself.

We must consider how to define the difference between paid staff and unpaid staff in a voluntary organisation, because they might do the same work and might have come through the door by the same route that you took. Such people have been interested in an organisation, have become a volunteer and might have become a paid member of staff. Generally, such people are welcomed into an organisation because they are enthusiastic and want an organisation to work. I wonder whether we will create barriers that stop parents from participating.

**Tricia McConalogue:** I do not think so. The protection of the child is still paramount to people. If someone had committed an offence against a child recently and had not been rehabilitated, it would not matter that they were a volunteer. We screen everybody—volunteers included. Recently, we had the ludicrous situation in which a volunteer co-ordinator who had volunteered to help a parent

had to be within view of everybody. That seemed ludicrous, but that concerned a vulnerable family and children and was necessary.

**The Convener:** So, having to fill in a SCRO check form did not stop you from getting involved.

**Tricia McConalogue:** No. I got involved and I ended up with a job.

**Michael Russell:** We are boiling down to a rather difficult equation here, although I am not sure that we should go all the way there. The essential question is whether it is a good idea to have systems that are so tight and robust—based on the merest suspicion—that, inevitably, one or two people will suffer because of some suspicions being unfounded. Should we put up with such systems on the basis that they will ensure that children are protected?

The bill as drafted will undoubtedly lead to one or two people getting into great difficulty because of suspicion about them. There may be a way through that, and I think that one such way involves being very careful about provisional registration, which seems to cast doubt before anything has been found to be true or otherwise. People will be affected, and we have to decide as a society whether that is tolerable because we are protecting children, or whether the system is too tight.

**Tricia McConalogue:** I would not go on assumption and suspicion to put somebody on a register. It is like a story that I once heard about a man whose car broke down, and who went to a farm late at night. He thought that the farmer would be—I am sorry if I am using up the committee's time like this.

**The Convener:** Carry on.

**Michael Russell:** Yes, on you go—I want to hear the rest of this.

**Tricia McConalogue:** The man was going for petrol. He carried his can all the way along the road, and, the whole way, he was making the assumption that he would be turned away when he reached the farmhouse. When he chapped the door and the farmer opened it, the man said, "Just keep your oil," and ran away. That shows that it is important not to go on assumptions and suspicions. I am much more keen on the legal aspect.

**Michael Russell:** The problem under the bill is that people do not have to be convicted of anything. There will sometimes be suspicion, and 99 per cent of it may be justified. Organisations will not act lightly. However, there may often be a nagging doubt, as we have been hearing from lots of organisations. It is something that we have to cope with. The question for all of us is whether we

accept that for the sake of protecting our children or whether we think that the provisions represent a step too far, because they will have a damaging effect on individuals.

**Thomas Lyons:** We can accept it as long as people have the right of a hearing.

**Jackie Baillie:** Let me take this a step further. We heard evidence from Disclosure Scotland about the process by which it would provide enhanced criminal record checks. Once someone has been through a SCRO check, the information will go back to their employer. There are issues around employers interpreting that information properly. If someone has come from abroad, there will probably be very little criminal conviction information about that person in this country.

To what extent does somebody somewhere in the system have responsibility for ensuring that employers understand the limits of the information that they will be given and how best to interpret the information? If someone was charged with breach of the peace when they were 18, that may not have any bearing whatever on how they behave as an older adult. It is about teaching employers what is and what is not relevant. Do you have any views on that?

19:15

**Thomas Lyons:** If a teacher comes from Ireland or Wales, or if a teacher whose name is on a list comes here from England, what would that mean to an employer in Scotland? Would the employer have access to that list? That might be a problem.

**Jackie Baillie:** I think that it is planned for that information to be shared. According to my understanding, the technical position is that that information is not shared now, because we do not have a list ourselves, although arrangements are made to share such information across the UK.

**Mr Monteith:** My understanding is that a teacher from any of those countries would still have to register with the GTC. Therefore, one must consider the registration process with the GTC when someone is already on a list in another country. One might expect that before a teacher can register with the GTC, that information must be passed on. The question is, does that mean that the information is listed in Scotland?

**Dr Beaumont:** I was interested in what was said about the voluntary sector. I am also concerned about the cost of checks and how that might deter and impede organisations. For example, we were considering getting playground supervisors for our school, which is a big school: there are lots of parents and it would mean taking more out of our budget.

There has been an uproar about the Criminal Records Bureau and teacher checks in England. I wonder how more and more checks here will affect the queueing system, how people will deal with the volume and whether it will severely disadvantage voluntary groups by pushing them further down the queue. Voluntary groups are key to many aspects of our children's lives, particularly to disadvantaged children. I foresee a scenario where the checks could make things difficult for voluntary groups that are important to children who might otherwise get into harm because they are not being occupied and cared for by caring people and volunteers.

We talked about Cullen and security. A lack of volunteers can increase danger. Early the other day, I found a child locked out of our school. My natural reaction was to help the panicking child, take her by the hand and tell her that I would take her into school. The child did not know me. I am a bona fide person, but one can imagine a scenario where she might have been in danger. I would not like children's confidence in people and their training in how they make judgments to be reduced by never being able to do any risk assessment or training. I am worried about the idea of safe operation, safe practice.

**Jackie Baillie:** It is worth responding to a couple of your points. Representatives from Disclosure Scotland felt that there would be no significant problems getting checks done timeously because they have not had the same issues as the Criminal Records Bureau down south.

A number of voluntary sector organisations already check their volunteers as a matter of good practice. The Executive made money available to Volunteer Development Scotland to set up a central registration body to enable it to act as a resource and gateway for the voluntary sector to deal with Disclosure Scotland and the Executive. The infrastructure is in place to allow us to make progress. I forget the anticipated cost of the SCRO check, but it was £10 or £15 when I last heard about it. Perhaps it is worth making that kind of investment if we want to protect children, but I recognise that some voluntary organisations are hard-pressed.

**Dr Beaumont:** That brings me to my final point. Many high-profile cases have come about because people have not followed good practice. They have ignored rules and procedures and I would like much harsher penalties for people who ignore those rules. Tricia McConalogue said that the checks do not put people off from coming forward. That is also my experience. It is actually useful to raise awareness of the fact that we have to be vigilant. That feeds into my point about safe practice and safe operation.

**The Convener:** Thank you all for your time. It

has been very useful for us to hear your comments, and we will be considering the issue in detail over the next few weeks. We will ensure that you receive a copy of the committee's stage 1 report when it is available.

*Meeting closed at 19:21.*

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