

# **EDUCATION, CULTURE AND SPORT COMMITTEE**

Tuesday 8 October 2002  
(*Afternoon*)

Session 1

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## **EDUCATION, CULTURE AND SPORT COMMITTEE** **26<sup>th</sup> Meeting 2002, Session 1**

### **CONVENER**

\*Karen Gillon (Clydesdale) (Lab)

### **DEPUTY CONVENER**

\*Cathy Peattie (Falkirk East) (Lab)

### **COMMITTEE MEMBERS**

\*Jackie Baillie (Dumbarton) (Lab)

\*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)

Irene McGugan (North-East Scotland) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

Michael Russell (South of Scotland) (SNP)

### **COMMITTEE SUBSTITUTES**

Murdo Fraser (Mid Scotland and Fife) (Con)

Marilyn Livingstone (Kirkcaldy) (Lab)

\*Fiona McLeod (West of Scotland) (SNP)

\*attended

### **THE FOLLOWING ALSO ATTENDED:**

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)

### **WITNESSES**

Dougie Arniel (Scottish Rugby Union)

Rose Challies (sportscotland)

Shirley Ferguson (Office of the Solicitor to the Scottish Executive)

Liz Gallacher (Scottish Independent Nurseries Association)

Cathy Jamieson (Minister for Education and Young People)

Pippa Murphy (Scottish Swimming)

Jan Raitt (Scottish Executive Education Department)

Judith Sischy (Scottish Council of Independent Schools)

Ernie Turpie (Scottish Association of Local Sports Councils)

### **CLERK TO THE COMMITTEE**

Martin Verity

### **SENIOR ASSISTANT CLERK**

Susan Duffy

### **ASSISTANT CLERK**

Ian Cowan

### **LOCATION**

Committee Room 1



**Scottish Parliament**  
**Education, Culture and Sport**  
**Committee**

*Tuesday 8 October 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:03*]

**The Convener (Karen Gillon):** I call this meeting of the Education, Culture and Sport Committee to order. We are in public session and I ask everyone to ensure that all mobile phones and pagers are switched off.

We have received apologies from Irene McGugan, Mike Russell and Brian Monteith. I invite members to declare whether they are present as substitutes.

**Fiona McLeod (West of Scotland) (SNP):** I am present as a substitute for the Scottish National Party.

**The Convener:** Thank you and welcome to the committee.

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

**The Convener:** Item 1 on the agenda is oral evidence on the general principles of the Protection of Children (Scotland) Bill at stage 1. I welcome Liz Gallacher from the Scottish Independent Nurseries Association and Judith Sischy from the Scottish Council of Independent Schools. Would you like to make any introductory remarks before we move to questions?

**Liz Gallacher (Scottish Independent Nurseries Association):** No.

**The Convener:** In that case, we will proceed straight to our questions.

**Cathy Peattie (Falkirk East) (Lab):** Do you carry out checks on potential employees? Will the bill place additional burdens on your members as employers?

**Judith Sischy (Scottish Council of Independent Schools):** I point out that our organisations are entirely separate, although we have similar concerns. Independent schools have always run checks. Since the 1989 circular was sent out, they have had the same instructions on running checks as local authorities have had. We conducted Scottish Criminal Record Office checks and now we all run disclosure checks. In all cases, we make applications for enhanced disclosure for teachers and for support staff. As well as making those checks, we have our own rigorous vetting procedures—we follow the usual guidelines and work with the Scottish Executive, Her Majesty's Inspectorate of Education, the General Teaching Council and others.

On the second part of your question, the bill will not so much place additional burdens on us as raise anxieties about where we should draw the line. Everyone would do anything to prevent potential abuse, so we welcome the bill and the requirement for employers to check and report. However, schools have a wide and diverse range of activities. Where should we draw the line after we have checked people who are involved in the obvious activities? Caretakers have a high profile at the moment, but would everyone have thought to check their caretaker if he did not have direct and unsupervised access to children? Now we check everyone, which imposes burdens on paperwork and expenditure but must be done.

The problem is with volunteers and others who help with community activities. Do we need to check everyone who comes into a school? Despite the guidelines that we receive, there is a general caution that we should check everyone, although that might put off parents and others who might

otherwise come into a school to help. There must be a debate about that grey area.

**Cathy Peattie:** I will come back to that answer, but I am interested in the view of Liz Gallacher's organisation.

**Liz Gallacher:** Previously, our members used the local authority's registration and inspection service. Now the burden of responsibility for checks is placed on individual employers, and we have to go through the disclosure system. We welcome the bill—we are happy to check everyone. However, the decision making is difficult and the decision-making burden has now been placed on the employer. A small employer, with perhaps only two or three employees, might be in receipt of information about an individual that they might not want to know—the employer might not want to have to make a decision about what to do with that information. Quite a lot of responsibility has been placed on employers and I suspect that that has a particular impact on small employers.

**Cathy Peattie:** Is it difficult to cope with the extra work and demands on time that are required?

**Liz Gallacher:** Yes, but the real difficulty is with the responsibility for decision making. We would prefer the responsibility to be held by an arm's-length body. Our members think that someone else should have to make the decisions for them, because individuals do not want to have to make decisions about whether a person is suitable.

**Cathy Peattie:** Judith Sischy talked about volunteers and parents and it is clear that schools depend on their participation. Will the bill put barriers in the way of the participation of parents and volunteers in the work of a school? My next question is for both witnesses. Will the bill make it more difficult to replace staff or to recruit new members of staff, given that the checks will have to be completed before people are in post?

**Judith Sischy:** If schools explain the system properly to parents and volunteers, it should be accepted because everyone will understand that children have to come first. However, it takes away the spontaneity of people saying, "Ooh, I want to come in and help," and dropping everything to come in at the weekend or in the evening.

When I was on the users group for part V of the Police Act 1997, people expressed concern that the system would become overburdened. Indeed, I suppose that that is what has happened in England. As a result, our concern is not so much that schools will become overburdened, but that the system will become blocked. After all, the first thing we need is the result of checks on teachers and others who are involved.

**Cathy Peattie:** So there would be concerns about recruitment only if the system became overburdened.

**Judith Sischy:** Yes, I think so.

**Cathy Peattie:** Does the Scottish Independent Nurseries Association hold the same view?

**Liz Gallacher:** Yes. In general, we welcome the bill. Obviously, we would do anything to ensure that children were protected. However, the problem is that the burden of checks might put people off volunteering. Although they might understand why checks need to be carried out, they might not want to bother going through such a process.

**Jackie Baillie (Dumbarton) (Lab):** My first question is for Liz Gallacher. In your written submission, you highlight the strong feeling that legal safeguards for individuals and employers need further consideration. Has your organisation considered any alternatives that address the particular burden of small employers who have to make decisions on individuals—albeit using guidance and information—in the knowledge that legal sanction might well fall on them?

**Liz Gallacher:** That has been a major concern for some of our members. Articles in the press have suggested that they might be open to prosecution if they make the wrong decision. Because people sometimes change their names these days, we now have to consider people's birth certificates and passports and decide whether they are legitimate. That is a big responsibility. I do not know what the legal situation would be or whether we could safeguard people. Previously, a Government agency carried out these checks. It is a great fear for employers. Indeed, it might put people off starting businesses that are related to child care services, because they might not feel that they could take on such a responsibility. However, I do not have any answers to your question.

**Jackie Baillie:** The committee has been pursuing the question of volunteers. I am interested to hear from Judith Sischy about her organisation's current practices and whether, because of the bill, it will have to check all volunteers. Moreover, does the bill make it mandatory for current volunteers to be checked?

**Judith Sischy:** Before the bill was introduced, we accepted that it was a requirement to carry out checks on anyone who worked with children. That situation has not changed. However, when we have asked whether the requirement also applies to volunteers, the official answer has always been the same: people who have unsupervised access to children need to make an enhanced disclosure. On the other hand, a parent helping a teacher with a football team might need to make only a

standard disclosure. We are still trying to work with the system, which is all very new. I do not know whether it is a statutory requirement that volunteers have to be checked, and I would be very grateful if someone could give me an answer to that. We simply assume that anyone who works with children needs to be checked. As I have said, I do not think that the bill changes that. The bill clearly reminds employers that if they employ someone who is not suitable, they are committing an offence. That is what is new in the bill, as I understand it.

**The Convener:** The bill will probably affect only a limited number of people. However, if one person is prevented from holding a position of authority over children and intentionally abusing them, it will be worth while.

Do you know of any situations where there were reservations about the suitability of an employee, but there was no concrete evidence that could be taken to court? Perhaps someone went through a disciplinary process, but there was not enough evidence to take the matter into the legal system.

14:15

**Judith Sischy:** I am not aware of any such situations—touch wood. The most that I am aware of is inappropriate use of the internet in a school, which is not uncommon. However, I am not aware of any dismissals on the grounds of abuse or suspected abuse of children.

**Liz Gallacher:** I am not aware of anything like that.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** Judith Sischy's submission mentions anxieties about infringing human rights legislation. What did you have in mind?

The submission also expressed reservations to do with the confidentiality and availability of the lists. There is a suggestion that we would have to be careful about who gets access to the list. Will you talk about those human rights issues?

**Judith Sischy:** I will deal with the first question. We are such a litigious society that if—heaven forbid—we had to dismiss someone, or someone resigned because they would otherwise have been dismissed, we would have to decide whether to refer him or her to the list. We can be sure that that would be challenged and taken to the brink.

Although no one wants to ruin a person's life unless they absolutely have to, if we were to put the child's interests first, we would have to err on the side of caution and refer them to the list. However, no one wants to be challenged under human rights legislation and have to go through all that litigation. One of the papers accompanying the bill said that it is difficult to balance the

protection of children with human rights.

**Ian Jenkins:** The matter may not have been in Liz Gallacher's submission, but does she have any worries about people who will be provisionally listed and the employers who will be able to access that list?

**Liz Gallacher:** I do have worries about that. There could be a provider in a small village, for example. How can you guarantee that confidentiality will not be breached if someone there has access to the list? Who has access to the list needs to be considered carefully. You cannot just give access to employers per se.

**Cathy Peattie** *indicated disagreement.*

**Liz Gallacher:** Is that not what is going to happen?

**Cathy Peattie:** No, it is not.

**Ian Jenkins:** Does Judith Sischy have any concerns about the definition of harm and putting children at risk?

**Judith Sischy:** I mentioned that because the bill covers harm that is not physical. That is very vague. We all know now about child protection and bullying. In the school context, we know what it means if a child is harmed or upset. However, for legislation, it seems to be a wide definition. We realise that the term includes harm that is not physical but perhaps that needs fleshing out.

**The Convener:** As there are no further questions, I thank you for your evidence and for the information that you have provided today. If there is anything else, we will come back to you while the bill is making its way through Parliament.

We now move to our second set of witnesses, from the sporting front.

**Jackie Baillie:** Field.

**Cathy Peattie:** It should be field.

**The Convener:** I cannot say "field". My colleagues are suggesting that I should say "field" but not all the witnesses are from the field. We have swimmers with us, and you do not swim in a field, Ms Baillie. Sport is not your strong point.

I also welcome to the committee Brian Fitzpatrick. Please feel free to contribute if you want. I may even call you, if you indicate that you wish to speak.

We have with us Rose Challies, who is the ethics manager for sportscotland; Dougie Arniel from the Scottish Rugby Union; Pippa Murphy from Scottish Swimming; and Ernie Turpie from the Scottish Association of Local Sports Councils. Thank you very much for coming. Would you like to make any introductory remarks or would you prefer us to move straight to questions?

**Rose Challies (sportsScotland):** It should be noted that we all work in partnership. Although we are from different organisations, we are here with similar concerns.

We agree in principle with the bill and its aims. We have concerns about its implementation and, in our written submission, we have proposed a process that may assist with the administration of the bill.

**Cathy Peattie:** To what extent is screening used with volunteers in your organisations?

**Rose Challies:** I will start my answer by considering some of the developments in child protection in sport, particularly over the past year, since it became evident that we had to have disclosures for volunteers. We have made significant advances in the development of recruitment procedures, which include disclosure checks, and in the management of allegations or suspicions of misconduct or abuse. A number of sports have done a lot of work on those issues; as a result, quite a few now use checks. I will pass over to Pippa Murphy and Dougie Arniel, because their sports have gone through the process.

**Pippa Murphy (Scottish Swimming):** In swimming, we took the decision to work from local level all the way up to national level, so that we could start training people locally and have a big network of people. We have worked on recruitment processes, and that work led into work on discipline procedures, on rehabilitation of offenders, and on many things that we did not expect to go along with child protection. It has been a steep learning curve for everybody. However, it has been a lot of fun. We have turned things into a positive voluntary recruitment process. We have changed expectations of what child protection is all about: it is not about unveiling a lot of abusers in sport, but about rewarding good practice, trying to find out what is going on, and involving more people in our national governing body. We do not know everything that is going on in swimming in Scotland and we would like to.

We have initiated a huge recruitment process. We do not yet police check our volunteers, but all our new recruits in swimming clubs now go through that full recruitment process. We spend a lot of money dealing with allegations and issues that may arise from them, so we want to be certain that local procedures have been implemented as well as possible. It is more difficult to do that at the national level because of the number of volunteers who are recruited for projects. The process has opened up a range of issues for us but, all in all, it has been very positive.

**Dougie Arniel (Scottish Rugby Union):** We are in a similar position, trying to organise things

so that all our volunteers will eventually be checked. That has taken some time but has met with very little resistance.

**Cathy Peattie:** That is good.

**Dougie Arniel:** As we move to the next stages, we will have to be very careful. So many positive initiatives for involving youngsters in physical activity and sport are coming along that we will need a massive recruitment campaign for adults. If I was looking for one thing today, it would be to run a national recruitment campaign for adults alongside the implementation of child protection guidelines. Each boosts the credibility of the other, but one on its own could frighten people away. It will be very important to get adults involved.

**The Convener:** Can you give us a ball-park figure of how many volunteers are involved in swimming and rugby coaching?

**Dougie Arniel:** In the past four or five years, we have put about 4,000 coaches through foundation level courses. Every one of them is issued with fair play codes, which talk about child protection, and any recruit to a club must sign up to that club's child protection policies. We hope that that will become part and parcel of coaching. The worry is that someone who helps with their son's rugby, one daughter's swimming class and another's brownies group will have to go through the process each time, which would become off-putting. However, it would be the bureaucracy that would put them off, not the principle.

**Cathy Peattie:** How do you support the small organisations in your structure? Clearly, the local swimming club and the local football club will organise everything to do with the activities, the recruitment of volunteers and so on. How could you help a small organisation to identify a concern about an adult who is working with children? Would the clubs use the Volunteer Development Scotland structure or work through your organisation?

**Pippa Murphy:** We provide member services only to those clubs that are affiliated to us. Some of those clubs are tiny, community-based clubs and some are larger, city-based clubs. When their concerns are reported to us, we advise them on the process that needs to be followed. We are in the process of appointing a child protection officer for every club in Scotland. We have about 100 at the moment, so we are about halfway there. They will all go through training and will deal locally with the issues as they arise.

**Dougie Arniel:** We issued guidelines to all the clubs and made it clear that they were responsible for having procedures in place. We have 134 child protection co-ordinators registered with us and we need to train them to bring their knowledge up to date. Now that the new disclosure structure is in



place, we want it to cascade down. We will start with one person at the SRU who will be the lead person and, from them, the system will cascade down through our organisation, through our development team and down to the local child protection development co-ordinators. We are big enough to be able to do that but it will be difficult for many small governing bodies to manage that situation. However, that is the model that we want to follow.

**The Convener:** Could we have copies of some of the material that you use?

**Dougie Arniel:** Yes.

**Pippa Murphy:** Ours is available on our website, which is [www.scottishswimming.com](http://www.scottishswimming.com).

**The Convener:** You are assuming that all of us know how to work a computer.

**Rose Challies:** What might put sportscotland in the top tier in this regard is the fact that, for the past year, the main focus has been on the ethics programme, which I manage within the child protection system. Part of that programme involved employing, along with Children 1<sup>st</sup>, a child protection development worker. She will be working as what Dougie Arniel has called the bang person in rugby. We are trying to provide as much guidance and as many templates as we can and intend those to filter down through the organisation.

**The Convener:** Ernie Turpie, you work with some areas of sport that involve a large number of people, such as bowling.

**Ernie Turpie (Scottish Association of Local Sport Councils):** I think that there are 3,000 bowling coaches.

**The Convener:** Have you had many concerns raised with you?

**Ernie Turpie:** No, not as yet. Obviously, we would like to advise our members, but my main concern is about the number of clubs that are not affiliated to a governing body. How do we get to those clubs? A number of clubs are not members of local sports councils. It would be great if all clubs in a district were members of a local sports council—we accept that that is not the case—and were members of the governing bodies. In more rural areas, not all clubs are members of the governing bodies.

14:30

**Cathy Peattie:** There can be a problem with small clubs that have been in existence for a long time. Such clubs are often run by one or two committed volunteers, who probably think that they do not need to seek affiliation because they have until now managed perfectly well. There is

the issue of how to protect children and how parents can know that their bairns are safe when they go off to participate in sport.

**Ernie Turpie:** I accept that. I have some knowledge of what the SRU has done. I was going to suggest that you are thinking of village clubs, but in fact village clubs are probably better protected than other clubs, because everyone kens everyone else. If one moves up a step, one gets into a situation in which the clubs are not so well known. How does a parent know that such clubs follow guidelines? There are certain sports councils that will not ensure a grant unless the club in question has a recommended child protection policy. It is easy to write a policy; to make it work is the major problem.

**Cathy Peattie:** Must all clubs have a policy?

**Ernie Turpie:** Most clubs that I know about are working towards having a policy.

**Fiona McLeod:** It was interesting to hear about practical examples of child protection policies that have been put into practice in rugby and swimming. That will perhaps allay some of the fears that were expressed by earlier witnesses, who said that such policies might put off volunteers. You say that that is not the case. What were the resource implications of going through that process? I refer to the administrative and financial implications.

**Dougie Arniel:** It is difficult to judge the financial implications. The big input is time. After one has taken the decision to make things work, it is a question of time and training. Training has to be organised and set up around the country, so that the relevant people can more easily attend sessions, rather than our having to train people centrally. It is a case of, "Where there's a will there's a way."

The stage that we have reached in developing sport for youngsters means that any future changes that we can make will be marginal. I am not saying that we cannot take things much further, but we will need a massive injection of adult resource—through schools, sports clubs and so on—to take sport forward. It is a question of how one manages that stage. It is self-evident that involvement of more adults in helping youngsters means that more eyes will be watching, which will make it more difficult for people to take advantage of a situation. Things become difficult in small and isolated situations.

Information can be given to parents through their children at school. Someone mentioned a leaflet that lists 10 things to look for in your local sports club, which will encourage parents to find out whether a club has a child protection policy, for example. As a result, every little club will aspire to have such policies to attract members and the

process gathers momentum. We are talking about a joined-up exercise—it is not a case of one thing or the other.

**Pippa Murphy:** There are no huge amounts of money involved in such provision in swimming—even though we provide free training for 500 or 600 people a year—because the provision of such training is not expensive. However, there are resource implications. I am the national development officer and at least 50 per cent of my time is spent on implementing child protection. My chief executive, who handles any disclosures relating to such information, spends perhaps 25 per cent of his time on that. Twelve months ago there might have been no impact, but now there is an enormous impact on how much other development a smaller governing body—for example, one that has only one member of staff—can do.

We want to protect children, but we are concerned about children's development and enjoyment and all the other positive aspects of sport, so we would not like our other activities to be restricted. Dougie Arniel and I are lucky to work in organisations that are comparatively large in sport. Finances are flexible for us, so perhaps we can be a bit more creative with our budgets than can others. However, if the committee offered us money, we would not turn it down.

The responsibility that we are trying to place on our general users and members is acknowledgement that, for a club to be successful, it needs the involvement of its community. It is no longer acceptable to dump children at a sports club and run. Parents must take on some responsibility for their children's safety. We say that we will look after kids in the pool, but not afterwards. Obviously, we do look after them after they have been in the pool; things happen and we have to be there for them. Some clubs have creative ideas, such as imposing higher membership fees on people who do not attend, help or volunteer at some point than they do on those who become involved. In little ways, we can try to get more people involved, which is what everybody wants.

**The Convener:** The committee is not known for its generosity, unfortunately.

**Pippa Murphy:** It was worth a try.

**The Convener:** It is always worth a try. The woman with the cheque book is sitting behind you.

**Ian Jenkins:** She is making faces behind you, too.

In the unfortunate event of people coming under suspicion, the decision whether to refer them for placing on the list will be important. The submission from sportscotland talks about the

desirability of an advisory panel. Will you expand on how that might work? That would give small clubs at least some support in making such decisions.

**Rose Challies:** We were concerned that the bill did not refer to the strength of evidence or to sending evidence directly to ministers for decisions. We have recommended that a process should be undertaken, which most governing bodies have taken on, to pass the information to someone who has knowledge—such as a child protection co-ordinator—and who could decide on appropriate action. In an abuse case, a procedure would be needed to pass information to the police and social work departments.

It is difficult for a person to decide, or to determine once a disciplinary process has been followed, whether the harm to which the bill refers has occurred, which would require a person to be put on the list. The same situation applies to disclosures. When disclosures arrive, people will be unsure about borderline matters. There will be obvious cases of people who should not work with children, but there might be cases in which that is not obvious.

For those reasons, we suggest that there should be a panel of people with expertise who could support all sports. Borderline cases could be passed to the panel for consideration and determination. That would create consistency across sport on who was passed on to the list and in considerations for the decision-making process. As Ian Jenkins says, that would be important for smaller governing bodies, because they would feel supported in the process and would not feel that they had responsibility for making such a decision, which could have a huge impact on someone's life, as has been said.

That is our approach. Many people are involved in sport—the number of volunteers is about 160,000—so bad decision making should not take place left, right and centre. Co-ordinating such decisions through a panel would be good.

**Jackie Baillie:** I will try to clarify a matter for my simple mind. The bill creates a distinction between a regulated child care organisation and any other organisation. I understand that sportscotland would fall into the category of any other organisation. For a regulated child care organisation, the implications are that the processes that are outlined in the bill are mandatory. For sportscotland, they are optional. Is that your understanding?

**Rose Challies:** Yes.

**Jackie Baillie:** We are on the same wavelength.

From the evidence that we have heard today, it seems that you intend to implement the provisions

of the bill in full. I do not want to put words in your mouth, but are you doing that because you think that leaving a gap might create a two-tier process of protection for children?

**Dougie Arniel:** The Scottish Rugby Union believes that, if a system is introduced for dealing with people who work with children—even if that system is not mandatory—it is advisable and desirable that it should apply across the board. How would a club feel if someone who had been excluded from working in a pair situation were allowed to volunteer and something happened? The system should be as near to mandatory as possible. We must ensure that the processes in place make it unlikely that such a person would have access to children.

**Rose Challies:** Sports organisations have called for a list of the type that is proposed. People fear that a person who has been excluded from rugby will immediately move to badminton, for example. Our aim is follow good practice, rather than to do only what is required of us. That is why Jackie Baillie might have received the impression that we regard the provisions of the bill as mandatory.

**Jackie Baillie:** That is fine. I am very happy with your response. It has been acknowledged that some smaller organisations might find it difficult to implement the provisions of the bill. However, we want to hold on to the policy purpose, which is to ensure that all children are protected, irrespective of by whom.

**Ian Jenkins:** Are you worried about the rights of representation that the bill accords to people who are referred to the list? What sort of protection does the bill provide against malicious accusations or inadequate evidence? At what point should people be represented? Some folk have suggested that there should be a tribunal arrangement. It has been proposed that, before people are placed on the provisional list, they should have an opportunity formally to defend themselves.

**Pippa Murphy:** It is important that we have as much information about candidates as possible. We will receive information about previous investigations through enhanced disclosure and we give people an opportunity to speak to that sort of information. Our approach in such situations is similar to the way in which rehabilitation is dealt with under employment law. If someone says that they were investigated in a particular county for a particular offence, we ask them what happened, what they learned and whether they have received training. We must distinguish between poor practice and convictions.

It is important that we have information and that the culture in sport allows people to provide us

with it voluntarily. People should come forward to tell us that they may be on the list because of X, Y or Z. They should tell us what they have learned from the experience and describe the training that they have received. We hope that the culture of good practice that we are promoting, which involves people not working on their own and not being placed in positions of responsibility before they have been properly educated for those, will cover such situations adequately.

**Rose Challies:** I support totally having a disciplinary process. This is not just a child protection issue; it relates to a number of different matters. In the past five years we have realised that a disciplinary process is needed in anti-doping cases, so that people can present mitigating circumstances. We are concerned that the bill does not appear to provide for such a process. Certainly sportscotland recommends that governing bodies and sports organisations are set up so that they have a supporting structure for disciplinary matters.

**Ian Jenkins:** That would mean that once you had gone through the disciplinary process, the offence would have to be pretty serious before you would consider referring the offender to the list. The disciplinary process would recognise that infringements had been made that might not have been serious enough to lead to a referral.

14:45

**Rose Challies:** It is different for different governing bodies, but generally there is some form of review process to take evidence and discover whether that evidence is strong enough to be taken through a disciplinary process. That is what a governing body will usually do.

**Dougie Arniel:** I would argue for the panel process on the ground that if the SRU is the umbrella organisation, then enhanced disclosures would come back to the SRU. One person will look at the disclosures and decide whether the person is acceptable or not.

There could be some sort of panel to consider borderline cases. Ninety five per cent of cases will go straight through with no problem. However, in more awkward cases in which there is something that we are not sure of, a panel would provide consistency so that rugby did not reject a person for a reason for which badminton would not reject them. That type of empathy among organisations would give the individuals involved confidence that the matter had been handled sympathetically and that the right decisions were being made, as opposed to individuals being relied on to make decisions using different criteria.

I lived through a situation in which a person who would never get through an enhanced check

coached children I knew very well. As an educator of children, he was worth a million dollars, and he was no more a threat to the children than a fly in the air. However, he would not get through the proposed structure because of offences he had committed as a much younger person. We must consider how not to threaten volunteers who are no threat to children. We want to keep out people who are a threat to children.

**The Convener:** As there are no further questions, I thank the witnesses for their evidence, which has been useful and informative. If we want anything else we will get back in touch with you.

14:47

*Meeting suspended.*

14:52

*On resuming—*

**The Convener:** I call the meeting to order. We will take evidence on the Protection of Children (Scotland) Bill from the Minister for Education and Young People, Cathy Jamieson MSP. She is joined by Jan Raitt of the children and families division of the Scottish Executive education department, and by Shirley Ferguson of the Scottish Executive's legal and parliamentary services. I know that they have sat in on much of the previous three meetings and have heard a lot of what has been said. That is helpful. I ask the minister to make her introductory comments.

**The Minister for Education and Young People (Cathy Jamieson):** I heard some of the evidence that was given earlier in the meeting. Throughout the process, the range of written and oral evidence that has been submitted to the committee has impressed me. The evidence shows that the majority of organisations take the issue seriously. We have come a long way on the child protection agenda, particularly in the voluntary sector, where people are putting in place good practice that will make a difference at local level.

I want to say a few things so that we have on the record a number of issues about the general principles of the bill. It is important to remind people that the bill provides for Scottish ministers to establish a list of persons who are unsuitable to work with children, either in paid employment or as unpaid volunteers. The information that someone is on the list will be made available as part of checks that will be carried out by Disclosure Scotland under part V of the Police Act 1997, which will be amended by the bill. It is important to state that clearly on the record, because some people have been concerned about who will have access to the information.

It is worth remembering that the need for such a

list was identified by Lord Cullen in his report into the tragic shootings at Dunblane and by Roger Kent in the "Children's Safeguards Review" on children who are looked after away from home. Both those reports recognised the need for improved checks on the suitability of people who work with children.

It is also worth remembering that nothing that we do with the bill will, in itself, give a 100 per cent guarantee that things will not go wrong or that there will be no problems in future. The bill is not intended to plug every possible gap—it could not do that—but it has been designed specifically to deal with a number of issues that have been raised and that we know have arisen in the past, where people who have been known to have harmed children or to have put children at serious risk have been able to move on to other jobs, whether paid or unpaid, or to resign from posts before they were sacked, and have continued working with children. The bill is designed specifically to address some of those issues.

The proposals have been widely consulted on. We have already stated that child care organisations—which for the purposes of the bill are defined as regulated organisations—such as nurseries and schools will have a duty to refer to the list. Other organisations may refer to the list. We have heard in evidence today some of the reasons why that distinction has been made. The reason for the distinction is that regulators such as the Care Commission monitor organisations generally, and compliance with the duty to refer can be checked alongside checks that organisations currently perform on other duties.

Other organisations that employ people in child care positions are certainly not precluded from making referrals, and will doubtless feel a moral duty to do so where they have serious concerns. We have heard in evidence that many organisations are taking that on board already and are examining how they would implement that in practice. Employment agencies, the Care Commission, the Scottish Social Services Council and certain inquiries will also be able to refer individuals to the list. That is important, because there have been examples in the past where inquiries into abuse in care identified a number of gaps where problems had occurred, but no power was available to make reference to a particular list.

It is important to be clear about the kinds of circumstances that will lead to a referral. A person who works in a child care position will be referred when they have put a child at risk of serious harm; if they harm a child; if they are sacked or moved as a consequence of such action; or if they would have been moved or sacked if they had not retired or resigned first. That is important, because we need to balance the rights of individuals with the

need to protect children. We have put in place a number of safeguards that will ensure that there is no scope for malicious referrals. Indeed, there will have to be a degree of due process within organisations before a person is referred to the list.

A child care position is widely defined in schedule 2 to include positions where the normal duties involve contact with children. Those who are convicted of an offence against a child will be referred to the list at the discretion of the court. For the most serious offences listed in schedule 1, the court will be expected to refer.

The effect of listing is that those who are on the list will commit an offence if they apply to work with children or if they do work with children. Organisations will commit an offence if they offer child care work to a person who is on the list or if they fail to remove an individual who is disqualified. That means essentially that any organisation that takes on a person to work in a child care position will need to obtain a check from Disclosure Scotland or risk committing an offence. The majority of organisations, of course, have stringent measures in place. It is worth stressing that the bill in no way absolves any organisation from the responsibility to take up references and make other checks that it thinks are necessary to ensure that a person is who they say they are.

We need to have safeguards for the individual, and we recognise the importance of balancing the rights of the individual with the rights of the child. There are provisions in the bill to preclude malicious referrals, and any evidence that is submitted with a referral will need clearly to demonstrate that any investigations or disciplinary procedures that have been followed are consistent with good employment practices, notwithstanding the fact that different organisations use different procedures.

I was concerned that there might be a question of people being referred to the list at certain stages without their knowing about it. Any individual will be able to submit observations on evidence that has been submitted with a referral. There will be a right of appeal to the sheriff or to the sheriff principal and, if leave is granted, to the Court of Session. There is also provision for people to have a periodic review of their listing when they have been rehabilitated or if evidence suggests that their behaviour has changed.

The bill is intended to close a loophole, which currently allows people who have lost their child care job over concerns about their conduct towards children to continue to work with children. It is important to recognise that the bill will not in itself protect children. However, when checks on the list are combined with other good recruitment practices, including thorough checks on

references, criminal record checks and supervision, the level of protection will be enhanced. We have to view the bill in the context of wider child protection measures.

I hope that that opening summary has been helpful, and I am happy to answer any questions.

15:00

**The Convener:** There has been a considerable amount of lobbying of the committee in relation to teachers. I would be interested in your views in relation not only to teachers but to other governing and registration bodies, particularly those involved with nurses and doctors, which are not specified in the bill as bodies that may refer cases to ministers. My view is that employers should have primary responsibility for people employed by the trust, education authority or school. Has there been any thinking that it would be advantageous were the bill to include such registration bodies in the list of bodies that may refer cases?

The Educational Institute of Scotland feels that there might be an issue of double jeopardy for teachers, who may be included on a list by a Scottish minister but may have been exonerated by the General Teaching Council for Scotland. Will you deal with that point, too?

**Cathy Jamieson:** The GTCS has made representations and submitted evidence on that issue. Our view is that it ought primarily to be employers who make referrals to the list. That ought to help safeguard against malicious or other inappropriate referrals.

I am aware that professional organisations and bodies will at times take steps to deregister someone—and I know that that will have relevance for the Scottish Social Services Council. We feel that, at this point, the primary focus must be on employers, as it is likely that the due processes of disciplinary hearings and so on will apply in such circumstances.

**The Convener:** Will you consider the GTCS as one of the organisations that can refer to the list?

**Cathy Jamieson:** We can certainly take account of the representations that have been made. I am aware from the EIS's evidence that there is concern to ensure a clear distinction between disciplinary procedures carried out by an employer and the steps that the regulatory body may itself take. We need to ensure that we take that into account when we consider implementation and guidance for the future.

**The Convener:** I think that that would be helpful.

**Jackie Baillie:** Let me focus on the tricky subject area of definitions and distinctions, which

have become clouded, as we have noted during the past three evidence-taking sessions. Let me start with regulated child care organisations and other organisations. From some of the evidence that we have received, it is unclear what the distinctions are. If there are differences in the enforceability of the provisions on referring to and consulting the list, what are they?

**Cathy Jamieson:** The basic difference centres on enforceability. Many child care organisations are already regulated. Moreover, a body will examine all the work that they are carrying out and will in effect be able to deregister or withdraw consent for a particular organisation if it does not comply with the standards that are laid down.

I am aware that the voluntary sector has expressed concerns on the issue. In fact, representatives of the sector have put both sides of the argument. For example, although some would prefer to have a duty that includes everyone, some smaller organisations in particular are concerned that such a step would be too onerous. Instead, they would be in a better position, through good practice and clear guidance, to ensure that they could use the power to make referrals in the event of any problems. I am sure that the committee will consider that issue in some detail.

**Jackie Baillie:** If SCRO checks currently apply across the board, will not the bill's provisions form an additional layer on top of them? If small organisations are already having to cope with the reality of SCRO checks, it will build on the foundations that they have laid to extend sound child care practice across every sector.

**Cathy Jamieson:** The requirement to ensure that an individual is not on the list and that SCRO checks are carried out is only one aspect, and we would certainly expect people to meet that as a matter of good practice. Concerns have been expressed about the enforceability of potential sanctions by small voluntary organisations. Perhaps it would be helpful if we gave the committee some further legal information that we have gained from a closer examination of the matter.

**Shirley Ferguson (Office of the Solicitor to the Scottish Executive):** We are aware of the committee's concerns on the matter, which is why we have been examining it. The difficulty is finding out what constitutes an appropriate sanction as far as small voluntary organisations are concerned. The bill specifies some offences for organisations and some for the individual who has been disqualified. After considering the responses to the consultation, we felt that it would not necessarily be workable to include a specific sanction—which would hit small voluntary organisations—in relation to referrals. However, it was difficult to come up

with an appropriate sanction at that stage, although we are considering the matter further.

**Jackie Baillie:** What sanctions have you considered? I am unclear about how much consideration has been given to the issue and which sanctions have been rejected.

**Cathy Jamieson:** Some of the issues centre on the aspects that we might be able to enforce. The fact that any sanction that is introduced must be enforceable was raised during the consultation and the evidence-taking sessions. As we have received conflicting information, we will need to examine the matter and ensure that there is clarity.

**Jackie Baillie:** I am sorry to be awkward, but from my understanding, the bill places a mandatory requirement on child care organisations to carry out a referral to a list, but contains no enforcement provision to ensure that that happens.

**Cathy Jamieson:** I have perhaps misunderstood your point. If the organisation failed to comply with the mandatory requirement, the regulatory body would be able to apply the ultimate sanction of delisting or deregistering it or deeming it unfit to practice.

**Jackie Baillie:** Is that enforcement provision spelt out in the bill?

**Cathy Jamieson:** My understanding is that it is and that that is how we will proceed. *[Interruption.]* I am advised that it is not in the bill. It will have to be specified in regulations.

**Jackie Baillie:** Ah, so it is not in the bill. How do you intend to specify it? Will it be through regulations?

**Cathy Jamieson:** We will have to consider regulations and guidance. It is important that we have guidance that will provide some commonality of practice across the different organisations, because there are a number of different regulatory bodies.

**Jackie Baillie:** Given that there is no real statutory difference between child care organisations and other organisations, aside from the enforceability provisions, is there any reason why the bill's provisions should not be extended to other organisations?

**Cathy Jamieson:** Do you mean organisations in general, or do you mean voluntary organisations, in particular those that are concerned with child care?

**Jackie Baillie:** I mean general voluntary organisations, and organisations that are concerned with child care.

**Cathy Jamieson:** It is a question of striking a

balance between including all organisations in the bill and believing that there is enough in organisations' practices and procedures to ensure that they would take up the power to make referrals if necessary. I have been interested to hear some witnesses suggest that, even though not all organisations are specified in the bill, they understand that they would have a moral duty, if not a legal duty, to make referrals. It is important that we have guidance that assists those organisations in acting on that.

**Cathy Peattie:** One of the issues that has arisen in our inquiry is the balance between rights in the workplace and the rights of children. The Scottish Trades Union Congress was concerned about the sheriff's role in relation to a provisional list and how an employer might use the bill's provisions as a way of moving an employee on without giving the employee an opportunity to answer accusations, particularly in an organisation in which the grievance procedures are not laid down and practice is not as good as it might be in a local authority.

What consideration has gone into putting people on the list provisionally? There is a feeling that, once someone has been on the list, whether they were there rightly or wrongly, they are on the list—the person knows and others know, and that affects the person's future career. There are real concerns about the rights that people will have under the bill in the workplace or in voluntary organisations.

**Cathy Jamieson:** I am concerned that we get the balance right. I do not believe that the bill allows employers or others to make referrals unless they have a substantive amount of evidence. They would have to have gone through disciplinary procedures or another due process in the organisation before they got to the stage of putting people on a provisional list.

I accept that witnesses have raised a couple of issues about provisional listing during the evidence taking. However, it is not the case that someone would be referred to the list without having an opportunity to make comments or make representations.

I am also aware that there has been discussion about whether a tribunal or a sheriff is the appropriate form of appeal. To have the appeal go to the sheriff gives a strong safeguard, because the sheriff would have to be satisfied that the Scottish ministers had made the correct decision on the basis of the evidence with which they had been presented. It is important that people have that opportunity at the appeal stage.

**Cathy Peattie:** The thinking behind the tribunal approach is that those on the tribunal would have knowledge and an understanding of the sector and

the issues. There is a feeling that, if appeals went to the sheriff, the sheriff would not have that background and would be less able to make the appropriate decision.

**Cathy Jamieson:** That perhaps relates to your earlier point about the possibility of employers using the list against employees. I return to my earlier point that the due process would have to be put in place by employers. It is not the case that employers would be able to make a referral and substantiate it without evidence to back it up and without going through the due process.

One suggestion, which emerged from the evidence that was given by the voluntary sector, is that a panel could be set up to advise small organisations or organisations that do not deal often with such matters. We should give further consideration to that suggestion.

Many of the organisations that we are discussing, including local authorities and other large organisations, will have extensive experience and knowledge of employment practices—they know about good employment practice. Equally, there is a great deal of good employment practice in the voluntary sector. I accept that the suggestion of giving advice to some small organisations is helpful. We will want to examine that suggestion.

15:15

**The Convener:** If someone runs a small organisation such as a nursery and goes through the due process, they may not be quite sure whether to proceed with it because of the potential effect of provisional listing. Does the bill place an obligation on a person in that position to make a referral to Scottish ministers?

**Cathy Jamieson:** It is worth reiterating that a person in the position of being provisionally listed would not be so listed until the initial evidence was submitted and the referral was considered carefully. We will not provisionally list people on the basis of unfounded suspicions; we will do so only on the basis of evidence. Those who are provisionally listed will not be banned from working with children at that stage, but any prospective employer who checks the list will be informed that a provisional listing has been made on that person.

An essential part of the safeguards that will be put in place to prevent people from moving employer when concerns have been expressed about them is for listing information to be available. We want to plug the loophole that allows people to resign from posts and move on to another job when concerns are raised or disciplinary action is threatened against them.

It is important to recognise that we want the situations in which provisional listings are made to be kept to an absolute minimum. We also want the full determination to be reached within a six-month period, unless criminal proceedings are on-going or a sheriff grants an extension of time.

**The Convener:** The loophole that you described demonstrates the importance of information being made available. We are all aware of cases in the past when that has not happened. There are also cases in which good employment practice has not always resulted in the right outcome. We must ensure the confidentiality of the provisional listing, so that it can be accessed only by potential employers. The list should not be used to blacken someone's character. How do we deal with that issue? How do we prevent discrimination against people who have been provisionally listed but who are found not to be guilty? People will always say that there is no smoke without fire. We have to ensure the confidentiality of the system.

**Cathy Jamieson:** That is important. It is also important that the entire list is treated with absolute confidentiality. People must not be given unauthorised access to it. The system will be an improvement on the situation in the past, when information was held informally by people or when people did not have the opportunity to challenge suggestions that were made about them. The new system will give people the opportunity to challenge what is said about them or the information that is held on them in a way that has not been possible in the past.

**Fiona McLeod:** The duty on employers to refer someone to the proposed list is another grey area. Does the provision apply to people who are paid by the employer or to people who work for the employer in an unpaid, voluntary capacity?

**Cathy Jamieson:** The provisions allow for employers to make references in relation to paid or unpaid staff. In the interests of good practice, I would expect large organisations to carry out the appropriate checks on their staff, including taking up references.

I keep coming back to the point that this process is not about trying to plug gaps in what ought to be good employment practice in recruitment, or gaps in the support and supervision of staff and volunteers; it is about dealing with a specific loophole that has appeared in recent years. We have to consider the matter in the context of the work that people would be doing anyway.

**Ian Jenkins:** I want to ask about some things that came up a couple of questions ago when we were talking about the confidentiality of the list. First, should making an unauthorised disclosure be an offence?

Secondly, small organisations are worried about

indemnity if they make a referral that ministers may not accept. Even if ministers do accept it, there may be a court case that leads to the possibility of litigation against an organisation. Would the fact that the Scottish ministers had considered the referral relieve the small organisations of their burden of responsibility? If ministers considered a referral and put people on the list, and if that listing turned out not to have been fair, would you, or the small organisation, take responsibility for the error?

**Cathy Jamieson:** The rules in part V of the Police Act 1997, where improper disclosure is an offence, would apply to this list. I hope that that sets Ian's mind at rest.

On the second question, the only way in which an organisation would get into difficulty would be if it knowingly colluded or if it gave false information. If an organisation reports genuine concerns and provides evidence, which then leads to a decision by ministers, the organisation itself will not, as I understand it, be held liable, because it will have acted in good faith.

**Cathy Peattie:** Minister, you heard the earlier evidence. That evidence, and other information, has shown that thousands of volunteers work in sports and all sorts of out-of-school activities across the country. I am not sure how this legislation will affect those people. Lord Cullen's recommendations were based on what happened in Dunblane, where the person concerned was involved in sports clubs with young people. This legislation is intended to tighten things up. How does it affect people who will not be registered, but who will be working actively with young people?

We have heard from sportscotland about the good work that is taking place, but I have real concerns about small organisations in the voluntary sector, particularly sports clubs. Can things be tightened up?

**Cathy Jamieson:** I value all the work of the voluntary sector and I value its commitment. I also acknowledge that this legislation will affect only a tiny minority of people who will want to work with children and young people. It should not put off volunteers and organisations from continuing to work with children and young people. However, we must acknowledge that there have been instances of people choosing to work in settings where they can get access to children and young people. That happens in both the public sector and the voluntary sector. The bill is not aimed only at sports clubs and voluntary organisations—I want to make that clear. In some instances in the past people have sought work in local authority social work departments—in particular, in residential child care. Although the gap that we are trying to plug will affect only a small minority, the damage that can be done to individual children is huge.



Because of that, it is worth plugging the gap.

**Cathy Peattie:** I agree that it is worth doing. However, consider a situation in which there is an inappropriate volunteer. I have a background of working with volunteers and have met a few inappropriate volunteers. They would go round agencies to try to do what it was in their mind to do. If an inappropriate volunteer has been in the statutory sector and comes to a small voluntary youth group, what protection will children have? Such people often work on a one-to-one basis.

**Cathy Jamieson:** I am aware of your background in the voluntary sector, Cathy. I know that many voluntary organisations have vastly improved their screening procedures and training processes and supervision of volunteers. I stress that the bill is not a catch-all or a panacea. It does not mean that the voluntary sector, statutory sector or anybody else can take their eye off the ball, say, "The bill is here," and relax child protection procedures. The bill is an added safeguard. If vetting procedures, recruitment, training and supervision of volunteers and staff are not in place, the bill in itself will not do the job, albeit that it will close an important gap.

**Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab):** Given that we are talking about sheriffs, among other things, I should refer to my entry in the register of interests and declare my membership of the Faculty of Advocates.

The committee and I are interested in the tension between equity towards an applicant who is about to be offered a post and the safety of a child. Striking a balance is difficult. It is easy to say that the rights of the applicant cease somewhere short of doing harm or the potential to do harm to a child, but the issue relates to establishing mechanisms.

One good reason for having an appellate structure in the Court of Session is to ensure consistency across the piece. It is not unknown for sheriffs to take inconsistent approaches—indeed, that is why there is an appellate structure. I am interested in reviews and appeals, which you mentioned. It seems that time will be important, but consistency will be important, too.

Is it intended to look for consistency through work with the Judicial Studies Board or the Sheriffs Association, for example, so that people who feel aggrieved will have a notion that thought has been applied to the circumstances in which people will go on to a provisional list, how quickly they might come off that list and what procedures will be available to them to seek review or to appeal, either through stated case or summary application? Most important, will the approach be as consistent as possible throughout Scotland, given that we are dealing with individual cases?

**Cathy Jamieson:** Your comments are helpful. You have mentioned issues that I want us to consider as we look to implementation and the guidance and training that might be required. Further discussions on such matters would be helpful and I would be happy to consider them.

**Jackie Baillie:** I have a couple of comments—I promise that I will then be quiet. You are absolutely right to say that the bill does not replace robust child protection measures—that message must go out clearly. The bill is viewed as an added safeguard. For that reason, I am concerned about evidence that we heard that the bill, as an added safeguard, might introduce a two-tier system. We all want to reach the same end point, but the issue is how to do so.

Today, we heard evidence about the possibility of somebody who is listed in the statutory sector moving into the voluntary sector, as they perceive a different and perhaps more relaxed regime there. There is no statutory difference between the organisations in question and the bill contains no enforcement provisions. Without checking, I will run the risk of saying that the bill does not spell out any regulation-making powers in that area. Therefore, can we please revisit the issue? I understand what you say about enforceability, but I think that we can move further in that respect.

**Cathy Jamieson:** It is clear that we need to consider that issue, which was raised in a number of submissions and in other evidence. However, we had to take into account the comments of some of the smaller voluntary organisations. We are trying to achieve the right balance, in order to ensure that those smaller organisations are not put at risk while at the same time ensuring that, across the board, people feel a duty to refer, even if that is not specifically spelled out in the bill. I was interested in the comments that a number of organisations made to the effect that they will refer, whether or not a duty to do so is spelled out in the bill.

15:30

**Ian Jenkins:** I will ask the same question that I have asked a couple of times already. What are your comments on the worry that people have that the definition of harm is too vague? Will you make the definition more precise in the guidance?

**Cathy Jamieson:** As you are probably aware, one of the difficulties with the bill is that the minute that we start to specify in detail what harm is, or to define the degree of harm, we risk opening up loopholes. We ought to have further discussions about that. I know that the voluntary sector in particular has asked for clarification and assistance on that point so that it can take matters forward.

**The Convener:** I will ask a couple of practical questions on issues that have been raised in the course of our evidence-taking sessions, so that your responses will be on the record.

Will checks conducted by Disclosure Scotland automatically include information from the proposed list?

**Cathy Jamieson:** Are you asking about checks made by child care organisations?

**The Convener:** Yes.

**Jan Raitt (Scottish Executive Education Department):** The check will disclose that a person is on the list when that is relevant to the position that the person applied for.

**The Convener:** What funding do you intend to provide to assist organisations with training on the proposed system?

**Cathy Jamieson:** I have examined the evidence closely, and many of the steps that people will be required to take are steps that they take already in accordance with good employment practice. However, I am interested in the voluntary sector's suggestion that organisations should have access to an advice panel or some other source of information. Once I have considered that suggestion in more detail, in order to see whether it is workable, I will come back with further information.

**The Convener:** We understand that part V of the Police Act 1997 has yet to be implemented in Northern Ireland, where the equivalent list has yet to be put on a statutory footing. Can you explain the practical consequences for someone who comes from Northern Ireland, on the boat from Belfast to Troon, and tries to get a job here?

**Cathy Jamieson:** It is clear that we will have some difficulties until the systems in the component parts of the UK are able to talk to one another, which is the ultimate aim. There are also issues for people who come from abroad. I can say only that that is not the whole story and that there will be other checks that people will have to make, such as taking up references and implementing vetting procedures. However, we will work with our colleagues throughout the UK to make sure that our systems talk to one another. Jan Raitt has some up-to-date information on that point.

**Jan Raitt:** Disclosure Scotland does get information from Northern Ireland. The Northern Ireland records include in the police intelligence section information about whether someone is on the pre-employment consultancy service list, which is being put on a statutory footing. I hope that it is of some comfort that that information is available from Northern Ireland police records.

**The Convener:** That is helpful.

Why did you decide that the Scottish ministers would make final decisions about listing? In other situations, tribunal systems have been set up to make similar decisions.

**Cathy Jamieson:** The decision was finely balanced. The consultation process threw up a range of different opinions on that point, and we made the judgment call that it would be better for the decision to rest with ministers. It is a serious matter for people to be put on the list and ministers will be held accountable for the decisions that they make.

**The Convener:** In respect of the European convention on human rights, and given some of the rulings on the decisions on sentencing policy made by the Home Secretary in England, have you had advice on whether a potential listing could be seen as a political decision?

**Shirley Ferguson:** We are confident that the appeals system that the bill introduces, alongside Scottish ministers being accountable to the courts for their decisions, will be compatible with the ECHR.

**The Convener:** As there are no final questions, I thank the minister. Some issues are still outstanding. It would be helpful for the committee to thrash them out with the minister and officials over the coming months in the run-up to stage 2.

**Cathy Jamieson:** I would be surprised if there were not outstanding issues at this stage. It has been helpful that people, including committee members and those who have submitted evidence, have worked to see how we can make the bill work in the best interests of children and young people. I want it to be placed on the record that I thank people for their work so far.

**The Convener:** Thank you very much, minister.

## Scottish Media Group

**The Convener:** I draw members' attention to another potential issue. It is not about the bill so I am probably abusing my position as convener by raising it. There is some concern about the proposed sale of the Scottish Media Group newspapers. Jackie Baillie has indicated that she wants to raise the issue. Given that the Parliament is about to go into recess for two weeks, I will allow her to raise it. I may be given a row later for doing that, but it is important that we do something at this stage, rather than wait three weeks before we act.

**Jackie Baillie:** I thank the convener. It is with that time scale in mind that I feel that the committee should reflect on the issue and do so quickly. I understand that members who are not present today expressed a similar interest in the matter in the chamber.

My suggestion is that, given the amount of debate that there has been about the sale of the newspapers within the Scottish Media Group, we should consider the matter on the basis of wanting to preserve the independence of newspapers and the diversity of the media in Scotland. That needs to be reflected in the debate in the new post-devolution context. I suggest that we write to the minister responsible, Melanie Johnson, and perhaps copy the letter to Patricia Hewitt.

I will also make several points that have been made to me. First, my understanding is that the bidder in this case is Ellerman Investments. Although people will claim that it has no trade interests, Ellerman Investments has a direct association with The Scotsman Publications (Holdings) Ltd; they are both owned by David and Frederick Barclay. That is of trade interest. We should write to suggest that perhaps ministers might consider referring this to the Competition Commission.

The second point that has been made to me—I cannot pass judgment on it as I am not a business analyst—is that the bid is higher than was expected. There are fears, although I cannot comment on them, that attempts will be made to recoup a significant amount of those costs by changes further down the line. It would be appropriate for us to write to ministers to ask them to consider the matter.

**The Convener:** Are members happy with that course of action? It does not preclude our placing the issue on the agenda for a meeting after the recess. It would be useful for us to copy the letter to the Secretary of State for Scotland, given her role in the negotiations on some of the issues.

**Brian Fitzpatrick:** I am not a member of this committee, but I am a member of the Enterprise

and Lifelong Learning Committee. It strikes me that there is a comity of interests. Consideration of the plurality of the media is obviously a proper exercise of the Education, Culture and Sport Committee's remit in terms of its scrutiny role and its advice to the Executive.

The matter is also important to the Enterprise and Lifelong Learning Committee in that it has tremendous implications for jobs—high-value-added jobs. I am anxious about the unfolding situation. It strikes me that there is the risk of a challenge to the plurality of the ownership of an important section of our print media. I cannot bind other members of the Enterprise and Lifelong Learning Committee, not least because I gather that Alex Neil is out of the country, but I am able to say to this committee that the Enterprise and Lifelong Learning Committee has an interest in the matter. Perhaps we could do some joint work on it.

**The Convener:** I do not want to get into a big discussion on the matter, because it is not an agenda item. I know that Cathy Peattie wants to comment. I will copy my letter to Alex Neil, for the information of the Enterprise and Lifelong Learning Committee.

**Brian Fitzpatrick:** I am obliged.

**Cathy Peattie:** The convener may recall that in the past we have considered some issues to do with SMG. There were concerns about our remit, but it is clearly an important issue for us as it relates to culture and jobs in Scotland. I have to say that Mike Russell has said that he wants to be involved in any future discussions. I assume that that will happen because the matter may be on the agenda, if necessary. It is important that we take some action.

**The Convener:** I thank members for their indulgence.

*Meeting closed at 15:40.*



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