

EDUCATION, CULTURE AND SPORT COMMITTEE

Tuesday 1 October 2002
(*Afternoon*)

Session 1

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EDUCATION, CULTURE AND SPORT COMMITTEE 25th 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)
Marilyn Livingstone (Kirkcaldy) (Lab)
Fiona McLeod (West of Scotland) (SNP)

*attended

WITNESSES

Morag Alexander (Scottish Social Services Council)
Laura Baird (Volunteer Development Scotland)
Carol Downie (Youth Scotland)
Brenda Doyle (Association of Directors of Social Work)
Jim Duffy (Scout Association)
John Harris (Volunteer Development Scotland)
Mary Hartnoll (Scottish Commission for the Regulation of Care)
Ian Hay (YouthLink Scotland)
David Jones (Association of Directors of Education in Scotland)
Councillor Helen Law (Convention of Scottish Local Authorities)
Janet Law (Children in Scotland)
Councillor Ronnie McColl (Convention of Scottish Local Authorities)
Margaret McKay (Children in Scotland)
Jacquie Roberts (Scottish Commission for the Regulation of Care)
Carole Wilkinson (Scottish Social Services Council)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Susan Duffy

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education, Culture and Sport Committee

Tuesday 1 October 2002

(Afternoon)

[THE CONVENER *opened the meeting at 14:04*]

Protection of Children (Scotland) Bill: Stage 1

The Convener (Karen Gillon): I call this meeting of the Education, Culture and Sport Committee to order. We are now in public session. Would everyone please ensure that all mobile telephones and pagers are turned off?

Item 1 on the agenda is the Protection of Children (Scotland) Bill at stage 1. We are taking evidence on the general principles of the bill. We will take our first evidence from Councillor Helen Law and Councillor Ronnie McColl from the Convention of Scottish Local Authorities; David Jones from the Association of Directors of Education in Scotland; and Brenda Doyle from the Association of Directors of Social Work, who is the convener of the children and families standing committee of South Lanarkshire Council.

Councillor Helen Law (Convention of Scottish Local Authorities): I will make a brief introductory comment. COSLA welcomes the bill's principles and fully supports the aim of strengthening the vetting and regulating of people who work with children and vulnerable adults. I do not think that we can get a system that is guaranteed 100 per cent, but it is important to make a statement of intent at this point.

Obviously, we have concerns—for example, about soft evidence and the two-tier system. However, we are keen to have an accreditation system. We must not lose sight of vulnerable adults in all of this. I know that the committee has a written submission from the ADSW. COSLA will follow up with a written submission later in the week.

Irene McGugan (North-East Scotland) (SNP): My first question will be to the ADSW. Thank you for your written submission. I was interested in your view that the standard for identifying people to be placed on the list has perhaps been set too high, which contrasts with some of the evidence that we have heard. If I understand you correctly, you want the standard to be an additional safeguard. You believe that the bill's proposed

criteria for referral on to the list will identify people who are already identified by current processes. You are worried that the proposed criteria will not pick up on cases in which there is concern about an employee's actions. Can you expand on that and explain why you feel that the criteria are not wide enough?

Brenda Doyle (Association of Directors of Social Work): Yes. Obviously, we must have regard to an individual's employment rights, but our worry is that the set criteria are too stringent in relation to information that an

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

Occasionally, there may be situations where we have serious concerns about people and allegations are made, but there is no conviction and no evidence to lead to conviction; in such situations, we have moved those people from their positions. We wonder whether guidance needs to be given about the definition of harm. Lord Cullen and Roger Kent, too, were concerned about the need to pick up on softer factors about which agencies may have been aware and which may have led them to move people from positions, without there necessarily having been a conviction.

Irene McGugan: It is the case, though, that a conviction is not required for entry to the list. In good employment practice, issues of concern are identified and raised with the employee concerned. The issues are discussed and addressed through training or another process. Does such a system, which relies not on a conviction but on a lesser body of evidence, allay some of your concerns?

Brenda Doyle: Yes. Paragraph 3 of our submission welcomes the emphasis on the requirement for a continuing culture of vigilance. We think that other organisations should be aware of the need for careful recruitment and selection processes. There is an issue of clarification. When we move people from positions, as we do occasionally, they might not have

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

but we might be worried about their conduct, there might have been certain allegations or they might be involved in serious substance misuse.

Irene McGugan: So you are concerned about the definition of harm and you want guidance on that.

Brenda Doyle: Yes.

Irene McGugan: One concern in your submission that has not been mentioned to us before is about the discretion that the bill will give to the court to determine whether to refer

someone, which will be based on the court's opinion of whether that person is likely to reoffend. Will you explain your concern about that?

Brenda Doyle: We have a question about what guidance the courts might be given and what criteria will be set for the use of that discretion. As the bill stands, it appears that the judgment of the sheriff will be important, which is a difficult issue because we want a consistent approach. Also, we want to know whether there is a role for social work in providing reports and risk assessments and so on. That is why we raised the point in our submission.

Cathy Peattie (Falkirk East) (Lab): I am interested in an outline of the checks that are carried out at present on people, particularly volunteers, who have access to children under the supervision of organisations.

Councillor Law: There is concern that the bill might frighten away volunteers who would not be left unsupervised with children, such as parents or other casual volunteers in schools. That does not detract from the fact that we are keen to have the checks that are outlined in the bill.

David Jones (Association of Directors of Education in Scotland): It is important that there are clear checks on anyone who is likely to have unsupervised access to children. From my experience in schools, I know that it is equally important to encourage parents who want to give up half an hour a week to come along and to work with children. That support should not be marred because people feel frightened of having their background investigated. There is a delicate balance to be struck.

Some head teachers have asked me whether they should allow parents to support in schools. There should be national guidelines on what is acceptable help and support from volunteers in schools. We must be more careful with unsupervised access, such as a parent who wants to run a football team. We should ensure that such people are checked.

Cathy Peattie: In the past, there have been barriers to parents' participating in schools. Are you concerned that the bill might make that worse? Helen Law said that volunteers probably would not be left alone with children, but I suspect that local authorities support a number of youth organisations that have youth workers who work alone with young people. What consideration has been given to that? Will councils' roles change? I am interested in barriers to parents, but also barriers to youth workers and other people who work with young people at present.

Councillor Law: That is the difficulty of a two-tier system in which only those who are involved with child care or education come under the

statutory check. Anyone who has an unsupervised role with children should be checked, but we do not have to go down that road for parents who help to cover books for a casual half hour a week and who are not left in charge of a class or a group of children. The key issue is whether people are supervised or unsupervised.

Councillor Ronnie McColl (Convention of Scottish Local Authorities): A major worry relates to organisations that use schools and facilities outwith school hours to run football or hockey clubs, for example. What criteria should be used for checking them? An article on the Scottish Executive website today quotes Cathy Jamieson and contains a checklist of what parents should ask an organisation that a child is going to join. Perhaps that approach could be turned around and local authorities could ask organisations such questions.

14:15

Cathy Peattie: So good practice is important. I am interested in barriers to parents.

David Jones: The division between supervised and unsupervised access is crucial. The point that you made about youth work is important. If we employ youth workers, we have them checked. Casual youth support—which may consist of only one helper for one session—is supervised and is therefore not the same.

If there is no accredited system for larger organisations—although scouts and guides may follow that route themselves—relatively large bodies that are not accredited are left in a limbo land. We are not clear about whether a well-reputed organisation would check itself or whether the local authority should try to check the many people who are part of such organisations. There is a problem in being caught betwixt and between. If we knew that an organisation was accredited with the Scottish Parliament and therefore was guaranteed to have checked itself, we would feel secure and would know that we had a responsibility towards all the other organisations. At least we would be clear about who is and is not being checked in the out-of-hours situations that we are discussing—that is obviously not applicable to in-hours situations or to employees, whom we automatically check.

I want to add a further point. At an early stage in discussions of checks on the suitability of people who work with children, post-16-year-olds were separated off. I argued strongly against that. Obviously, someone in further education could work with schoolchildren who are under 16 or who are 16 to 18 years old. A child care institution has not been defined as including further education institutions. Many schools have link courses into

colleges and unchecked FE lecturers can work unsupervised with children who are under 16.

Jackie Baillie (Dumbarton) (Lab): I do not think that the list is any substitute for proper child protection practices, irrespective of whether the organisation is regulated. You seem to make a clear distinction, which I would like to capture. The issue for you is not whether an organisation is regulated, but whether someone has unsupervised access to children, irrespective of whether the organisation is voluntary or statutory. Do you therefore think that the bill should be clear and unambiguous in its intention and include voluntary groups, such as the scouts?

David Jones: I think that the scouts, guides, sea cadets, air force groups and many other organisations should be accredited and therefore in charge of ensuring that the people who work for them are clearly checked. They should maintain a register that is accessible to people who hire out facilities to them, such as local authorities that allow their premises to be used. We could then be sure that everyone who works with children in a local authority area is checked centrally by the organisation. If an organisation had problems with that, at least we could work alongside it to ensure that its workers are checked. The bill could leave us in a limbo land, uncertain whether people who work with children have been checked.

Councillor Law: One scout leader said to me that it appears that he would have to be checked many times, as he is involved with a local group, a regional group and other groups. If there were accreditation, such people would have to be checked only once and could then work in an organisation at different levels in different areas.

Jackie Baillie: Yes. We want to avoid multiple checks. A check that would cover a variety of things in which people are involved would be sensible.

I have a question for the two elected members. I understood that, in letting out their premises, some local authorities insisted that the groups that use them included only people who had been checked by the Scottish Criminal Record Office. Is that not correct?

Councillor McColl: Unfortunately, although some authorities insist on that, not all do. A sane system has to be brought into force throughout the country. It would be helpful if there were such a requirement in the bill. That would mean that there would be a set standard.

Jackie Baillie: In your experience, has anyone been put off unduly because they were asked to be SCRO checked?

Councillor McColl: Not in my experience. People might have been put off in the past, but

because of the recent tragic cases involving children, I do not believe that anyone will be put off. I think that they will feel quite good that they are being checked and being given a clean bill of health to work with children.

David Jones: The difficulty is knowing whether the organisation has the ability or the right level of clearance to do the checks itself. If the organisation is not accredited or recognised, how can we be sure that it is in the position to ask those questions of SCRO?

Jackie Baillie: Do you not consider that the central registered body in Scotland, which is hosted by Volunteer Development Scotland and which acts as a central co-ordination body, could provide some of the solution, along with some of the larger intermediaries such as YouthLink Scotland?

David Jones: That could provide some of the solution, as long as we know where the central reference point is and who is able to ask for such checks to be done.

Jackie Baillie: Perhaps at the moment it is more important to establish the principle than the mechanisms.

You have been carrying out checks on people for some years now. How will the bill change your responsibilities?

David Jones: From the schools' perspective, the bill will not change our responsibilities a great deal because those checks have been in place for a considerable time.

One of the interesting features mentioned in the background papers to the bill is the use of and connection with lists such as list 99 in England. That is a notoriously unreliable method of checking. It is a matter of subjectivity and contradiction. I would be very cautious about exploring that route.

An issue that has arisen before—Helen Law referred to this in our briefing—is the reasons for which the General Teaching Council for England has ruled people out of teaching. It might be that the reason why those people have been de-registered has nothing to do with problems with children. It might be that their competence to manage a class is called into question. Would those people therefore have a right to appeal against being categorised on the list that is proposed? Those people are not a danger to children, but they are not competent to teach a class from an educational point of view. They may be people who could work in a classroom assistant's role but who could not take a class. The line between GTC registrations and the proposed list would have to be defined clearly.

Michael Russell (South of Scotland) (SNP):

Your evidence emphasises that the bill is introducing an element of not checking—an element of what one might call justified suspicion, or evidence that is not strong enough or has not been taken to a court of law. Although I do not disagree with a lot of what you have said, it misses out one of the central elements of the bill. I want to ask you, Helen Law and Ronnie McColl some questions about that central element of the bill. Justified suspicion arises in circumstances in which an authority might decide that an individual should not work with children but no criminal action has been taken. What difficulties do you believe that an authority might get into with employment law?

David Jones: There can be some difficulty, but the willingness of an authority to stand up and be counted is important. I am well aware of circumstances where there were teachers who should have been categorised or placed on a list, but where that has not happened because of the soft nature of the evidence. Those teachers have been quietly moved on to other schools or other authorities and things have gone from bad to worse elsewhere.

I am pleased to say that this time, that issue cannot be swept under the carpet or hidden away. We will have to face up to the fact that if we believe that someone is unsuitable, even if we do not have the hard evidence, we will have to take action and ensure that that person is listed. We must face up to the difficulties that that may bring, if people invoke their human rights and ask us to justify our actions. We must accumulate soft evidence and stand up to be counted on it.

Michael Russell: When dealing with soft rather than hard evidence, local authorities may find themselves in difficulties over employment law. Would it be easier if the case for inclusion on the register had to be made to a court rather than to the Scottish ministers? At our meeting last week the Scottish Human Rights Centre suggested that it might be better if the initial decision to list someone were taken by a court, rather than by a minister. The centre argued that, instead of individuals being included on the list on a provisional basis and having a right of appeal, they should be included on the list only after a court hearing. Today we received written evidence from the Baptist Union of Scotland supporting that argument.

Councillor Law: This is a very difficult issue. Fife Council decided, on the basis of soft evidence, not to allow Thomas Hamilton to rent any of its premises. As I understand it, there was no case for seeking a police prosecution. Mr Hamilton appealed against the council's decision to the ombudsman, who found in favour of the

council. Fife Council had to rely on soft evidence—it did not like Thomas Hamilton's methods, but it could not generate a charge against him.

Councils must be given a certain amount of discretion. People should have the right to know what councils are thinking and to put their case. However, I do not think that someone should be listed only if charges against them can be proved in court. Councils must be brave. They must stand up if they have genuine feelings and not be frivolous. Action of this kind has been taken before and has been helpful.

Councillor McColl: Another problem with proceeding through the courts is the consistency of the courts in dealing with cases. It is hard enough to get the sheriffs in one area to deal with an issue consistently—let alone throughout the country.

Michael Russell: There is genuine sympathy for the bill and its aims, but there are considerable problems with it regarding human rights. I do not doubt the soft evidence in important cases such as that of Thomas Hamilton, but all of us accept that mistakes may be made. The effect of such mistakes is profound. The procedures set out in the bill are not robust compared with normal judicial procedures. Have you considered alternative ways of handling listing?

David Jones: Michael Russell mentioned the possibility of taking cases to court. How would such cases be handled? If the civil standard of proof—based on the balance of probability—were used, it would be no bad thing for cases to come before the courts. However, it would be very wrong to apply the criminal standard of proof. That would be to tilt the balance too far in favour of the person whose listing is sought. If an attempt is made to list an individual on the basis of soft evidence, that evidence should be able to stand up in a civil case. One should be able to prove on the balance of probability that the person concerned should be kept away from children.

Michael Russell: We could write into procedure that such cases should be judged on the balance of probability, if they are decided by a court rather than by a minister. You are suggesting that an authority's decision to seek listing might be made on similar grounds. A court hearing would simply provide an outside check on a decision that an authority was required to make by law.

David Jones: That is the sort of decision-making process that should be laid down. However, cases should not automatically be referred to the sheriff court. A person who is removed from front-line duties may have recourse to the procedure that I have outlined. In the first instance, it may be inappropriate to refer cases to the sheriff court. Rather than seeking to convict

someone of a criminal offence, we should use the civil standard of proof—based on the balance of probabilities—to decide whether someone should be removed from circumstances in which they work with children.

Councillor Law: The reference to general practitioners seems to have been lost from the bill. Would it not be worth retaining the provision for people to approach a GP with their concerns?

The Convener: That is a valid point.

Michael Russell: It is worth thinking about.

The Convener: I thank the witnesses very much for their evidence. If anything else comes up, we will be back in touch.

14:30

The Deputy Convener (Cathy Peattie): I welcome the representatives from Children in Scotland. They are Margaret McKay, the chief executive of Children 1st, and Janet Law, who is policy officer for the Scottish Out of School Care Network. I invite the witnesses to make an opening statement before we ask you questions.

Janet Law (Children in Scotland): I am the national policy officer for the Scottish Out of School Care Network. On behalf of the network, I am very pleased to have been invited by Children in Scotland to submit evidence on its behalf.

We have submitted written evidence, and I hope that everyone has had a chance to see a copy. We welcome the Protection of Children (Scotland) Bill. It has been anticipated for some time, and various organisations have discussed its potential provisions with ministers in the past. Consideration of the bill provides a welcome opportunity to raise with the committee a number of points that have been raised by members of Children in Scotland over the past few weeks since it became known that the bill was to be considered by the Education, Culture and Sport Committee.

There is a need for training among organisations for which additional work will arise in connection with the bill's requirements. Various aspects of training will be appropriate, including additional training in child protection. I am—as, I am sure, are members—looking forward to hearing what the Scottish Social Services Council has to say about the application of training. There will be a need for good practice in employment and training for the managers of child care services. Many small child care services that are managed by voluntary management committees will fall under the eventual act, so it will be important to train those management committees. The various elements of training could perhaps be provided by a variety of organisations. There is, among the different priorities for training in child care, competition for the resources that are available for training.

Children in Scotland has seen the evidence from such organisations as YouthLink Scotland and Girlguiding Scotland, which expressed the opinion that volunteers should be covered by the bill. We understand that volunteers will be covered through the bill's reference to

“work of any kind, whether paid or unpaid”

and through the status of volunteers under existing employment law. It might be worth considering whether the position on that is correct.

We have raised the issue of the need for organisations to be in some way indemnified against the possible consequences of proceeding against a person, referring that person to the list and then finding that that was unfair and that legal costs will be involved. Insurance against that will be an additional cost for small organisations, of which they will have to be aware. They may tell local authorities that there is a need for additional resources to reflect that.

Those issues are all laid out in our submission, and we will be happy to take questions. I do not know whether Margaret McKay wants to address any other issues.

Margaret McKay (Children in Scotland): I want merely to make a broad point. Children 1st is here today on behalf of Children in Scotland, which represents large and small organisations in the voluntary and statutory sectors. It is important that the bill and its proposals be seen in the wider context of an approach to child protection that encompasses the whole community. The Parliament and the Executive should, as a result of the various measures that exist, be trying to arrive at a position where child protection is seen as being everybody's business. Within that, there are specific responsibilities for employers and voluntary bodies that engage volunteers, but we should overall be trying to create a culture that views child protection as a positive feature, rather than a negative one in which checks are regarded as hoops to be jumped through or as negative balances. My plea is that the bill should be set in that context and that we should drive towards achieving that culture in all our communities. I see the bill as a plank within that overall objective.

Jackie Baillie: I will start where I left off with the previous group of witnesses. My clear understanding is that the bill makes provision for checks to be carried out on organisations that will be regulated. However, there is a vast array of organisations that do a superb job in many of our communities, but which will not be regulated in the terms of the bill.

Notwithstanding the fact that I do not think that the bill is a substitute for good child protection measures, do you have a view on whether such organisations should be covered by the bill?

Janet Law: The care commission has recently decided which organisations will and will not be regulated as part of a kind of jigsaw of measures that have been put together. We are still in that process, in which things are becoming clearer than they were. I hope that, by the end of it, we will have a robust position on Jackie Baillie's question. It might be easier if we knew exactly how many organisations will not be regulated and whether there is any way in which those organisations can satisfy themselves that they have good child protection and recruitment processes in place. If such organisations were to be accredited, the bill would require significant amendment.

Jackie Baillie: Let me come at the issue in a slightly different way. I am not suggesting that all such organisations—which are voluntary and do a very good job for us in our communities—should be regulated. That would be excessive. However, if anybody, irrespective of their status, has unsupervised access to children, should they be checked?

Janet Law: I think that people should be checked in every case.

Margaret McKay: In our experience, unsupervised access to children is the key issue. However, that is only part of my broader point about creating a culture in which ensuring the safety of children is seen as a positive thing, rather than as something oppressive. There are good practice arrangements whereby risk can be minimised.

If an organisation thinks carefully about what it is doing, there are relatively few situations in which its volunteers need to be in an unsupervised one-to-one position with children. However, for that to happen, a culture shift is required; people need to think before they act. If, for example, a child is left behind and needs to be given a lift home, the volunteer needs to think before taking that step. The issue that we are discussing is not about the adequacy of checks, but about getting people to think before they act. They need, for example, to think about asking another person to come with them. We need to balance what is in the best interests of children with what will protect individual adults against accusations that might be made against them.

Jackie Baillie: At the start of Children in Scotland's presentation, you leaned heavily towards training. You spoke about areas such as employment law, awareness raising and the attitude shift that Margaret McKay has just described.

I am concerned about Disclosure Scotland's interpretation of the information that will be held by large organisations, such as local authorities and small management committees. Could that

become an issue and, if so, should it be picked up on centrally or covered in guidance? Is there definitely a need for a programme of training in that respect and, if so, who should carry it out?

Janet Law: There is a definite need for organisations to have support and the opportunity to discuss within a supportive context their responsibilities under the proposed legislation. People will seek support from a variety of organisations—indeed, they do so already. A specific commitment to providing support for organisations would mean that people would know to whom they could turn.

Margaret McKay: I can give the committee the benefit of my experience with Children 1st. Our experience has led us to develop a joint child protection and sport initiative with sportscotland. Our approach to sportscotland arose out of our members' experiences in sports clubs and organisations. Members told us that they were unsure whether their concerns were legitimate.

People are often in situations in which they are uneasy about something. I am not talking about people who are acting out of ill will or ill intent, although I know that that is a concern. I am talking about people who are concerned because they have observed what they perceive to be an inappropriate action or set of actions. Such people have told us that they did not have the confidence, experience or—in some cases—the hard evidence to progress the issue and that they needed an opportunity to talk through the situation.

Children 1st, formerly the Royal Society for the Prevention of Cruelty to Children, has a role as a child protection agency. That means that we receive a substantial number of calls from members of the public, who work in local sports groups or organisations and who want to explore situations in which they find themselves. They ask us, "What shall I do?" and "How can I check this out?" That is a positive move, because it means that people are not turning their backs on what they are seeing.

Such situations are evidence of the need for a source of advice and guidance where people can talk through the causes of their concern and where they can find out what are their responsibilities. That indicates to me that there needs to be, alongside the proposed provisions of the bill, a source of telephone or other advice and guidance for concerned members of the public who work in small sports groups or community organisations. Very often, the best advice that people can be given is that they should trust their gut instincts. If we assume that people are not acting out of ill will, it is important that someone listens to them.

Cathy Peattie: It is good advice to say that people should trust their gut instincts. Where

should the source of information be located in order for it to offer ease of access to the organisations about which we are talking?

Margaret McKay: It is likely in the real world that there will not be a single focus. It is often said that a single focus is ideal, because it makes life easier for everybody. People will turn to the organisations that they know and trust. For example, Disclosure Scotland is already carrying out that sort of function, but people will turn to Disclosure Scotland only if they are aware of its existence.

14:45

As I said, we need to consider the provisions within the wider context of community safety. For example, there ought to be an identifiable organisation in each local authority area or in each community area to which people can go for help and advice if they have concerns about a child or about an adult's relationship with a child. If people see a house on fire, they phone the fire brigade. If they see somebody breaking into somebody else's house, they know to phone the police. However, when people out on the street are asked what they should do if they are worried about what is happening to a child or about who is doing what with a child, they give many different answers.

Cathy Peattie: However, if I phone the fire brigade because there is a fire in my house, the fire brigade will come. If I am a volunteer secretary for an out-of-school care group and I pick up the phone to ask for information, I might be able to get somebody who could tell me how I could deal with the situation. People may need to ask for that kind of on-going support rather than simply to call for the fire brigade.

Margaret McKay: Absolutely. I was trying to illustrate the need for clarity on where people can take such concerns. People must initially be able to discuss and talk around the issue and then be clear about what steps and what action they should take following that.

Cathy Peattie: Some of the evidence that we have heard today has suggested that small voluntary organisations might feel intimidated by the bill and that they would be reluctant to raise issues. Is there a possibility that organisations will not seek support and that they will not seek to have checks done?

Janet Law: From experience in the Scottish Out of School Care Network, I think it is likely that people will be keen to pick up on any issues. My concern is that people must have the support for dealing correctly with issues. Employment practices must be pre-emptive; they must not deal with issues simply in the fire-brigade sense. Good policies need to be put in place. Organisations

could identify in their child protection policies where people should turn to discuss such issues. All organisations should do that.

Cathy Peattie: I agree.

Margaret McKay: Perhaps the bigger risk is for ordinary members of the public rather than for organisations. One does not want volunteers to feel that they should not continue to work positively with children. We need the sort of culture that says that the bill's measures are positive. The provisions should not put people off volunteering. I think of the Olympics in Australia, where the process of vetting and training the thousands of volunteers was carried out successfully and was seen to be positive. The people who worked on that in Australia saw the vetting process as something to be valued; they did not see it as a reason not to volunteer for that huge event.

Irene McGugan: The bill's accompanying documents estimate that there might be 30 referrals each year to Scottish ministers and that 18 of those might end up as names on the list. Given the numbers of adults working with children, is the figure of 18 a year realistic? If it is realistic, are not we going to a lot of bother to find only 18 people a year who might be a danger to children? Despite the significant move that we are making, are we perhaps still not identifying sufficient numbers of people who may pose harm to children? What are your views?

Janet Law: I am not sure about the numbers. Obviously, I was interested to see the estimate of 30 that was made based on experience in England. The fact that there are 30 people about whom we might be concerned is extremely significant. It would be worth taking the bill forward even if we were protecting only one child.

In terms of the sort of support that local authorities might need, 30 people would work out as roughly one per local authority. That sounds like it would amount to quite a significant sum in terms of our organisation and out-of-school care. Even if we are talking about identifying one person per local authority about whom there are concerns, that is a huge issue and I am glad that we will at last be able to address it seriously.

Irene McGugan: I was playing the devil's advocate.

Janet Law: I thought that you were.

Irene McGugan: I agree with your sentiment, but I suspect that there are more than 18 people who need to be on the list. Are we putting the right system in place or are there other things that we can do, within the terms of the legislation, to identify the more than 18 or 30 that I suspect exist and who need to be listed?

Janet Law: It has been suggested that the procedures that were in place under local authorities' old registration and inspection procedures might have been able to identify individuals who were unsuitable to work with children but who would not necessarily be identified under the new system. It might be worth considering how organisations can be sure that the references that they receive are from the most appropriate people and how they can ensure that their recruitment procedures are as robust as possible.

Fit person checks, which are in operation now for managers of services, used to be applied by local authorities to all workers in child care. Therefore, local authorities were in a position to say whether it was appropriate for a person to work with children based on knowledge of that person from a range of sources. For example, they were able to get references from the GP of anyone who wanted to work with children. That part of the system is not necessarily currently being operated because not all organisations feel able to ask consent from people to approach their GPs for references. That might need to be taken up separately from the bill, but it is part of the jigsaw of significant changes that are taking place that sometimes make it difficult for small organisations to know exactly what they are required to do. They need a lot of support.

The Convener: I thank you for giving evidence today. If we have any more questions, we will be back in touch.

I welcome our next set of witnesses, who are John Harris, the head of Volunteer Development Scotland, and Laura Baird, who is the policy officer from Volunteer Development Scotland. *[Interruption.]*

I am informed that the witnesses have not yet arrived. We will take another set of witnesses first, in that case. I welcome Ian Hay, Jim Duffy and Carol Downie. Do you want to move straight to questions or make a few brief comments first?

Ian Hay (YouthLink Scotland): We will go on to questions after I have given a brief introduction. I have with me Jim Duffy of the Scout Association and Carol Downie from Youth Scotland. We are pleased to give evidence this afternoon.

Jackie Baillie: You will have gathered that the theme that runs through my questions is whether the bill makes a false distinction between organisations that are regulated and people who have unsupervised access to children, irrespective of the status of their organisation. I suspect that it is Jim Duffy's fault that I started off down that road. In his submission to the committee, I caught his thought that the bill should apply across the board. I admit that I have some sympathy with that view,

although it raises practical issues. As far as the principle is concerned, should the bill be extended?

Jim Duffy (Scout Association): In theory, it should be extended, but that would create many practical problems. We pointed out that organisations that have fairly robust vetting systems for adults who work with young people will automatically consult the index. At least, we believe that we will automatically consult the index through disclosure requests, although we would like clarification that a disclosure request will automatically trigger a check of the index.

We believe that we have a moral duty to consult the index and to refer to the index cases about which we have concerns for young people. We have asked for clarification as to whether the Scout Association and similar bodies would be required by statute to consult and refer. As I said, our view is that we have a moral obligation to do so. However, statutory enforcement of that might cause great difficulties and a lot of additional work for local authorities and others. The Parliament should take those issues into consideration. Our association would commit to consulting and referring, as appropriate.

Jackie Baillie: I am well aware of the track record of the Scout Association, uniformed organisations and the wider youth movement in following good child protection policies. I am keen to explore your response that, in theory, you would extend the bill, but that that might cause specific difficulties. What are those specific difficulties? Does it come down to resources, or is something else involved?

Jim Duffy: Resources are an issue. The Scout Association has both a long history of developing its child protection policies and a highly centralised system that operates throughout the UK. We have a hierarchical structure, from local scout groups right through to the national operation and it will be relatively easy for us to operate the new system within that structure. However, it will be much more difficult for a voluntary youth organisation that operates in isolation at local level. Some of my colleagues may be able to speak about the experiences of such organisations in more detail.

Carol Downie (Youth Scotland): Youth Scotland is a network of youth clubs and groups in Scotland. We have 683 groups throughout Scotland and resources are a considerable issue for us and we are considering police checks at present. We would like to be able to commit ourselves to conducting police checks and to consulting the index, but we are in the same situation that other organisations find themselves in. For example, Girlguiding Scotland believes that it will not have a robust system in place until 2004. It takes quite a lot of time to negotiate with local

authorities because a range of issues is involved. That work impacts on organisations such as Youth Scotland, because youth groups cannot conduct the checks themselves, and the national headquarters organisation does not have the resources to conduct the checks for them. I set that comment against a backdrop of a cut in our grant from the Scottish Executive, as well as a cut in our training grant.

Jackie Baillie: As I am not a member of the Executive, I assume no responsibility for that cut.

I will keep pressing you on the point, because it is critical to how we make progress with the bill. Volunteer Development Scotland's central registered body suggested that it could provide some of those services. What is your view on that? I take it that you have seen that organisation's submission.

Jim Duffy: Yes.

Ian Hay: Yes.

Carol Downie: Yes, we have.

Jackie Baillie: Is that view consistent across the sector or is it VDS's view only?

Jim Duffy: I confess that I was not consulted before that submission was made.

Jackie Baillie: I make a distinction between large intermediary bodies such as those that the witnesses represent and smaller local groups that have few networks through which to obtain such support. The matter is interesting.

Ian Hay: VDS did not consult YouthLink before the submission was made. We have concerns about the amount of work that will be taken on by organisations that are trying to come to terms with the difficult business of running checks and seeking disclosure certificates.

15:00

Jackie Baillie: We have been here before, but if we said that the principle of indemnity was too important and that we wanted all children or all people working with children to be covered, what would be the outstanding indemnity issues?

Jim Duffy: Significant difficulties exist in encouraging voluntary organisations—particularly small voluntary organisations—to participate in referrals. Some attention must be paid to the idea that indemnity follows organisations, particularly when an organisation refers an individual to the index in good faith and a decision is subsequently made not to place that person on the index. It is conceivable that that individual might seek legal redress for the process that they had to undergo and the resulting potential damage to their reputation. Volunteers would be concerned about

that. That problem already exists in relation to the use of disclosure information and decisions that are made on that.

It is a big issue, particularly for voluntary organisations. We wish to co-operate as fully as we can, but we must be mindful of the potential damage that we do to volunteers, who may be concerned that, after acting in good faith, they will find themselves in legal difficulty.

The Convener: I thank the witnesses for their evidence. I am sure that we will be back in touch while the bill progresses through the Parliament and through stage 2 with the committee.

15:03

Meeting suspended.

15:12

On resuming—

The Convener: I call the meeting back to order. We will now take evidence from John Harris, who is head of the central registered body in Scotland, which is a unit within Volunteer Development Scotland, and Laura Baird, who is Volunteer Development Scotland's policy officer. Do you wish to make any introductory comments before we proceed to questions?

Laura Baird (Volunteer Development Scotland): I will make some brief remarks. Volunteer Development Scotland, which is the national centre of excellence for volunteering, welcomes the invitation to give evidence to the committee. Some members might know that Volunteer Development Scotland is home to the central registered body in Scotland, which was set up through Scottish Executive funding. The central registered body in Scotland provides access to free police checks for volunteers in the voluntary sector who work with young people, children and vulnerable adults. We feel that we are particularly well placed to give evidence.

The Convener: Thank you very much. Members will now ask questions.

Cathy Peattie: I am interested in the role of the centre of excellence in considering further the Protection of Children (Scotland) Bill. How can VDS support small voluntary organisations that will have to consider their practice and look at the workers, both paid and unpaid, within their organisations? How will you be able to provide the kind of support that they will require?

15:15

Laura Baird: We are already providing such support through the work of the central registered body in Scotland, which is in touch with the

majority of child care organisations and other volunteer-involving organisations that deliver services to children. The CRBS works with national organisations and with small, grass-roots community organisations. The system is already in place to help to provide such organisations with advice, support and, to some degree, training in what is required to access free disclosures from Disclosure Scotland.

John Harris (Volunteer Development Scotland): The position is that we administer the provision of free disclosures. The opposite side of that process is our provision of support, guidance and assistance to a large number of organisations. We deal with three main constituencies. The first constituency comprises large United Kingdom organisations based in London that have a large volunteer base in Scotland. That produces an interesting cross-border issue in relation to the bill. The second group consists of the Scotland-wide organisations. The third group, which is by no means the least important group, is made up of a large number of small but crucial volunteer-engaging organisations, which often operate in a specific locality. Our work so far in administering the disclosure process has related not only to the formal process, but to the provision of advice, guidance and assistance to enable people to take advantage of the scheme.

Cathy Peattie: How would you respond if I suggested that the small organisations sometimes feel that you are not listening to them and that you cannot support them in the way in which they need to be supported? There has been criticism that you have not consulted the people whom you speak about representing. What is your view on that?

John Harris: I, along with my colleagues who are involved in the process, have detailed face-to-face contact with a large number of organisations on a routine basis. All the different constituencies come to the process with different needs. The requirements of the large UK organisations are different to the support and guidance needs of smaller groups. I do not doubt that, if we had the wherewithal to do all that we need to do, we could do more. We have 650 enrolled organisations, which represent many thousands of other, smaller groups. We are doing what we can within current resources.

Cathy Peattie: Are you able to work effectively at local level within your current resources?

John Harris: We would always want more resources to do the work. You would be surprised if I did not say that. When you consider that the unit is made up of nine people and that we are dealing with three important constituencies, it is remarkable that we are reaching out to as many groups as we are.

Cathy Peattie: How could you support a small organisation that had a gut feeling that something was not quite right? Suppose that I was the secretary of a local organisation that was involved in summer play schemes and that I had a wonderful volunteer who did not feel quite right. If I wanted support in identifying some issues that I was concerned about, would you be able to help me with that?

John Harris: In the first instance, we help people to understand what the process is able to provide for them. The process in which I am involved comes at the end of what I hope will have been a group's robust local recruitment and selection process.

Once a group is involved in the process, we provide it with support and assistance and try to make it easier for it to make those kinds of decisions. Ultimately, if a disclosure is adverse to an individual, the group must decide whether to engage that person, but we will give advice and assistance in interpreting the disclosure and in sketching out the parameters of the things that need to be taken into account.

Jackie Baillie: I wish to push you further on those points. First, I am keen to get a sense of the stage of the process at which you become proactively involved. Do you do so right at the beginning when, for example, a management committee is about to start on the interview process by advertising a post, or do you get involved at the end, in interpreting information, or do you get involved following a request from an organisation?

Secondly, to what extent do you work through intermediaries? I am conscious that in the bulk of cases in which police checks are called for, existing intermediary organisations throughout Scotland will do the training and provide advice and information as part of a package of good practice for their members. I am keen to get a feel for the picture.

John Harris: On the first point, the Disclosure Scotland scheme is structured such that disclosure is requested only when the organisation wishes to engage a paid member of staff or a volunteer. At that stage, the applicant is asked by the organisation to fill in the form. Disclosure comes at that point and not earlier.

We work through a number of intermediary bodies. From a practical point of view, a number of associations are clearly well placed to act on behalf of other people. An excellent example is the Scottish Pre-school Play Association, which represents a large number of smaller playgroup associations. We have worked through intermediaries on a number of occasions.

We also have a trial with Argyll and Bute Council, which is offering the same kind of service for enrolling lead signatories for early-years facilities in its area, because of the remoteness of the area and the council's dependence on voluntary provision. We are extending that same facility through the network of volunteer centres in a number of areas, such as Highland Council, North Ayrshire Council and South Ayrshire Council. We hope to extend that to a number of other locations in the next few months.

Jackie Baillie: You are involved in the process only when an application is submitted to you, but the process in the bill means taking much more proactive measures than simply receiving an application. Your focus would change to being much more training-oriented and advice-oriented, and therefore you would be much more proactive than you currently are, which would have resource implications. You said earlier that the bill would simply extend what you currently do and that you could probably cope with current resources, and then you said that of course you would want more. Have you any idea of the difference that the bill will make to your organisation? How many more resources would you need to see it through, if we found favour with your proposals?

John Harris: The bill would make us much more proactive. In response to an earlier question, however, we identified that that is needed, because we must enable organisations to get to the point where they can make maximum use of the service that is available to them. Even in the short span of time in which the CRBS has been running—less than nine months—we have learned from what organisations, and in particular the smaller ones, have told us about their requirements. There is a change of emphasis in what we are being asked to do, but I see it as being within the current framework.

I am not sure about the impact and the likely cost implications. Our experience of helping and supporting organisations to use the current system, which is more limited than what is being suggested, tells us that a significant amount of activity is needed. I do not want to put a figure on that, but the implications will have to be closely examined.

Jackie Baillie: The bill makes a distinction between regulated and unregulated organisations. Do you contend that that distinction is false and that the bill should apply to all adults who work unsupervised with children, irrespective of whether their organisation is regulated?

Laura Baird: Yes. Our concern is that if the bill does not apply to all organisations that work with children, a loophole could be created. Organisations that are not regulated by the Scottish Commission for the Regulation of Care

will want to make referrals, and in turn, will need support and advice to do that. Volunteer Development Scotland's view is that the bill should apply to all organisations that work with children, to close a potential loophole.

John Harris: There are dangers. If we do not make the position universal, unsuitable individuals may gravitate towards organisations that are not subject to the requirements. I have serious concerns about that happening.

The bill must be considered as part of a wider public policy agenda that will raise standards on such matters. To create a distinction that is in some respects artificial would be unfortunate. Organisations have already advised the central registered body—in our current operation—of their concerns about individuals. We have passed those concerns on to the appropriate authorities.

Michael Russell: Paragraph 2.1 of your submission says:

"Volunteer Development Scotland welcomes and agrees, in general, with the intention and content of the Bill".

The submission also raises volunteering issues, which I will deal with. What does "in general" mean? What intention and content does the organisation disagree with, short of the volunteering issue?

Laura Baird: That statement relates to the issues that are specific to volunteer-involving organisations. As the national centre for volunteering and the representative voice of volunteering, Volunteer Development Scotland would like to ensure that the bill and subsequent legislation will lead to good practice in volunteer management and the protection of children and will create no unnecessary barriers to people's involvement as volunteers.

Michael Russell: That is a key issue. Almost every other submission has expressed some dubiety about the legal process that will be followed. Everybody supports the intention of the bill in general, as you say, but concerns have been expressed about the legal process. Those concerns are not mentioned in your submission. Will you expand on that?

John Harris: The basis of the disclosure scheme is an individual's conviction of the offences that are outlined in schedule 1, which results in that individual's being notified that they are required to be put on the list. Under the Disclosure Scotland scheme, however, one element of information, known as non-disclosure information, is found on enhanced disclosures.

For example, there may well be circumstances in which an individual is taken to court and the court finds that the case is not proven. That finding may appear on the disclosure certificate under the

category of non-conviction information. That issue must be addressed. Under the existing scheme, although someone may not have been put on the list, such non-conviction information may appear in another context. Those issues need to be thought through.

15:30

We also need to bear it in mind that, although the criminal prosecution of individuals for such offences is critical and important, the criminal standard of proof requires relevant and specific evidence about the individual to be produced—evidence that places them at a given point. In criminal prosecutions, the standard of evidence may be higher than the evidence that is available against an individual. That should not lead to inaction as, in most circumstances, the case is jointly reported to the procurator fiscal and the reporter to the children's panel. The reporter is often in a position to be able to act to safeguard the best interests and care needs of the child.

A situation might arise in which the alleged perpetrator has had a case found not proven or not guilty, but the reporter, using the processes available to him under the Children (Scotland) Act 1995, is able to act in respect of the child concerned. That is especially the case if the child happens to be the child of the alleged perpetrator. It is possible to find that, although there has been no criminal finding, action has been taken in respect of the child of the alleged perpetrator.

Although that sort of dissonance happens under the law, we have to understand that such issues are likely to crop up because the process is based upon proof of conviction.

Michael Russell: Surely such issues will not only crop up—surely they are at the heart of the process? You spoke first about the not proven finding. If I remember correctly, Sheriff Fulton said that the not proven finding is designed for cases in which the court is not convinced of the innocence of the accused. However, you are now talking about cases in which no verdict has been reached. Indeed, you mentioned cases in which the person was acquitted, and yet the non-conviction information continues to act as if that had not happened. Everybody wants to see the bill succeed, but what you describe is an undermining of the process of law. Does that sit easily with you?

I am also concerned about the fact that the important points that you have just made are nowhere to be found in your submission. I find, however, a very long proposal that includes in paragraph 4.2.3 a plea for additional funding. I repeat that nowhere in the submission can I find an examination of the key issues that have to be

considered at stage 1 of the bill. We have to sort out those issues before we get to the question of anyone taking on any role.

John Harris: I mentioned the specifics of the bill in response to the question. My main concern in respect of the evidence that the committee is taking today is the process in which we may or may not be involved in giving assistance to organisations. I would not be impudent enough to suggest to legislators how the framework of the bill might deal with the specific elements of offences.

That said, we want to see a cohesive approach taken to the legislation. Specific issues about the nature of offences and the recording of convictions may need to be addressed. Volunteer Development Scotland's main concern is to ensure that the legislators are clear about the impact of the bill on organisations, particularly the smaller ones. We are also concerned about the process, not least because of the absence of support in many cases for individuals, officials and groups to be able to cope with what they have to do.

Irene McGugan: I want to ask specifically about a system of accreditation for voluntary organisations, which Lord Cullen mentioned when he reported in the aftermath of Dunblane. I wondered whether your proposal to act as a one-stop shop for disclosure, advice, guidance, training and support might be considered a step towards the establishment of a system of accreditation? Would such a step be an appropriate way of making progress?

Laura Baird: A big part of Volunteer Development Scotland's work is to promote good practice and high standards in the involvement of volunteers. Accreditation is a part of that work, but it is a part of that work only for individuals and organisations that seek such formalisation. Although Volunteer Development Scotland would be interested and willing to play a role in the development of such a system, there should never be an expectation that a volunteer would have to gain a qualification or accreditation unless they had a specific wish to achieve that. Accreditation for organisations would be worth considering as a matter of good practice.

Irene McGugan: You feel that, at the moment, an accreditation system would exclude too many organisations.

Laura Baird: It is perhaps a little too early in the scheme of things, because we have heard concerns about the support that would be necessary to meet such requirements. Small, community-led groups, in particular, need a great deal of support in meeting legislative requirements. Further down the road, there could well be a place for accreditation.

John Harris: One would probably need to deal with the issue in an incremental fashion, which would enable organisations, particularly the small ones, to gain the confidence and competence to take on such requirements. In response to questions about our proposal, we want to be able to support what will be a long-term process. One needs to look at the landscape of volunteering. A wide range of activities exists. Large and very small organisations have differing needs, which must be met to enable them to make use of the scheme that is there. It is also important for organisations to have a single point of contact with the processes that provides a comprehensive degree of support and assistance.

The Convener: Given that many, if not all, of the organisations for which you work are carrying out police checks, if we applied your proposal across the board, would it increase inordinately the work load on those organisations?

Laura Baird: On which organisations?

The Convener: The organisations that are carrying out police checks.

Laura Baird: As part of the enrolment process, the CRBS gives a great deal of information and advice to organisations. In our proposal, we would approach the index by including advice and support about that process and about how to make referrals. Extra work would be incurred for the organisations and the process would be an extra thing for them to know about. Organisations would need to understand their roles, responsibilities and obligations and would need to inform their volunteers. It is important to make the point that the nature of some of the large voluntary organisations means that even they are managed, ultimately, by volunteers—a board of directors or a council of management. Therefore, training, advice and support for those large organisations would be paramount to ensure that they could meet their obligations.

Cathy Peattie: Would it not always be VDS's role to provide such training, advice and support for organisations that deploy volunteers?

Laura Baird: That is always a role for Volunteer Development Scotland, but it is a matter of expanding on that role. To return to John Harris's point, having a single point of entry keeps everything neat, packaged and streamlined, and organisations know exactly where to come for advice, information and support on all aspects of disclosure and on making referrals to the Scottish ministers.

John Harris: At present, we are offering advice to organisations on a number of key areas of legislation, including the Human Rights Act 2000 provisions covering the rehabilitation of offenders and data protection, and part V of the Police Act

1997. Those four areas of legislation are critical to the process in which we are engaged. It seems entirely logical and sensible to build from the foundation of the process—from the enrolment and identification of the lead signatory—an understanding of its implications for organisations. The necessary training and support also needs to be made available to them. We are working on that with respect to other legislation, so we see similar work in relation to the bill as a natural extension of our current activities.

The Convener: You have described how you are engaged in all that work now—would extra work in relation to the bill not incur huge additional expenditure for you?

John Harris: It will certainly incur additional costs for us, but it is difficult to be specific about it. We would need to examine that point in detail, and I am sure that, should we be asked to do so, we would be able to give some indication of the amount involved. We do not want to create a situation in which there is less of an element of eligibility. All the organisations concerned are able to obtain comprehensive support, which will enable them to make the maximum use of the facilities available to them, which in turn protects their client interests, their volunteers and the wider community.

The Convener: I thank the witnesses for their evidence. We will be back in touch with you should we wish to raise anything else.

We now come to our final set of witnesses this afternoon. I welcome Mary Hartnoll, the convener of the Scottish Commission for the Regulation of Care, Jacquie Roberts, the chief executive of the Scottish Commission for the Regulation of Care, Morag Alexander, the convener of the Scottish Social Services Council, and Carole Wilkinson, the chief executive of the Scottish Social Services Council. It is nice to have you all here. I invite you to make any introductory remarks should you wish to do so.

Morag Alexander (Scottish Social Services Council): I thank the committee for inviting us to give oral evidence in addition to our written submission. We want to make some general points before answering any questions of detail. We broadly welcome the principles of the bill, as it will extend safeguards for children and young people.

We are particularly pleased that our two bodies have been invited together to give evidence. This is the first time that the two new bodies, which were set up under the Regulation of Care (Scotland) Act 2001 with a duty to consult each another, have written joint evidence. We have just come from a meeting with our ministers, in which we demonstrated how we work closely together

and keep each other involved in our work. It is a special pleasure to provide this evidence together because we have some positive and useful input that the committee might welcome and which might benefit the final shape of the bill.

15:45

Although we are giving evidence together today, we are separate bodies. The Scottish Social Services Council, of which I am convener, has four main tasks. First, the council is required to register key groups of social services workers. Secondly, we publish codes of practice for all social services workers and their employers. On Monday last week, the codes of practice were launched by the minister, Cathy Jamieson, so we are pleased that one of our main tasks has been discharged successfully. Our third main task is to regulate the training and education of the work force and the fourth is to carry out the functions of the national training organisations for personal and social services and to help work force development. Virtually as soon as we were established, the rules for the national training organisations were changed, so that is one more thing that is a bit of a challenge at present.

Applicants for registration with the Scottish Social Services Council must satisfy the council that they are fit to practise. That is the area in which we have things to say to the committee, because the SSSC, as part of its verification of applications, will need to seek information from the list that is proposed in the bill. That is our interest in the bill and that is why the committee might find our experience of value.

Mary Hartnoll (Scottish Commission for the Regulation of Care): I am convener of what we call the care commission, which trips off the tongue a little more easily than the Scottish Commission for the Regulation of Care. We welcome the opportunity to say that we are very much in favour of the approach that is taken in the bill.

Let me make some general points that the committee should take into account. Like a number of other bodies, we are concerned that the procedures that are proposed in the bill should apply to vulnerable adults as well as to children. The care commission is responsible for the regulation of care services for people from early childhood right through to old age. We also regulate the care services that are provided to people with all kinds of health and other problems. Within that group, there are not only children who are vulnerable but many others such as those with learning disabilities, those with mental health problems and very old people. We would like the bill to be extended to cover those people.

On the protection of children specifically, we want to explore with the committee the possibility of extending the criteria for inclusion on the list. At the moment, the criteria are tightly drawn and would leave some children vulnerable. For example, if a person could not be placed on the list after having been dismissed from looking after somebody in an establishment for adults with learning disabilities, that person might get a job in a unit for adolescent children with other problems. It would give greater protection if such persons could be placed on the list.

The terms of registration require that the manager is a fit person and that the organisation has systems in place to avoid, as far as possible, taking on somebody who is not fit. The check for a police record, through Disclosure Scotland, would pick up somebody who had a conviction. In other judicial or semi-judicial settings, such as a children's hearing, it may be found on the balance of probabilities that a child has been abused but there may be no finding of guilt, which means that there may be other adults who are unfit or who could be a risk to children. The tight criteria of people who have actually harmed a child or who have placed a child at risk of harm should be examined carefully. The inclusion of further criteria should be considered.

We support the changes to the Police Act 1997, which will allow information to be released to Disclosure Scotland.

We suggest the inclusion in the bill of an additional mechanism that would include adults who live in, for example, a childminder's home or the homes of foster carers, who do not at the moment fit within the definition of employment. That is another group that has been identified as potentially needing to be checked.

The Scottish Social Services Council has just published its codes of practice for employers and employees. Within those codes, there are clear messages for employers about having safe and effective recruitment procedures. The care commission must take into account those codes, in particular the code for employers, when regulating and inspecting care provision. We are happy that the provisions in the bill allow the care commission to satisfy itself that care service providers comply with section 2.

We suggest that rather than the care commission and the Scottish Social Services Council having a discretionary power, we should have a duty to refer to the list. That would put the matter beyond any shadow of doubt and would avoid us having to satisfy the human rights of individuals. If we had a duty, the situation would be clear cut without each case having to be considered on its merits.

The Scottish Social Services Council and the care commission propose that other regulatory bodies, such as the General Teaching Council for Scotland and the Nursing and Midwifery Council, should be included in section 4 as organisations that should refer names to the Scottish ministers for inclusion in the list. Consideration could be given to including in section 4 local authorities as holders of information on adults who are unsuitable to work with children.

Those are the general points that we feel we should highlight and bring to your attention. We welcome your questions.

Jackie Baillie: Your point about other adults in households is well made. Such adults should be brought within the scope of the bill, because they can often have substantial, and in some cases unsupervised, access to children.

I am interested in pursuing—as we have done all afternoon—the scope of the bill. The bill covers organisations that are subject to regulation. First, the issue that is being debated is whether the bill's provisions should be extended to cover all people who have unsupervised access to children, irrespective of whether an organisation is regulated or not. Secondly, do you see any inherent weaknesses in an accreditation system for those organisations that currently are not within the scope of the bill, as opposed to the work that you do with organisations that are?

Mary Hartnoll: Consideration is being given to an extension over the coming year or two of the care services that are subject to regulation. Other provisions might be included in that, particularly in relation to home care services, I suppose.

Jackie Baillie: I am talking about a wider level in the community, where a lot of informal voluntary organisations provide excellent services but, nevertheless, work unsupervised with children.

Jacquie Roberts (Scottish Commission for the Regulation of Care): The inclusion of such organisations would extend the provision enormously. Having had the experience of trying to set up a new organisation with new regulations and legislation, I am aware that it is helpful to learn to walk before you can run. Many organisations that provide children's services, at least those that provide more than two hour's care a week, are covered by the arrangements of the central registered body for Scotland.

Carole Wilkinson (Scottish Social Services Council): It would be worth the committee's while to explore that issue. We are aware that, the more that certain bodies and people are regulated, the more the people that we are talking about will try to find other avenues, which is why there is a concern about not including vulnerable adults in the provisions. Clearly, people who seek access to

vulnerable people will choose avenues that are not regulated. There is a need to explore what organisations are outwith the legislation and how they might be brought within it, given that they might fall outwith the area that the commission and the council are currently able to regulate.

Mr Brian Monteith (Mid Scotland and Fife) (Con): Jackie Baillie mentioned concerns about extending the bill to cover those who live with people who work with children, such as childminders or—as recent events have made us all too aware—janitorial staff, who often live in premises on the school grounds. Should the bill cover people who live in a family situation on school grounds with people, such as janitors, who work with children?

Mary Hartnoll: At the moment, such people would not be within the care commission's remit. The school premises are not subject to regulation by the care commission.

Jacquie Roberts: Nevertheless, it would be possible to have a system of regulating the providers of services to ensure that they have safe practices with regard to the people whom they employ as janitors and others who might live in the environment in which they look after children. It is possible to build those arrangements into our current regulatory system.

Carole Wilkinson: I would have thought that, if teachers and classroom assistants were included, it would be logical to ask the education authority to consider any other employed staff on the premises. We know of instances in which concerns have been expressed about janitors.

The Convener: I would like us to talk only in general terms about janitors, given that the matter that is in everyone's mind is subject to court proceedings at the moment.

Mr Monteith: I will continue to speak generally. Support staff who work in schools, such as gardeners, do not usually have a house in the school grounds. I raised the issue of janitorial staff because their house is often in the school grounds. That is a difficult area that might make the extension of the bill harder to apply. Can you think of a way round that difficulty?

Carole Wilkinson: We face similar issues. We will have to regulate certain groups of staff, such as people who work in residential or day care services, but people will say that, if such people are being regulated, perhaps others such as drivers and cooks should be regulated. At the moment, those people do not fall within our remit, but the Parliament might be asked to consider adding them to it in the future. Mr Monteith is exploring a similar line of thought.

Jacquie Roberts: I said that we should not run

before we can walk. It is important to have a credible system that works. The committee may want to consider having a staged process. Once the system is up and running, wider categories of people could be made eligible for referral to the list.

The Convener: Are you concerned that the bill may raise expectations on which it cannot deliver? Might it be perceived that the bill will give protection that it is not possible to give?

16:00

Mary Hartnoll: Our aim is greater safety. It may be beyond human ability to achieve 100 per cent safety, but we can do more to improve safety by taking reasonable steps. If we overload the system, there is a risk that it will be unable to cope and that people will find ways round it.

Carole Wilkinson: It is important that people should understand that the measures in the bill are one of a number of processes that are needed to protect children, to ensure that children are safe and to minimise harm. Earlier today we talked about people's tendency to rely on police checks. People tend to think that if someone has been cleared by a police check, everyone is safe. The message is that people need to do different things as part of safe recruitment and selection. Support, development and supervision of staff contribute to safe practice. People should not think that the bill alone will guarantee safe practice.

The Convener: If the bill is passed, will you work that message into training and support of staff?

Morag Alexander: The Scottish Social Services Council has the major task of communicating what it does and what it can guarantee. The council can register people. Before it does so, it requires them to have qualifications that fit them for the job or to be working towards such qualifications. Before registering people, the council carries out police checks on them and ensures that their employers have conducted a fair recruitment process, during which references were taken up. All the work must mesh together—the bill requires that. If there are gaps, that may cause difficulties.

We need to give people as much reassurance as possible that children and other vulnerable people are as safe as we can make them. However, things may go wrong and no system is foolproof. A great deal of effective communication is required to ensure that people understand that they need to be watchful at all times, instead of relying on systems as a comfort blanket. We can do the best that we can, but that is all that we can do.

The Convener: In your written evidence, you

say that other regulatory bodies should be included in the scope of the bill. You made that point again today. Let us assume that the committee regards that as a positive way forward. What other bodies do you think are missing from the bill?

Jacquie Roberts: Before the Regulation of Care (Scotland) Act 2001 was introduced, local authorities were able to pass vital child protection information to their staff who were registering and inspecting care services. Because the care commission is a separate legal entity, it does not have the right to receive that information. It is very important that the bill should fill that gap. Local authorities should be able to refer to the list.

The Convener: Could you provide us with some written detail on that suggestion, so that we can raise it with ministers?

Jacquie Roberts: Certainly.

Carole Wilkinson: It would be worth adding the Health Professions Council, which regulates occupational therapists and other therapists, to the bill. Some occupational therapists work with children, so we may want to include them in the scope of the bill. We have suggested that the Nursing and Midwifery Council also be included.

Irene McGugan: Under the appeals process that the bill proposes, an individual has three months to appeal to a sheriff against listing. Others have suggested that a tribunal might have a role. What are the strengths of those suggestions?

Carole Wilkinson: Under our regulations, applicants to the register and registrants whose removal from the register is being considered have a right to appeal to the sheriff, so we would probably support the proposal that an appeal to the sheriff should be possible. That would send the right message about the importance and seriousness of the matter. It would also provide a measure of consistency, given some of the similar issues that sheriffs will have to examine. For instance, people who appeal against removal from the register might raise similar issues about being on the list.

Jacquie Roberts: The Scottish Commission for the Regulation of Care takes that position, too.

Irene McGugan: The position sounds logical. It has been suggested today and elsewhere that a judicial process before listing might not be out of order. What are your thoughts on that? Some have suggested that more than simply a referral by an employer to ministers should be required for listing and that the present proposal might not be in keeping with human rights legislation.

Carole Wilkinson: That is interesting, because we have just held a consultation on the rules that

will govern how someone joins the register and how they are dealt with when they misbehave or when their removal from the register is being considered. Initially, our rules had procedures under which we made decisions without giving the person involved a right to representation. Virtually all the consultation respondents felt that that was inappropriate and that it should be possible for someone to be represented. It may be unfair that the first stage at which someone has the right to put their case is when they are before the sheriff. The committee can take that information for what it is worth, but that was a strong opinion.

Michael Russell: I will follow up that extremely important point. Everybody wants the bill to succeed. In that small anecdote, Carole Wilkinson identified a feeling that fairness should apply in all circumstances. Given the work, including the supervisory work, that all the witnesses' organisations do, how will the concept of fairness be guaranteed under the bill for all bodies—particularly public bodies such as local authorities and health boards?

Jacquie Roberts: Our legal advisers suggested that we should have a statutory duty to refer, so that the test of fairness could rest in one body. The test of fairness would be with the people who hold the decisions about the names on the register. If many bodies had discretion to refer, they would have their own tests of reasonableness and fairness. We would be in danger of establishing many bureaucratic systems to follow due process for referring.

Michael Russell: An individual's relationship with their employer must involve trust. How can an employee trust an employer that is prepared to make a referral on the basis of suspicion? Even if the bill were passed, would that be fair under employment law? I ask those questions because we will have to dig into them. Is that situation likely to damage trust generally between an employer and an employee? Is it uncaring for an employer to undertake that task? We should examine that, because we are dealing not with convicted people—we understand convictions—but with people who are under suspicion and with circumstances that make a body decide that an individual should not work with children, although no legal process has been followed.

Irene McGugan makes an important point: not only will no legal process be followed but provisional listing will be made without a legal process. Only once someone is provisionally listed can they go to a court to try to have a listing rescinded. I would like some reaction to that, because your work also must be based on trust and fairness.

Jacquie Roberts: I understand from the criteria and the recommendations in the explanatory notes

that a referral would be based on much more than suspicion. In my practice, a relevant example would be a person who significantly lost their employer's trust by the damage that they did to an adult or a child but who could not be pursued further through the judicial process. The employers and the people who use care services have the right to be able to prevent that person from finding employment elsewhere. There are protections for the individual once the person is on the provisional list.

Carole Wilkinson: The starting point is the protection of children, which must be paramount. We need to ensure that at every stage the processes are spelled out clearly and that people understand what is happening. The processes must be as transparent as possible. I am not sure whether you are suggesting that at the point at which the referral is made the employer will not tell the person.

Michael Russell: No, I am not saying that at all. That would become painfully obvious to the individual.

I want to follow up on the point that Jacquie Roberts made. I am not questioning your professional judgment, but from what you just said, a referral would be based entirely on your professional judgment or that of your colleagues, rather than on any process of law. The most sensible thing that we have heard this afternoon is about the requirement for civil proof rather than criminal proof. I am flagging up what I think is a genuine difficulty with the bill, which is becoming worse the more evidence that we take. I am looking for creative thinking from this distinguished group of witnesses and all the other witnesses from whom we hear to find a way around that difficulty. If we do not find a way around it, the bill will fall into disrepute.

Jacquie Roberts: The process can be based on excellent employers' practice. However, I am not suggesting that it be based not on law but on suspicions and professional judgment. It is possible to go through open, honest and clear disciplinary procedures, but some of them might not come to a clear conclusion. Then we would be left with the knowledge that an individual really should not be working in child care. The bill would plug that gap, but we would have to have fair, honest and clear employers' practice.

Michael Russell: The three words "fair", "honest" and "clear" are vital to us and we will return to them. Thank you.

Morag Alexander: I want to make a point that is not related specifically to what Mr Russell said, but which follows on from it. In our view, the best possible outcome at the end of an investigation

process in which in the suspicions of an employer were not borne out would be that the individual who had been investigated would have his or her good name restored. How can that happen and how can the process help that to happen? The individual might have been challenged maliciously, or they might have been challenged on good grounds that on subsequent investigation were not found to have substance. The individual might be exonerated. What can the process do to ensure that that individual is reinstated? That is perhaps not quite so difficult, but how can the process ensure that there is no whispering campaign and that the press reports the outcome?

Michael Russell: That is a very wise question to raise. If we turn the issue on its head, the question is how we can devise a process in which individuals are not put in such circumstances and maintain our intention to support the principles of the bill. If I thought that the bill, as drafted, would allow a person to reclaim their good name, I would be less worried than I am now.

Carole Wilkinson: Do we not then require clear guidance and procedures for referral, with an onus on the referrers, or the employers, to make it quite clear on what basis they are referring? There should be a system to sift at that stage, so that the investigation procedure could sift out the referral and it would go no further.

Michael Russell: There are no perfect procedures. I accept that there must be very good procedures, but I do not know whether they can be perfect. The situation in a court of law is that even if the procedures are flawed, there is still a possibility that the outcome could clear somebody's name. In the case of suspicion, there is no such procedure. That is why we must think carefully about how we act in the context of wishing the bill to be enacted. The current structure is problematic.

Mary Hartnoll: Local authorities are aware of the problem of acting merely on suspicion, as are most other care providers. My background is in local authorities and only partly in the voluntary sector. The times when one has suspicions, but can do nothing about them, are legion. The odds are stacked against both younger children—who do not have much of a voice—and older ones. There can be malicious allegations as well.

The process is highly complex and none of us would pretend otherwise. We know that there have been many cases of dismissal in which people have appealed and the dismissal has been upheld on the balance of probability because the information has been sufficient eventually to satisfy not only one or two professionals but a range of people that harm was done. The person in question can leave their employment, go to another town and nobody knows about their past.

The problem is getting the balance right. We do not suggest that suspicion is sufficient; we say there should be good procedures. At the end of the day, one cannot have absolute proof of what happened in some cases.

Michael Russell: Nobody would disagree with you. However, a difficulty remains. Nobody wants the balance to be tilted against children—that is what we are trying to avoid. Equally, in the name of justice, we must ensure that the balance is not tilted so far the other way that good individuals can suffer with no redress and, as Morag Alexander pointed out, with strong and positive loss of their reputation.

The Convener: As there are no further questions, I thank you for your evidence. I am sure that we will be seeing more of you in the future.

Meeting closed at 16:16.

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