The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 29 May 2012

Session 4

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HEALTH AND SPORT COMMITTEE
18th Meeting 2012, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Jim Eadie (Edinburgh Southern) (SNP)
*Richard Lyle (Central Scotland) (SNP)
*Fiona McLeod (Strathkelvin and Bearsden) (SNP)
*Nanette Milne (North East Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)
*Dr Richard Simpson (Mid Scotland and Fife) (Lab)
*Drew Smith (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chris Birt (Scottish Government)
Margaret Cassidy
Craig Flunkert (Scottish Government)
Omar Haq
Jean Maclellan (Scottish Government)
Michael Matheson (Minister for Public Health)
Neil McCarthy (People First Scotland)

CLERK TO THE COMMITTEE

Douglas Wands

LOCATION

Committee Room 1

Scottish Parliament

Health and Sport Committee

Tuesday 29 May 2012

[The Convener *opened the meeting at 10:06*]

Social Care (Self-directed Support) (Scotland) Bill: Stage 1

The Convener (Duncan McNeil): Good morning and welcome to the 18th meeting of the Health and Sport Committee in 2012. I remind everyone present that mobile phones and BlackBerrys should be turned off as they can interfere with the sound system.

No apologies have been received, although Margaret Cassidy has had some travel difficulties. We hope that she will be here, but in the meantime we intend to proceed with Omar Haq. Welcome, Omar. It is pretty daunting for a witness to sit there on their own, but I can see that you are pretty relaxed about that, which is great. We are pleased to have you along for the first item on our agenda, which is our final oral evidence session on the Social Care (Self-directed Support) (Scotland) Bill.

Before we move on to questions, I give Omar the opportunity to say a few words.

Omar Haq: Thank you. It is a pleasure to be here. I am a local Edinburgh resident. I am 27 and I graduated a couple of years ago from Edinburgh Napier University with a master’s degree in human resource management. I am currently unemployed and looking for work. I have been on direct payments, which I believe is one of the elements that you are looking at, for the past six years. I am here to give you, as best I can, an indication of how the system has worked for me, what is good about it and what is bad about it. I am happy to help in any way that I can.

The Convener: Thank you. We move on to questions, beginning with Fiona McLeod.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Good morning, Omar. I start by saying that I understand direct payments personally as I went down that route for my mum. I want to ask you and Margaret, when she arrives, to outline the process of getting direct payments. What did you have before? What made you choose direct payments? What was the process like?

Omar Haq: I was not made aware of direct payments until I was in my second year at university, in around 2006. I needed someone to help by scribing and taking notes at my lectures, and I was made aware of an organisation called the Lothian Centre for Inclusive Living, which helps to recruit personal assistants for disabled people to do things such as scribing and personal care. One of the elements within that was direct payments, to be used for things such as personal care within the home. That was separate from the university funding from the Student Awards Agency for Scotland.

I had to go through an assessment by the social work department, which assessed my needs and told me, based on that, what funding I would receive. There are three levels of payment—£7.95, £8.55 and £9.85—depending on the seriousness of the disability or illness. As a result of the assessment process I became aware of direct payments. That was in 2004 or 2005.

When I left university a year or so ago I felt that I had to be reassessed because I needed to increase my hours. After all, I was leaving university and wanted to keep on my personal assistant to help me with additional activities such as looking for employment. I realise, however, that direct payments are not used specifically for such purposes.

When I was reassessed this time last year, because I had asked for an extra 10 hours on top of what I was getting, the reablement team, who help people who are able to look after themselves but who might have been hospitalised for a period of time, were asked to have a look and see whether I actually needed them. The team came into the house for about two weeks and basically carried out all my personal care before my rate—which was the middle rate— was approved for the second lot of hours. At the moment, I receive just shy of 24 hours’ funding.

Fiona McLeod: When you left university and decided that you wanted a reassessment because you knew that your needs were going to change, did you ask the council to be reassessed? How was your request viewed?

Omar Haq: First of all, I told my independent living team representative at the LCIL, which does all the payroll work for this activity, what I wanted to do and asked what the process was. I knew that there were other funds out there; for example, a year and a half ago, I heard about the independent living fund, which apparently had been closed. The LCIL team told me what the process was and said that I needed to be reassessed. Basically, an occupational therapist comes out to your house and assesses everything that you need. However, they want a breakdown of every element of your life, which is very difficult to provide. Although certain elements might not seem trivial, they are quite trivial because they are just part of everyday life and I found it difficult to think through what it was I actually needed. However, as a result of that assessment and evidence from the reablement team's two-week stay in my house, I was able to get an increase in hours. While I was at university, I got 14 hours, which was enough because they were being supplemented by extra hours paid for through the Student Awards Agency for Scotland. Last August or September, my hours were increased by 10 to 24, at a new rate, which was the middle rate of £8.55.

Fiona McLeod: I need to let other members in, but I have to say that you sound as if you had quite a positive experience once you knew what was available. Was the experience made positive by the support that you received from the LCIL?

Omar Haq: Definitely. If I had not had the centre's backing, I would not have known how to approach the matter. It deals with all the nitty-gritty, technical stuff and makes it easy to understand what is going to happen. As they are part of the council, OTs work to strict guidelines and can be too rigid in their stance, whereas, if someone from the LCIL is present, they can be a bit more flexible and open to new ideas about what people need—which is an issue that I hope we will discuss later.

Fiona McLeod: I have loads more questions, but I realise that other members want to come in.

The Convener: Indeed. Gil Paterson has indicated that he wishes to ask a question.

10:15

Gil Paterson (Clydebank and Milngavie) (SNP): What was your situation before you received self-directed support?

Omar Haq: As I have said, I am 27. I live at home with my parents, who have provided all my personal care including showering me, dressing me and helping me into my wheelchair. I can walk about the house with the aid of a stick, but someone else needs to be there, and I do not feel comfortable walking around the house if no one else is in or if I have no support around me. Basically, my parents have done everything for me. In fact, they still do a great deal but when I heard about direct payments I thought that I might be able to keep on the PA I had at university, who is really good and whom I really get on well with.

Because of my disability—I have cerebral palsy—my fitness was at a low level; for a few years, I had not been focusing on it or doing exercise. At that time, I was getting 14 hours' worth of direct payments and decided to use it to get two hours of physiotherapy a day. Three years ago, I could barely move around but, with the money for physiotherapy and so on, I have now trained myself to walk about as best I can with the aid of a stick and some assistance. As I understand it, though, such use does not strictly meet the criteria for direct payments, which relate to personal care. I am not saying that I do not need personal care—I do—but with my parents' assistance with care and that extra cash I have been able to develop my physical state and move forward. I am now fitter than I have been for perhaps the past 10 years, which has opened up new avenues; for example, I can, with support, walk round the block. My quality of life has improved, and my mum and dad have been able to get a bit of freedom. Of course, my dad works but my mum, who has looked after me all her life, knows that, because the PA is in the house, she can nip out to the shops without worrying that I am in the house on my own. I am able to get about the house with assistance. As I said, my quality of life has certainly improved.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): You have obviously found physiotherapy to be very beneficial. However, it tends to be related to health matters. Do you have a specialist doctor or someone like that?

Omar Haq: I pay privately for a physiotherapist, who now sees me about once a month. When I recruited her back in September 2008, my condition had worsened to the extent that I needed assistance with everything. I still require assistance but at the time I found doing things a lot harder. The physiotherapist knew that I had a PA and told me, "Look, the process might be a slow one but if you do my regime every day, who knows where you will end up?" Without the money to have that daily physiotherapy, the process would have been much slower but the fact that I have a PA and can get maybe an hour or an hour and a half's physiotherapy each day I have managed to reach a level of fitness and health that no one could have imagined for me four or five years ago.

Dr Simpson: I am slightly concerned as to why the health service, through the primary care unit or hospital, did not offer you such treatment to allow you to manage your own condition.

Omar Haq: I left school back in 2003, when I was 18. While you are at school, you can get regular physiotherapy at the Royal hospital for sick children. Actually, it is not all that regular; it probably happens every six weeks.

Once you leave, you are out of the system completely. I went to see my general practitioner, who is an excellent guy—his name is Dr McMillan—and he said to me, "We can offer you physiotherapy only if there's something wrong with you for a sustained period." If you get injured, for example, and it affects your mobility, you can be offered physiotherapy for that period but, once the injury or the problem is sorted out, the physio has to stop.

My health steadily deteriorated for a number of years until 2008-09. In 2008, I thought that I really needed to do something about it because I was having other health problems that were unrelated to my physical condition, but which were probably caused by sitting about too much and not being able to move about even with assistance. That is what eventually drove me to recruit my own physiotherapist privately. She has been with me for four years and she has been very good at setting me targets and giving me a platform to build on. The physio from the national health service completely stopped when I left school in 2003.

Dr Simpson: We are interested in the boundary that exists between what is described as social care and what is described as health care. You have given us an excellent example of how, with self-directed care, you were able to do something through physiotherapy that should have been provided by the NHS, which should have been protecting and supporting your health.

Omar Haq: Yes, absolutely.

Dr Simpson: Thank you for that.

Richard Lyle (Central Scotland) (SNP): Good morning, Omar. You have taken control of your life, but you said earlier that there have been some pitfalls and downsides to what you have done. Can you explain that?

Omar Haq: In terms of direct payments?

Richard Lyle: Yes.

Omar Haq: When I was assessed for direct payments, on both occasions the assessment was based just on my need for personal care. That is all well and good—I am not saying that I do not need personal care. I need everything done for me—I need assistance with showering and dressing, and I need my meals prepared for me—because I cannot lift anything. Even when I am standing, there is no way that I can lift or hold anything. I need help with going to the bathroom, and I need somebody with me all the time even if I am walking about, just in case I fall.

I have been told that the assessment for direct payments is made only on the basis of the need for personal care, but that does not allow for true independence because I am independent only when I have somebody with me. My PA allows me to be independent, but the direct payment does not cover things such as domestic tasks. It is not meant to cover somebody helping you to clean the house, do the vacuuming or do the gardening. There is no money available to help me to get out and about—for example, if I want to meet my friends or go to the cinema. Also, taxi fares are really expensive but I have a free bus pass and having my PA with me allows me to use the bus. I need somebody there to help me to get on the bus, because buses are quite cramped; I can make full use of the facilities only if I have somebody with me.

Although a direct payment might provide financial independence—you are given money and you decide how to use it—it does not allow true independence because it does not take a holistic approach. It looks at one element, which is personal care. I am only 27—I am not yet an elderly person who is happy to receive just personal care and does not need to go out and about. I would like to go out and about, and I hope to get a job as well, but I need support around the clock. I have been told that, because my condition is not severe enough to merit 24-hour support, this is as far as it will go for now, but the direct payment does not really suffice in a lot of ways. The main problem with the direct payment is that it is not holistic but focuses on only one element.

Richard Lyle: You said earlier that you have 24 hours of personal care per week, when your PA comes in.

Omar Haq: That is correct.

Richard Lyle: Do you decide when your PA comes?

Omar Haq: Yes. Because I have only 24 hours to play with, I have to be quite canny. I know people—and I have heard of others—who use the hours to suit their own needs, even though they need personal care. I am lucky because I still live at home with my parents, who provide personal care such as getting me up in the mornings and showering me. My PA then comes at around 10 o’clock. Twenty-four hours works out at about four or five hours a day. We do some physiotherapy and if I want to go out and about or if I have some errands to run, he helps me to do that. He also helps me to look for work. He used to help me by scribing for me at university, and he helps me to fill out application forms and things when I apply for jobs. That is how our day is spent. It is not strictly personal care according to the definition of personal care, but I see it as fulfilling a personal need to have somebody there who enables me to do what I need to do on a daily basis.

Without a PA, I would not be able to get out and about on the buses or look for jobs as freely as I can. I would not necessarily have been able to come here today—my PA brought me here on the bus. My parents would not have as much freedom to go out and about as they have when they know that my PA is with me. For example, between the hours of 10 am and 3 pm, my mum knows that I have company, so she can go out and about and do what she needs to do. There needs to be a much more holistic approach. I am sorry to keep banging on about it, but that is what is needed.

Richard Lyle: That is why we asked you here today. Thank you very much. I could certainly recommend you highly for work—you have an excellent attitude.

The Convener: Somebody asked about your mobility, which is just one element. Are other state benefits available to you to deal with issues such as mobility?

Omar Haq: Yes. I am on the higher rate of disability living allowance, which is about £500 a month, part of which is for a car. I cannot drive, so my parents drive for me. I get money for living expenses that equates to just under £300 a month. I have been made aware that I may have to be reassessed for the personal independence payment, and I am obviously apprehensive about that. I do not feel that I should be scrutinised in that way, as I need the money. I am not a scrounger, so to speak. I have a disability and I do not understand why I should have to go through the assessment again in 2013-14. Apart from that and the direct payment, I do not receive any other form of funding.

I would have liked to hear more about the independent living fund. Apparently, it provided not only more of the personal care element, but help in getting out and about, support for work and things like that—before it closed its doors in 2010. As soon as the current Government came into power, the fund decided to close its doors and deal just with the people whom it had on its books.

I am not aware that any other funding is available.

The Convener: The bill seeks to deal with different groups of people in different areas of need. Indeed, it explores the question of the different groups and cultures who may not access support.

Having listened to your story, I understand that you discovered what you could receive only well into your university days; we also heard about the role that your mum and dad have played and still play. Was that part of why you did not get access? It is important that the committee brings out that there are groups—

10:30

Omar Haq: Do you mean in terms of my ethnic background?

The Convener: I mean in terms of whether your parents did not look for that sort of support because of a cultural thing.

Omar Haq: I am obviously British, but my parents are from a Pakistani background. They have been here for 30 years. Culturally, you look after your own, but we always knew that we were going to get to a stage at which I needed to find some assistance. It was just luck that I discovered that assistance when I was at university. I did not realise that it was available. That is not necessarily a cultural thing. It might be a cultural thing that it happened a wee bit later than usual, but it was always going to happen.

The Convener: I just wonder whether, when we roll out the legislation, we need to reach out to ethnic groups to ensure that they are not encountering any cultural or language barriers that prevent access to self-directed support.

Omar Haq: Somebody might be apprehensive because of their cultural background, but the beauty of the direct payment is that you can choose who you recruit. If you have somebody in mind—a friend or whatever—and you know what they are like and that they are willing to help you, the direct payment solves the problem on a cultural level. Do you know what I mean? Culturally, I certainly do not see the direct payment as a major issue. I just feel that it is underresourced for what is needed at the moment.

The Convener: Omar, I will give you a well-deserved break, because we also have Margaret Cassidy with us. She is accompanied by Neil McCarthy, the national development worker for People First Scotland—welcome to you, Margaret and Neil.

Omar has been answering some questions for us very ably indeed. We would like to offer you, Margaret, the opportunity to make a short statement for the committee, if you wish. Is that okay?

Margaret Cassidy: Aye.

The Convener: Thanks for that.

Neil McCarthy (People First Scotland): Sorry, can I just check whether you received Margaret’s written statement?

The Convener: We have. Margaret, do you want to say anything further?

Margaret Cassidy: I needed to fight for a direct payment. It is good. It helps me to get out and do things for myself and be my own boss.

Neil McCarthy: Margaret is saying that she got her direct payment, although she needed to fight for it. It has been great, because it helps her to get out and do things for herself. She is now her own boss.

The Convener: Do you want some questions, Margaret? We have your statement, but Fiona McLeod would like to ask a couple of questions. Is that okay?

Margaret Cassidy: Aye.

Fiona McLeod: Thank you very much for coming today, Margaret. I have read your statement and heard what you have said about how you enjoy being your own boss. You fought to get your direct payments. How did you find out about direct payments, and who helped you to get them?

Margaret Cassidy: The Glasgow Centre for Inclusive Living and Morag Mackay helped me to get them.

Fiona McLeod: If you had not had Morag at the Glasgow Centre for Inclusive Living to help you, would you be your own boss today?

Margaret Cassidy: No.

Fiona McLeod: So that help was very important.

Margaret Cassidy: Aye.

Fiona McLeod: Morag was very helpful once you got her. How did you find out about Morag?

Margaret Cassidy: Morag was a pal of mine.

Fiona McLeod: A friend.

Margaret Cassidy: Yes. A friend. We grew up together in a home. She asked me if I wanted direct payments and I said aye.

Fiona McLeod: Who would say no to being their own boss?

Margaret Cassidy: That is right.

Fiona McLeod: I have one last question, Margaret. If Morag had not been your pal, would the social work department have told you about direct payments?

Margaret Cassidy: I had never had a social worker, so Morag got me one.

Fiona McLeod: That is very interesting. Thank you, Margaret.

We hope to ensure through the bill that nobody in your position has to rely on a pal telling them; you will be told because it is your right to know. Thank you very much.

Margaret Cassidy: Thank you.

Gil Paterson: I have a wee question, Margaret.

Can you tell us what difference it has made since you have had the opportunity to have self-directed support?

Margaret Cassidy: I can do things that I have never done before.

Gil Paterson: Is the real big one being your own boss? Is that what makes the difference?

Margaret Cassidy: Aye. I can go everywhere I like—to the pub or the dancing or anything.

Gil Paterson: Are you any good at dancing?

Margaret Cassidy: No.

Gil Paterson: That makes two of us.

Margaret Cassidy: I know.

Gil Paterson: Thanks for that, Margaret.

Bob Doris (Glasgow) (SNP): Thanks for coming along, Margaret. Your prepared statement mentions that you now do things like go dancing and go swimming, not when you are told to go swimming, but at a time of your choosing when you are in the mood to do it. The situation seems to be that you now tell social work what you would like to do with your life and they try their best to make it happen. Before that happened and you got that kind of choice, what was your experience of how the council supported you?

Margaret Cassidy: They told me to do things when they wanted.

Bob Doris: I suppose that I am trying to give you the opportunity to put on the record whether you thought that enough choice was previously offered to you by your social worker. Were you given things that you were happy with?

Margaret Cassidy: It was so-so. I will tell you a wee thing. One time I wanted milk and the woman who was helping me said that that was not her job. I was only asking for a pint of milk, but she said, “By the way, that’s not my job.” I said to her, “What is your job?” We had a falling out and I told her, “There’s the door. Don’t come back.”

Bob Doris: Quite right, Margaret. It seems that you are properly in control now, rather than having other people trying to tell you what to do. I will take this opportunity to thank Margaret Cassidy and Omar Haq. The bill can get a bit dry, boring and dull when we are looking at it, but you have brought to life what it really means. Thank you very much for taking the time to do that.

Drew Smith (Glasgow) (Lab): We have your prepared statement in front of us, in which you speak a little about your experience of assessments. Can you say a word or two about how you found assessments to be, how they have made you feel, and whether you think that they have been fair?

Margaret Cassidy: No, they have not been fair.

I am sorry. I feel awfully nervous because you are all looking at me, and so the words do not come out right.

Drew Smith: Margaret, you have been through a few assessments. Were they about you and what you needed or were they about the council and others getting what they wanted?

Margaret Cassidy: They wanted to save money.

10:45

Neil McCarthy: The assessments did not seem to take account of a lot of the things that Margaret was choosing to do in her life that were important to her and were not the basics of cleaning and shopping. Margaret's chosen activities were not given the same value, which was very frightening because she would no longer be able to do a lot of the things that she had developed and become involved in if there was no support there to help her to do them.

Drew Smith: Thank you, Margaret. That was very helpful.

Richard Lyle: Good morning, Margaret. If you were not nervy telling the lady where to go because she would not get your milk, I am sure that you will not be nervy talking to MSPs.

You say in your statement that you are worried about your further assessment. You say:

> "I am waiting for the assessment to be rearranged"—

the same as Omar Haq was saying earlier—

> "and I am really worried about my hours being cut again and being stuck in my house like I was before."

What would you say to the people who are coming to reassess you? Should they be giving you more hours?

Margaret Cassidy: If someone came to me and asked whether I wanted more hours, I would say yes. I would then go on holidays and go to this and that.

Richard Lyle: You feel that you being in control—your being the boss—has made your life better.

Margaret Cassidy: Aye.

Jim Eadie (Edinburgh Southern) (SNP): Good morning, Margaret. Thank you for coming to the committee. I have a question for you—

Margaret Cassidy: I hope that it is a good one.

Jim Eadie: It will be a good one, and I am sure that the answer will be even better.

How important is it for you to know that, rather than a lot of different people coming in, your personal assistant, who provides you with the support that you need, is the same person?

Margaret Cassidy: I do not like a lot of people coming in and out. I like my own two people coming in.

Jim Eadie: You do not want a lot of people coming and going—you want the same people.

Margaret Cassidy: Aye.

Jim Eadie: You know them and they know you. Has it made a big difference to your life, that you know who is coming in to look after you?

Margaret Cassidy: Oh, aye. I do not like new faces all the time—I want the same face every day.

Jim Eadie: That is excellent—you have made that point very well. How did you choose your own two people?

Margaret Cassidy: I went on a panel to pick them. I did not like some of them.

Jim Eadie: Could you choose the people that you liked and that you wanted?

Margaret Cassidy: Aye.

Lianne came to my door one time and she said that she was going to work with me. I said to her that no one had told me that she was coming, and no one asked her to telephone the office and ask them to send someone to introduce her to me. I got the boss to come and introduce her to me.

Do you know what I am saying?

Members: Yes.

Margaret Cassidy: Good.

The Convener: That same question is an interesting one to put to Omar Haq. Omar, you have selected people and you have been satisfied with them. Was there ever a time when you have recruited someone and it has not worked out?

Omar Haq: No. I have had the same PA for the past five or six years. I recruited him, from a number of candidates that I had shortlisted, through the LCIL, which provides help, including with the recruitment process and payroll.

I was really desperate to increase the support hours when I left university. Some people have a distant relationship with their PA. However, I have had the same PA since university, and we are the same age, we get on really well, and he is more like a mate than an employee. One of the main reasons why I wanted to increase my hours was because, without him, I would not be able to do half the things that I do. He is an extra pair of hands and he allows me to be as independent as I possibly can be. I have had only the one PA.

Eventually—I do not know when and I do not know how—I would like to move into my own place. I understand that you can recruit again to have a team of three or four people who work on a rota system—you can choose who you want. To be honest, I do not know how soon that will happen, given how resources are going, but that is my ultimate aim.

Fiona McLeod: I will follow up on that with Omar. I am interested in hearing about your experience, especially as you have an HR background, and Margaret Cassidy's experience, too. When you employ your personal assistants, what safeguards should be in place to ensure that the right people end up as personal assistants?

Omar Haq: They have to go through a disclosure check, obviously. The LCIL recommends that you hold an interview at its premises, if you can go there. It is based at the bottom of Easter Road. I went there to interview my PA. The LCIL sets out the job description and hours of work and all that, and it recommends that we agree among ourselves a trial period of three weeks or six weeks or whatever and review it after that period.

I am thankful that I never needed to do that, because we got on straight away. Some people like to be more formal, but with me and my PA it is a bit more informal, if you see what I mean, and it always has been. Perhaps that is because we are the same age and have the same interests and we are both very easy going. I am lucky because I have support at home, so if my PA cannot get in because he is busy or because something has happened, we are flexible. I am also conscious, however, that if I was to move into my own place, I would be reliant on other people. As I said, I feel as though I need someone to be around 24 hours a day, even though I do not qualify for that according to the criteria.

If there are good people such as the LCIL at the start of the process, they can help with adequate safeguards.

Fiona McLeod: Is that true for both of you? You both found your assistants through the centres for inclusive living. Did those organisations do the disclosure checks? What would have happened if they had not done that? At the moment, an individual cannot do a disclosure check. In future, should an individual such as you be able to check that a person is safe to be looking after you?

Omar Haq: Yes. It is important because we are talking about vulnerable people. Also, people are coming into our homes so we should be able to be as natural as possible with them. Speaking from personal experience, it does not just impact on me; it affects the rest of my family. I have my mum and dad and two sisters, so we have to make sure that everyone else is happy and the dynamic is right.

Margaret Cassidy: My view is that you need a police check. I asked Lianne if she had had a police check and she said aye.

Fiona McLeod: That is a bottom line for you both.

Margaret Cassidy: Oh aye, definitely.

Fiona McLeod: Can I ask one final question on an area that we have not touched on?

The Convener: Richard Simpson was in line to ask a supplementary, but if you have a very brief question, Fiona, we will make Richard's the last question because we are running behind time.

Fiona McLeod: We have not mentioned carers, and Omar Haq has talked a lot about his parents being his carers.

11:00

Dr Simpson: I will stick with the issue that we are on.

Fiona McLeod has asked the first part of my question. It seems to me that the great advantage of the system that you are both under is that you have flexibility. Margaret Cassidy's submission states:

> "I can go swimming ... I don't have to hope the support worker who turns up will agree to go swimming with me ... I am able to go to parties now and not have to leave early."

It seems to me that you have benefited from the combination of flexibility and continuity—those are the two things that you have both achieved through direct payments. However, I have some residual concerns. I think that both of you have employed your PA or support worker through an agency—in Margaret's case it is Mochridhe, and is it the LCIL in your case, Omar?

Omar Haq: Yes.

Dr Simpson: They look after the technical side of employment, do they?

Omar Haq: Yes. The LCIL does all the recruitment, including drawing up the job description and person specification. It has a team that helps with payroll, doing all the wage calculations and dealing with HM Revenue and Customs. Because I have been unemployed for the past year, I have recently been going in on a Thursday afternoon just to get some work experience, so I have seen how the operation works. There is a team of about 15 people and they all have a role to play in operations, payroll and so on.

In my case, although I use the direct payment money, it is a private arrangement. I draw up a contract between me and my employee that we both have to sign and we review it on a yearly basis, as with any other employment contract.

Dr Simpson: Margaret, is that the case for you as well? Does Mochridhe look after payroll and the job description, and do you then flesh the arrangement out into how you want it to be?

Margaret Cassidy: Yes. Mochridhe knows what I need. We have a meeting to discuss my support, and if I do not like somebody, I do not take them. One time, a lassie came in, and her dress and her hair were not right. It looked like she never washed her hair or combed it. I phoned up the office and told them that I did not like her.

Dr Simpson: So the arrangement gives you control.

Margaret Cassidy: I know inside me, from somebody's body language, whether I like them or not.

Dr Simpson: That is good.

What about the question of holidays, sickness, maternity leave or even redundancy? We heard in Glasgow that somebody had to make a worker redundant because their hours were cut, and they were really quite worried about whether the direct payment would provide for things such as holidays, sick leave, maternity leave, redundancy and so on. Do you have views on that?

Omar Haq: My PA recently went on paternity leave, which was provided for. Sick leave is provided for to a certain extent. However, that causes problems—people obviously have to reorganise their day, for example. Having an extra person would be beneficial, but the problem is building trust again, which takes time. It is more of a personal choice for me. I could recruit somebody for holidays if I wanted to, but doing that is not satisfactory for everybody, because the position will not be permanent. That is an issue for people. The person would be there only if my PA was off.

Dr Simpson: Do the hours and the money that you are given under your contract allow for such a contingency?

Omar Haq: To an extent. I must be honest: I have had to pay my PA out of my own pocket at times if I have needed to. Nobody else knows that—my parents do not even know it—but that is a personal choice that I have made. Although I have only 24 hours of support a week from my PA, I have agreed with him that, if I give him a wee bit extra, he will stick around for a wee bit longer. Obviously, there are people who cannot afford to do that.

I keep banging on about the fact that there is underresourcing. I know that we are in tough times, but the vulnerable get hit hardest. Funding should not be taken away just because times are tough. That needs to be looked at. It is about getting the right people in place.

I am going a wee bit off track, but I mentioned at the start that, over the past four or five years, I have spent a lot of time trying to improve my physical fitness. I live right beside the university campus where I studied. I used to go in my wheelchair and get a taxi in. When I started to feel a wee bit fitter, my mum used to drop me off in the car and my PA would be with me. I used to walk from the car park into the university campus, into the lift, and to wherever I was going. One day, my PA was holding on to me, and the disability adviser from the university saw me. She said, “Oh, you're walking about now. Does that mean you need less support?” It is not just a matter of money; it is also about attitudes. The right people must be in place. That shocked and horrified us both, and we regularly tell people that story. It is about having the right people in place with the right attitude and the correct understanding. People have to put up with such things on a daily basis.

The Convener: Are there any other questions? We need to be brief, as we are around 20 minutes over time, and the next session is with the minister. Fiona McLeod can ask the final question.

Fiona McLeod: I have a brief question for Omar Haq about carers, as we have not talked about them. You have said that your parents are very much your carers. How much information have they received over the years about their right to a carers assessment, for example?

Omar Haq: I am sure that my mum must have got information. When I left school, I worked for Aegon for a year as a customer service adviser. I vaguely remember that we looked into that then, but there were no direct payments then, so we would have had to get somebody in from the council to get us up and ready. The problem is that those people do not usually come on time, so we halted there. It was only when I got into university about three years later that I became fully aware of direct payments and things like that.

Fiona McLeod: Did your mum, as your carer, ever have an assessment done of her support needs?

Omar Haq: She did, because she used to have all my allowance.

Fiona McLeod: So she had help with that.

Omar Haq: Until I was 18 or 19, all my allowance went to her. Recently that shifted and the allowance now comes to me. She was aware, but as I said, it all comes down to having the correct support. Maybe people thought that the correct support was not available.

I am in a different phase of life now. I need to try and work out how to improve things going forward, because my parents are not going to be around for ever. That is why I keep banging on about how there needs to be a holistic approach—a joined-up approach, if you will. I hope that this meeting will move things towards that.

The Convener: Do you want to add anything, Margaret?

Margaret Cassidy: I do not like direct payments going to mum and dad.

Neil McCarthy: If mum and dad are the boss, that is not right. The person should have the choice; it should not be the mum and dad who decide.

Margaret Cassidy: Because if the parents are the boss they earn the money, and I do not approve of that.

Fiona McLeod: So once you are an adult, you are an adult.

Margaret Cassidy: Oh, aye.

The Convener: I thank Omar Haq and Margaret Cassidy for coming, and I thank Neil McCarthy for his assistance. Omar and Margaret have given valuable evidence. As someone else said, you have brought insight and knowledge to the very dry subject of the legislation. Thank you very much for the time that you have given us. We wish you well in the future—Omar, I hope you get that job; you certainly deserve it.

11:12

Meeting suspended.

11:16

On resuming—

The Convener: I now welcome to the meeting Michael Matheson, Minister for Public Health, and his officials from the Scottish Government, who are Jean Maclellan, head of adult care and support division; Craig Flunkert, bill team leader; and Chris Birt, from the Scottish Government legal directorate. I understand that the minister wishes to make a short introductory statement, and we will be happy to listen to his comments before we move to questions.

The Minister for Public Health (Michael Matheson): Thank you, convener, and thank you for the opportunity to give evidence to the committee and to make this short opening statement.

I have followed the stage 1 consideration of the bill with interest and look forward to the discussion that we are about to have. In reviewing the evidence so far, I think that it is clear that there is broad support for the bill's principles and a strong consensus among the vast majority of local authorities, support organisations, users and carers groups that this is the right time for this bill. I believe that that support is genuine and firmly held for a variety of reasons, including, in particular, the fact that in 21st century Scotland it is no longer appropriate for the state to slot individuals into a particular service simply for its own convenience. It is time for the state to trust individuals to make their own choices and to determine what they want, and it is that very right to choose that the bill seeks to enshrine in social care law.

Some have asked why, if this is all about choice, control and culture shift, the bill's title refers to social care. In addition to looking forward, the bill is about returning to the values and principles of the original Social Work (Scotland) Act 1968 and going back to the flexibility and greater wellbeing that should be at the heart of social care. That is why the term "social care" is used.

Although some people—individuals who have a very firm grasp of the principles of independent living to which the bill aspires—will, quite rightly, wish to take maximum possible control, we should also remember that there will be others who might have come to expect care to be delivered but who still wish to live as well and as independently as possible for as long as they can. I believe that people should have as much flexibility and choice as they wish over the support that they receive, whether they call it support or whether they call it care, and the choices that are laid out in the bill should apply to all those who are eligible for care and support.

I have noted the committee's reflection on the evidence provided thus far, particularly its view that the devil is in the detail, and I look forward to exploring some of that detail this morning.

The bill is quite short but, as committee members will have noted, the change in culture and approach that it seeks to underpin is significant. It is therefore vital that Parliament collectively ensures that the bill is as good as possible, and that it is designed to enable choice, creativity and collaboration, which are three things that are crucial to making self-directed support work.

I look forward to answering the committee's questions.

The Convener: Thank you. Our first question is from Gil Paterson.

Gil Paterson: Good morning. The bill certainly has a fair wind behind it, as people think well of it. The committee will agree with me that the bill has good will behind it from right across the sector.

We need to explore the financial impact of the bill further, for instance by looking in detail at the discrepancies between the estimates. As the clerk's note says, the Convention of Scottish Local Authorities "has explained that it has not provided a breakdown of the quantitative analysis because it does not have permission to share this information from its member councils."

That is a disadvantage to the committee. Do you have information that you could provide to the committee on how COSLA's sums come together?

Michael Matheson: It is worth explaining what I think at times is a misunderstanding about cost neutrality. We have provided a significant package of money to go alongside the bill, to address some of the short to medium-term issues that we recognise must be addressed. That is set out in the financial memorandum and is about helping to expand the provision of advice and information and deal with some of the local authorities' transitional costs. The lion's share of that money will go to local authorities, to assist them in preparing staff and in making some of the necessary transitional arrangements.

To arrive at the figures that we have provided alongside the bill, we looked at the financial figures that Glasgow City Council published on its work on moving towards more individualised budgets. Alongside that, we looked at much of the published data on direct payments as they stand. We have used those two sets of published data to evaluate what we believe are the costs that are likely to be associated with the bill. As you have seen from the evidence from the University of Stirling and the pilot studies in England, in the long term the cost of someone having more control over their care arrangements—be it through direct payments or whatever—is broadly the same as the cost of someone having a traditional care package. From that point of view, our belief is that the overall cost of social care will be roughly the same. However, we have provided resource to assist local authorities and other partners with some of the short to medium-term costs, to help to prepare for the introduction of the bill and to make some of the arrangements that are necessary to help support people to make informed decisions.

Gil Paterson: I note that the Government is providing £23 million for the transition. COSLA's low estimate of the cost is 100 per cent more—£50 million. However, COSLA has a high estimate of £90 million, which is almost another 100 per cent. There are discrepancies, or differences—I should not say discrepancies because I do not think that we can quantify them at this stage—which we need to address in some way, for the bill to go forward. COSLA has been asked for but has not given us the quantitative analysis that it undertook to come up with these figures. Can you give us some information to help us understand why there is such a vast difference?

Michael Matheson: All in, we are providing £43 million for short to medium-term work on the bill, £23 million of which will go to local authorities for assistance with transition.

In evidence, the Association of Directors of Social Work and COSLA both recognised that they found it difficult to arrive at figures for costs. Although we have asked COSLA for details of how it arrived at its figures and although we have indicated that we are more than happy to explore the issue, it has been unable to provide that information. We are providing resources based on hard and publicly available information which, if it helps members, we can forward to the committee to give it a clearer understanding of the data that we used to arrive at what we believe are reasonable figures for the short to medium-term costs of introducing the bill. It is obviously for COSLA to explain where its figures came from; we have asked it for that information but, as I have said, it has been unable to provide it.

Gil Paterson: Are you still waiting for that information, or is it simply not forthcoming? If you still expect to receive it, can we see it?

Michael Matheson: That is down to COSLA. We have asked it for information on how it arrived at its figures and it has given us a rough idea of the process that has been used. Basically, local authorities have provided estimates of what they think it might cost; COSLA has simply gathered all that together and concluded that implementing the bill could cost anything between this figure and that figure. We have asked for the modelling and information that it used to reach those figures but, as yet, it has not provided those things. I hope that it will do so but, in the meantime, I am more than happy to provide the committee with detail about the published data that we have used to arrive at what we believe is a reasonable estimate for some of the costs associated with the bill.

Gil Paterson: That would be extremely useful.

The Convener: When did you request that information from COSLA?

Jean Maclellan (Scottish Government): I think that Craig Flunkert is better placed to answer the question about the timeframe.

Craig Flunkert (Scottish Government): We were fairly—

The Convener: It is probably my hearing but, when two of you speak together, I cannot hear you clearly.

Jean Maclellan: I was simply suggesting that Craig Flunkert might be in a better position to answer your query about the last time we asked COSLA for this information. There have been a number of such occasions.

Craig Flunkert: We worked quite closely with COSLA officials on developing their survey, but I understand that, when the survey was issued, it had not been agreed with councils that the details provided by each would be published and shared more widely. Instead, it was assumed that COSLA would pull together the general analysis that you see in the low, medium and high estimates.

Perhaps I should add some background detail on this matter. The transformation costs are not direct costs associated with specific provisions in the bill but are very much to do with the general change in culture and approach that might need to take place. As the minister has indicated, COSLA has suggested that there are real uncertainties in predicting these figures but, as far as the sharing of information is concerned, that was part of COSLA's agreement with councils when it issued the survey.

The Convener: I am somewhat concerned about COSLA's refusal to provide relevant information to substantiate its case to the Government. Given that I spent four years as convener of the Local Government and Communities Committee—indeed, Bob Doris was deputy convener—I have to wonder about the substance of this issue. We know, for example, that COSLA regularly meets Cabinet ministers. I want to get to the heart of the matter, so I wonder whether we can see the correspondence that has been exchanged between the Government and COSLA on this issue. I know that COSLA does not like to play out disputes with the Government because it has agreed that any disputes will be discussed directly between senior people in COSLA and cabinet secretaries and ministers. What has brought about the breakdown in communication between the Government and COSLA?

11:30

Michael Matheson: I would not say that we are in dispute with COSLA.

The Convener: So there is no dispute—that is good.

Michael Matheson: It is not a dispute from our perspective. COSLA has come up with figures that go from £50 million to £90 million. We broadly know that it has collated those figures from what local authorities say they think the cost of implementing the bill will be.

The Convener: The committee has seen COSLA's position and the conclusions in the Finance Committee's report.

Michael Matheson: We have asked COSLA to provide us with information about how the figures were arrived at that it has brought together in its total. We have asked it how it has quantified the cost of implementing the bill and what modelling it has used.

The Convener: The context that has been represented to us is that you have repeatedly asked COSLA for that information and it has failed to provide it. I had four years on the Local Government and Communities Committee and I know that COSLA would not play out such disputes, because there is a recognised mechanism for holding such discussions. Is that mechanism still in place? Is COSLA dealing appropriately with the Government to substantiate its case about the money that it believes will be needed to make the transition to self-directed support?

Michael Matheson: We have asked COSLA for that detail. We can provide the committee with as much information as we have if it would assist the committee in understanding how we have arrived at our figures. We can also provide the points that we have raised with COSLA in trying to find out how it arrived at its figures.

The Convener: Do you have a meeting with COSLA scheduled to discuss the issue? When will that take place?

Michael Matheson: We continue to be involved with COSLA. COSLA is represented on the working group on implementation of the bill. It is not a case of our not being in discussion with COSLA; it is about getting information from COSLA that we would find helpful. We are in constant dialogue with COSLA and it is still our partner in implementation of the legislation should Parliament agree to pass the bill.

The Convener: So there is an on-going dialogue with COSLA.

Michael Matheson: There is an on-going dialogue with COSLA and it is involved with the bill.

The Convener: Thank you.

Bob Doris: I will be very brief because I think that the minister's last answer might have covered my point.

The convener rightly mentioned his and my experience on the Local Government and Communities Committee. Back then, COSLA would not share with the committee details of discussions with the Government, but I understand that, when it was in discussion with the Government, it would put numbers on what it believed the additional pressures would be and then explain how those numbers were derived. It might not have shared that information with the committee in the previous parliamentary session, but at least it let us know that the Government and COSLA were having detailed conversations. Has COSLA said that it is willing to break down its figures in detail, or has it just said what each local authority has decided the cost will be under each heading? I am trying to tease out whether it has said that that is as far as it will go, or whether it has said that it will go back and look at the figures again. In the previous session, COSLA would have had far more detailed conversations with the Government, even if it did not share that information with the Local Government and Communities Committee. I understand that there is a degree of confidentiality around such issues.

Michael Matheson: As you have probably heard in the evidence given by some of the local authorities, COSLA and ADSW, it can be quite difficult to quantify the costs. We have asked for information about the factors that local authorities have taken into account in arriving at their figures. Part of the challenge that COSLA faces in trying to explain the detail to us may be that different local authorities have taken different approaches.

We can try to provide the committee with whatever information we have and, as I say, we have a continuing dialogue with COSLA. If we can provide the committee with more information if COSLA gives it to us, and it is happy with that, we will be more than happy to forward that information.

Bob Doris: I appreciate that, because you have an on-going positive relationship with COSLA, you are being quite measured and diplomatic. However, as a committee member, I am frustrated that COSLA has not given us a more detailed breakdown of its figures. The Finance Committee's report shows that that committee, too, is concerned about that. We have a fairly detailed breakdown of the figures from the Government, and we have to set that beside COSLA's assertions, which is a worry to me.

I will ask a final question on the financial memorandum, because I think that we should move on to the positive aspects of the bill fairly soon, and other committee members want to come in.

Are there valid budget headings for everything that COSLA has listed as a potential cost? For example, on the talk about running dual services, apparently there will still be costs for maintaining traditional services in old buildings that are hard to heat and maintain, while disaggregating moneys to direct payments. Do you think that every budget line that COSLA has for the financial memorandum is valid, or is COSLA trying to add costs that are for on-going responsibilities, irrespective of the bill?

Michael Matheson: I think that they are valid to some degree. The reality is that, should the bill be enacted, there will not be a big-bang approach so that everybody automatically moves to a direct payment. Some will continue to use services in the way in which they are provided at the moment.

The argument about having to run dual services is not entirely accurate, although there may be an element of truth in it. Some of our work on transition is to assist local authorities in developing capacity to allow work to be taken forward. However, COSLA may be overemphasising some points.

The bill will allow what I see as a progressive move that will let local authorities remodel how they provide care and services. That will happen over time, rather than everything happening at a particular point, after which councils have to run dual services for a longer period. I think that there will be a progressive movement that will allow local authorities to direct their resources in a much more managed way, rather than always having to run dual services in the way that some may present.

Bob Doris: Thank you.

The Convener: I think that some of what Professor Bell outlined supports your position. He said that moving to greater self-directed support is an uncertain process and that costs for local authorities could vary widely depending on demand, whether there is decent advocacy and whether duties are placed on local government.

You mentioned costs over the longer term. When reorganising any public service, we all aspire to gaining on costs over the longer term and delivering services effectively. However, what do you mean by costs over the longer term? Will the costs be roughly the same for five years or 10 years? There will be a transition period when local authorities could be running dual services. I presume that there will come a tipping point when people will opt for the services and they will become more equal. If the bill's aim is realised, there will be a gradual process so that we will come to a point when local authorities will be running dual services. However, the people who have been missed in this—we have taken some evidence on this point—are of course those in the third and independent sectors who run services. The question is how the transition costs will impact on them.

Michael Matheson: Your question is about the timeframe.

The Convener: My question is what you consider the longer term to be. When do you see all this taking off to a level where—I presume that the calculation has been made—you will have local authorities running dual services? They will have to have a system in place to give flexibility and options to a number of individuals, but they will still need to maintain some services for people opting back into public sector delivery and they will need to keep the community halls and resources open for those who stick with that service delivery. When does that happen and how do we deal with that?

Michael Matheson: We are certainly nowhere near a tipping point, as you described it. I would see the longer term being around the 10-year strategy on self-directed support that we launched in 2010 with COSLA and the move towards much greater self-directed support.

It is worth keeping in mind that the experience will be different in different local authority areas. Some authorities have more resource tied up in capital infrastructure, while others have less resource tied up and are much more into spot purchasing and using the independent and voluntary sectors to provide services rather than providing council-led facilities. It is not possible for me to tell you that, at a certain point—year X—we will be at a tipping point, because that will be different for each local authority, depending on the way in which they deliver services.

The progression will involve people using a mixture of services. They will choose to use elements of the statutory services that are provided by the local authority, and elements of the services that are provided by voluntary sector or independent organisations, as different parts of their care package in a way that best suits them.

The challenge for some local authorities concerns the point at which they feel that some of the services that they currently provide or have traditionally provided are no longer sustainable because people are using them in limited numbers. Each local authority will have to look at the model that is uses to deliver services. If people are voting with their feet because they do not wish to use a service, the challenge for local authorities will lie in ensuring that they redirect the resource towards the services that people wish to use and in how they manage that process. That will happen over a number of years, as people gradually take more control of the way in which their care is organised. I think that the reality in 10 years' time will be that people will use a variety of services. Some of those will be provided by local authorities, some by the voluntary sector and some by the independent sector.

The Convener: Do you expect that councils will use the transitional money to plan for and anticipate the changes, rather than waiting until they happen?

Michael Matheson: Some of our local authorities are already moving down that route. They are looking at how they will redesign and provide services for people in the future.

The move towards more self-directed support has not come out of the blue for local authorities. We have a strategy, and that has been the direction of travel for some years, even—to a limited degree—with regard to direct payments, of which we want more. Self-directed support is not new to councils.

It is important that local authorities continue to make the necessary progress to provide a range of services that are flexible and that reflect the choices that people make. Nothing has stood still in social care over the past 40 years. Even in the mid-1990s, local authorities were having to remodel the way in which they provided services because there was a much greater focus on supporting people in the community. They had to design and develop services that people could use if they stayed in the community rather than in an institutional setting.

The way in which social care is delivered and local authorities engage in that process has constantly evolved. Self-directed support is a further phase in that process, and local authorities must manage the process of change as people take more control and are more discerning about their choices. The challenge for councils is to ensure that they provide people with flexibility and choice in the decisions that they make.

The Convener: If no one else wants to come in, that moves us neatly to Richard Lyle's questions on need and how it is assessed.

Richard Lyle: Good morning, minister. The bill gives people excellent choice and, as you said, covers the four elements of self-directed support: direct payments, directly available resource, local authority-arranged support and a mixture of those options.

This morning, we heard two excellent presentations from two service users, who said that they had a choice and were in control. Margaret Cassidy said in her written statement, "I am the boss." The challenge involves taking control away from the councils and giving it directly to the person. In her statement, Margaret said:

> "I am waiting for the assessment to be rearranged and I am really worried about my hours being cut again and being stuck in my house like I was before. I hope this doesn't happen."

We want the bill to enable people such as Margaret Cassidy and Omar Haq to take control of their lives, but what if the council says, "No. We are cutting this and we are doing that. We are taking back control"? What appeals process will there be for the individual who is concerned that what you want to give them will be taken away by—dare I say it—a council?

11:45

Michael Matheson: It is worth keeping in mind the bill's purpose, which is to put the choices that people must be provided with on a statutory footing. Local authorities will be legally obliged to provide people with the options that are set out in the bill when taking forward their care. The bill also sets out that information and advice should be provided to people and that they should be signposted to those who can provide them with that advice and information.

The bill's provisions are anchored in the Social Work (Scotland) Act 1968, which sets out local authorities' responsibilities under their duty of care to individuals. The bill does not change that duty of care in any shape or fashion; it remains, to ensure that, if a council has identified someone with a need, appropriate care is provided to meet that individual's need.

A further, bigger piece of legislation was the National Health Service and Community Care Act 1990, which came into effect in 1991. I started in social work at that time—I know that you are thinking that I am far too young to have started back then—and that act set out the assessment process that is used for deciding and identifying someone's need. The assessment process, as established through that 20-year-old act, will probably change. The process will still identify need, but the outcomes will be agreed with the individual. The individual will then have four options to choose from on how their care is taken forward, rather than, as is often the case, local authorities organising the individual's care following assessment. The bill places a legal duty on local authorities to provide people with the four options.

One of the concerns that I have heard relates to the assessment process and individuals who may have chosen a direct payment. Local authorities have not been as up front about direct payments as they should have been, or they have not been proactive in encouraging people to take up direct payments. The stats bear out the situation, given the low numbers. In that regard, some local authorities are better than others, and the bill places all local authorities on an equal statutory footing. It is not a case of them turning round and saying that they do or do not provide a service. Local authorities cannot decide that they will not provide one of the four options because they do not offer that option—people have a legal entitlement to all the options.

On the bigger question of the appeals process, are you asking about an appeal against the outcome of an individual's assessment, or an appeal in relation to the options provided under the bill?

Richard Lyle: We have met several organisations that believe—although I do not believe—that there should be a separate appeals panel process. What is your view?

Michael Matheson: Do you mean in relation to the outcome of the assessment rather than the four options?

Richard Lyle: Yes.

Michael Matheson: That goes beyond the bill's purpose. There has never been a formal appeals process in social work for the outcome of a social care assessment. However, a review of the outcome of an assessment can be requested to reconsider the situation if a person feels that the agreed outcomes from their assessment are not appropriate or do not necessarily meet their needs. That review would be undertaken by the local authority. If we introduced an appeals process for the outcome of social care assessments, we would need to consider carefully the wider implications.

Bearing in mind that more than 200,000 people in Scotland receive some form of social care as a result of a social care assessment, and given that such a move would be a departure from the previous situation in social work, we would need to consider certain fundamental questions such as who would hear the appeal, how the appeal mechanism would be constructed and what the wider implications would be. We would need to consult much more widely. Looking at the figures, I think that we would also have to consider the costs of introducing an appeals process. Although I understand where certain individuals are coming from on this matter, I think that we need a much wider-ranging consultation, as I have suggested, on what the appeals process would look like, how it would be managed and what it would cost.

I point out that an individual can already request a review of an assessment. The bill also provides for those who are refused one of the four options to request a review of that decision.

Dr Simpson: I want to raise two issues. First, I will not ask the minister to go through the Subordinate Legislation Committee's full report but simply seek an undertaking that he will respond in detail to it, particularly with regard to paragraphs 27, 28, 70 to 75, 83 and 92. I think that the report itself is very interesting and comprehensive, and I hope that the minister will return to it.

My second—and main—question is, if, as witnesses themselves have wondered, the bill's ultimate objective is to maximise the independence of people with disability, why does the bill make no mention of independent living? The minister has highlighted the partly historical reasons for that with regard to links to the Social Work (Scotland) Act 1968; unlike the minister, I am old enough to remember its introduction and the separation of social work and health.

Michael Matheson: On the first question, we will consider and respond to each of the Subordinate Legislation Committee's points and if we agree with any of the committee's concerns we will seek to address them at stage 2.

Dr Simpson makes a fair point about independent living. The bill's underlying principle is to give people choice and flexibility, to allow them to make the choices that suit them best and best meet their needs and to have a system that is flexible enough in that regard. Of course, all that fits very well with the concept of promoting independent living and, given that the principle behind the bill is to deliver just that, I see no particular reason to say anything specific about it in the bill. That said, in light of the evidence received, I am more than happy to explore with the committee how that might be expressed more explicitly and in a way that members might find useful. Any such move will, of course, need to fit in with necessary technical drafting requirements if the bill itself is to work.

Dr Simpson: Looking at the matter from the Government's side, I think that there is a danger that the bill will raise considerable aspirations. Raising aspirations is a good thing and, indeed, one of the bill's fundamental tenets is that people should take control of their own lives. However, the provision of independent living will be limited by resources. I do not know whether you heard Omar Haq's earlier evidence, but he described very graphically not only his desire to move into a flat on his own away from his parents but his recognition that having further independence will require him to get more than 24 hours a week of support.

On the one hand, having independent living in the bill would be important; on the other, we have to be realistic about the fact that the general trend, on which Audit Scotland reported, has been for care to be provided less and less to people with less serious needs and more and more to people with more serious needs. There has been a retrenchment in relation to the people to whom care is given. However, the whole of the Christie report—and everything that we have talked about since—is about trying to broaden the approach into one that is about prevention of deterioration. It will be difficult to get that right. How does the bill fit with the current, perverse approach?

Michael Matheson: The bill is a key part of the independent living agenda. It cannot deliver independent living on its own, but it is an important part of the agenda, in that it will provide choice and flexibility around care arrangements.

A challenge that local authorities have faced during the past decade or so is that individuals who have much more complex care needs are being supported in the community, in a way that did not necessarily happen in previous decades. There has been a marked shift in the complexity of the care that is provided in the community setting. I expect that direction of travel—the principle that people should be supported at home for as long as they want to remain there—to continue, because we know that there are much better outcomes for individuals who are provided with care at home.

The Christie commission said that the draft self-directed support bill was progressive and represented the right direction of travel. The bill gives us an opportunity—some of the pilots have teased this out—in that when individuals have much greater control over their care arrangements, they can identify what meets their needs and will better support them to live in the community. The flexibility around how to manage their care gives people a choice about how to utilise the resource in a way that continues to meet their needs, so that they can not just fit in with what the local authority provides but move the resource around at different times, in the way that suits them best. That in itself can help to prevent issues that might present if people are not getting the services that local authorities do not traditionally provide.

Experience from the health pilots that we ran demonstrated that self-directed support can help to prevent issues from developing, because people have much greater control over how they use the resource to meet their needs and achieve the outcomes that they are trying to achieve. In general, the existing system has not been as good at addressing the issue as it could have been, but much greater control under self-directed support will help us to move in the right direction.

That will happen progressively; it will not happen overnight. I suspect that in 20 years' time we will look back and say, "That was clearly the right direction of travel. People are using resources in a way that meets their needs much more meaningfully, which helps to prevent complications along the line."

Dr Simpson: Thank you for that useful response. This morning, Omar Haq talked about how physiotherapy has made him much fitter—

The Convener: I am sorry to stop you, but Nanette Milne will ask about health and social care. I was under the misapprehension that you were going to follow up Richard Lyle's question about assessments. Perhaps another member will do so.

We have heard a lot from user groups and others about the management of assessments. There are issues to do with eligibility, which are contributing to our concern about the need for a right of appeal. I think that that is what we have heard from people who have been through the process. Indeed, in Glasgow people felt that the process was all about cuts.

We have also had evidence from people who speak well of direct payments and self-directed support, but even they told us that they were not as well equipped as they should have been when they were undergoing assessment because their carers play down their role. Only afterwards were they told that they could have damaged their case and that they might lose up to 20 per cent of their package. A husband who was looking after his wife and son played down his role, with the result that what he did was not included in the assessment.

The assessment varies from place to place. It is a big issue for those people who have been through the process; Bob Doris wants to say some more about that. How do we ensure that, wherever someone is, the assessments will be similar? Assessments might be different in different areas, but how can we know that the system will be fair? How will we know that people will be advised prior to the assessment what is expected?

12:00

Bob Doris: The committee's visit to Glasgow was interesting. It was acknowledged that an individual's care package in Glasgow depends on the resource that is available at any given time. If someone was given care support in Glasgow in 2005, their needs were assessed, but the extent to which the local authority could meet their needs depended on the resources that were available at that time. That person would continue to get that level of support. However, if someone with similar needs entered the system in 2008, they might have received a significantly lower standard of care package because the financial situation had changed.

Glasgow City Council now calls the reassessment process an equalisation process, which means that, irrespective of when someone entered the care support system, they should get an equitable supply of support from that local authority, based on the resources that are now available. Some people will see that as a cuts agenda, because they will see the level of their support being reduced, but others—a smaller number, I suspect—will see an increase in the level of support that they get. The issue is the extent to which we can get across the narrative to those who are getting support from local authorities that they are going through a natural part of the process. Should safeguards be put in to soften the blow or to provide a parachute for individuals? People need to know that it is not that their needs have reduced, but that they have been reassessed vis-à-vis other people who have similar support needs and that that is why their level of support has gone down. I hope that you are able to follow this, minister.

Can we put in guidance or in regulations how local authorities should deal with the situation and soften the blow? If someone is receiving a high level of support and the equalisation agenda means that their level of support will be reduced, even though their care needs remain the same, should that happen overnight or should it be gradual? What is the Government's view on that? We have found that the issue is very real for people.

Michael Matheson: It is important to realise from the outset that a local authority's duty of care will not change as a result of the implementation of the bill's measures. There will be no change to the local authority's duty to perform an assessment and meet an individual's needs. I understand that local authorities can sometimes find that challenging.

I will address the issues that the convener and Bob Doris raised as effectively as I can. One of the issues is the various ways in which local authorities apply eligibility criteria for certain services that they provide, which can have a bearing on the outcome of someone's assessment. That can leave us with a situation in which two people with very similar needs, in two local authority areas, can end up with two different care plans because of different eligibility criteria.

We are engaged in a work stream with local authorities on eligibility criteria. Is there a way of addressing those issues so that we can get greater consistency in local authority service provision? We need to respect the fact that local authorities, as corporate bodies, have a level of flexibility in deciding how to deliver services locally. We need to find a way of addressing that.

As part of the self-directed support strategy, we have been addressing issues around eligibility. Going forward with the integration of health and social care and the national outcome framework that we intend to take along with that, which we are consulting on at present, gives us an opportunity to achieve greater consistency in the way in which local authorities and health boards are addressing the issues. There is an opportunity for us to address some of that through the integration of health and social care. I have no doubt that the committee will consider that in detail when it considers the legislation.

I understand the issue that individuals are raising around the idea of an appeals process on the outcome of an assessment. One of the challenges that always presents itself in social work lies in drawing a line between assessed need and perceived need. Some people expect or think that they require something but then someone carries out an assessment for the local authority and says that, on the basis of their eligibility assessment, the person does not require that service. It is a challenge for anybody in social work to square that off and to work with people collaboratively to allow them to understand the local authority's process, how their need has been assessed and how that might differ from their expectations of what would come from that. That is always difficult and challenging.

Most cases will work out and people will be satisfied with the outcome of their assessment, but there will be cases in which that does not happen. That is why there is a review mechanism. If I recall correctly, Glasgow City Council introduced risk panels to which cases could be referred when there was an issue of dispute to be considered. Some of the resource that we are using in connection with the bill, in working with local authorities, is being used to identify areas of good practice in local authority areas and to encourage other local authorities to consider doing those things. We will also consider whether there are ways in which we can encourage such good practice through the guidance that is associated with the bill. It is important that we work with local authorities on areas of good practice that can assist us in addressing issues around appeals and eligibility. We must also ensure that people feel that there is a robust process in place and that, should there be a dispute, they have an opportunity to have any decisions reconsidered in a meaningful way.

It will always be challenging to strike a balance between those different areas but, through the integration of health and social care and through some of the work that we are doing with COSLA on the introduction of the bill, we can make progress in them all.

Bob Doris: I think that, somewhere in your answer, you said that you might consider writing best practice into the guidance. Part of the guidance might be suggestions for how local authorities should deal with individuals who have been reassessed as having lesser care needs than before. Some of that might be written into guidance concerning what would be recommended.

Michael Matheson: As part of the monitoring of the way in which the bill is introduced, local authorities will review care plans and care packages regularly. That is extremely important. One of the difficulties that some individuals have experienced is that their care packages have been assessed and provided three or four years ago but there has been no review of their needs since then. Someone then comes along and carries out a review of their needs, and their needs may have changed. We are seeking to introduce a system of much more individualised care planning and budgets. If the person is told that their needs have changed and they do not require the same level of care that they received four or five years ago, the association is that that is because of the individualised budgets. However, as I said at the outset, a local authority's duty of care in assessing and identifying need and ensuring that that need is appropriately met remains the same at any given point, no matter what.

We must see whether there are ways in which we can ensure that local authorities use the best practice and experience from other local authority areas to assist them with their processes around managing the transition. Some of the transition resource that we are providing is to assist local authorities in looking at best practice from other local authorities in order to help them to manage the process.

Communication with the individuals concerned is a big part of that. An issue that individuals who had concerns about changes in their care packages raised with me was the lack of communication from the local authority or social worker in discussing that matter with them. Communication should be a key part of managing any transition in how a care package will be managed. That is extremely important.

The Convener: I am sure that COSLA has listened carefully to what has been said about all the structures that will have to be put in place and their associated costs.

I am trying to make progress. Nanette Milne will ask questions on another theme.

Nanette Milne (North East Scotland) (Con): Good morning, minister.

I am picking up that there is almost a chicken-and-egg situation with the legislation on self-directed support and that on the integration of health and social care. A number of witnesses have thought that perhaps it would have been better if the legislation on the integration of health and social care came before the Social Care (Self-directed Support) (Scotland) Bill in order to get everything tied up. It is clear that there is a significant relationship between the two.

I think that you mentioned a culture change and the need for people to change their way of thinking. That might be very much the case with health and social services. When SDS is talked about, some local authorities think that it makes sense to integrate health and social care, but users have said to us that they do not like the medicalisation of social care. Omar Haq gave a good example this morning. He used his direct payments to employ a private physiotherapist, who would not have been available to him in the health service. That has significantly improved his level of fitness over recent years and made a huge difference to his quality of life. There is a complicated series of issues within the relationship between SDS and health services. On the other side of the coin, I think that the Royal College of Nursing was worried about “scope creep” in respect of the nursing service, health services and social care services. How can greater interaction between the health service and self-directed support be achieved?

Michael Matheson: Many of the challenges around health services supporting people in the community tend to relate to areas in which there are fairly complex care packages and people have both health and social care needs. The bill is founded on the social care assessment that is required.

Given your background, you will probably be aware that people with complex health needs often require health provision alongside social care provision. At present, a health board can provide resources to a local authority so that the money can be utilised as a direct payment if that is how the person wishes to utilise it. There can often be a bit of creative tension between the different budget headings and I think that one of the benefits that we will get from the integration of health and social care is that the different budgets will become a single budget. It will not be a case of whether a person can get a direct payment under the health service; a budget will be available to help to support people through social care assessments that have health elements as a result of both the bill and the integration of health and social care. I hope that that will give greater clarity and certainty about the process and reduce the tension that can often exist between those two areas.

12:15

It is important that we recognise that the bill will build on a mechanism that currently exists, and that the integration of health and social care will cause less tension and allow us to get greater clarity from budgets that are responsible for different elements

The example that you give of Omar Haq using some of the resource for physiotherapy goes back to the point that I made to Richard Simpson about one of the benefits that can come from self-directed support, which is that individuals will be able to use their resource in a way that best suits their needs. They may wish to use it for a service such as physiotherapy that they think would be appropriate to address their needs. That is a good example of how self-directed support gives people greater flexibility and choice in making such decisions.

For some individuals, there may be periods when they do not require that type of support, and there will be other times when their condition might change and they feel that such support would be appropriate for them. Self-directed support gives the individual the opportunity and flexibility to make that type of decision for themselves at a time that is most appropriate for them.

Nanette Milne: Presumably, the assessment is all-important. The other witness, Margaret Cassidy, said that the social work staff who initially assessed her were looking at housework and laundry, for example. They did not take into consideration that she wanted to be able to go to a party and return late at night or go dancing if she so wished. That did not seem to be part of the initial assessment, although she managed to overcome that issue through advocacy.

If we are considering the outcome for the person who is using the services, such things must be taken into consideration at the outset in any assessment that is made.

Michael Matheson: Social care assessments are holistic, in that they look at a whole range of issues relating to an individual. At the end of the assessment, one or two particular services may be identified as being appropriate, but it is a holistic process that should cover a range of different issues.

You mentioned the issue of culture change. Margaret Cassidy gave the example that, through advice and support, she was able to challenge some of the assumptions that the assessment was only about X, Y or Z—cleaning, washing and so on. Social work needed to take into account the wider agenda, and it was possible to address the issue.

We are providing resource to assist organisations that provide information, support and advice to help people make informed decisions and to enable them to question local authorities about some of the assumptions that might be made during the assessment process.

There is an opportunity to ensure that the holistic nature of the assessment is more widely recognised, and to create the necessary culture change to ensure that staff understand that in assessing the needs of individuals.

Nanette Milne: Presumably, training must be part and parcel of a successful outcome for the legislation.

Michael Matheson: Yes. Some of the transition funding that we are providing for local authorities is for the training of staff, but that will not involve a one-day workshop type of approach. It will cover the principles of self-directed support, and the choice and flexibility to which people are entitled.

Many of the social work staff who currently carry out assessments do so under the National Health Service and Community Care Act 1990. We acknowledge as a challenge—which is why it is part of the wider package of measures—the need to change that focus, so that social work staff recognise that people have a range of choices to make at the end of the assessment process.

Staff training will be on-going rather than a one-off, and will focus on the principle of giving people choice and flexibility and ensuring that staff are aware of that.

Nanette Milne: I look forward very much to the legislation on the integration of health and social care, because that will be extremely important if the SDS bill is to be a success.

Michael Matheson: We are consulting on that just now.

The Convener: The committee has carried out inquiries into elderly care and the integration of health and social care, and we are all convinced that the culture needs to change. However, the bill places a duty only on local authorities to create and confirm that change in culture with regard to giving people choice.

From users and carers, we have heard examples of situations in which there is an interchange with the health service that does not empower them. One man requires a medical procedure to enable him to see his family off to school in the morning. The health service does not provide community care outwith those arrangements, and the man has had to use his care package to have that medical procedure done. This morning, Omar Haq told us that he has had to use his care package to access the physiotherapy that is of great benefit to him. We have also heard about the transition in the way in which the education system helps families and carers, because the child is out of the house for six or eight hours a day. We are being told that the duty on the local authority is too narrow, and that people engage with wider services to deliver care packages, not just with local authorities.

Michael Matheson: The bill is anchored in the social care assessment process under the Social Work (Scotland) Act 1968. With the integration of health and social care, NHS staff will increasingly be involved in conducting assessments, and the budgets for delivering some of the services will be pooled budgets that, under the bill, can be used for the delivery of individual care packages.

If I understand you correctly, the concern is about the understanding that health staff have of the issues around empowering people, and you believe that the bill should go wider—

The Convener: From the evidence that we have heard, in some cases, healthcare responsibilities transfer to the individual—for example, Omar Haq, from whom we heard this morning, has decided to use his care package to access physiotherapy—and, in other cases, the responsibilities pass to carers, who are trained to carry out medical procedures. We heard from one person who requires a medical procedure at around 7 in the morning to allow him to go to the toilet and then see his children off to school. He tells us that there is no empowerment in that process and no transfer of budget—the health service opted out in that situation. It seems that there is something missing. Surely the ambition of the bill is not to transfer those health responsibilities to individuals and carers.

Michael Matheson: Some of those examples are good examples of why we need greater integration of health and social care. At times, local authorities provide particular services in particular ways in order to meet an individual’s needs and, in some cases, the health service might not take such issues into consideration in relation to the way in which it delivers services or allows people to use services. Greater integration will enable us to ensure that local authorities and the health service are much more effectively aligned with one another and that the health service is much more focused on helping to support people in the community and giving them the advice that they require.

At the moment, resource for the provision of some of that care can be transferred from the health service to the local authorities. I recognise that that arrangement operates differently in different areas and that it is not always as consistent as we would like it to be. The integration agenda will enable us to address some of those important areas of care, which can be quite confusing for people.

The Convener: In the interim, is there anything in the guidelines that can encourage better working now between the health service and local authorities with regard to the wishes of the people who are in receipt of care?

Michael Matheson: One of the things that we are looking to do in the guidance that will accompany the bill is to give some clear illustrations of where it is appropriate for services to be provided. If there are ways in which we can demonstrate that around some of the health areas, we will do that.

Some of the pilots that we ran were on health provision, to help to inform us as we took forward the guidance. Although there is willingness on our part, we recognise that the area can be quite complex. There is interplay between different factors. We have to ensure that the systems are much more effectively aligned and that their approach is much more person centred. There is no doubt on our part that we need to make more progress in that area.

Fiona McLeod: You will know that I have been pursuing the personal assistants agenda. We heard this morning from Omar Haq and Margaret Cassidy about their employment of personal assistants. They both said that the minimum safeguard that should apply is that all personal assistants should have a disclosure check. Such checks are always obtained for personal assistants who are employed through an agency but it is more problematic if someone employs a personal assistant themselves. How can that issue be overcome?

I have been considering the regulation of personal assistants for a number of reasons. One is so that we can overcome local authorities' reluctance to allow family members to be employed as personal assistants except in exceptional circumstances. I note from the policy memorandum to the bill that you want local authorities to move away from that position. Will you talk us through that?

Michael Matheson: First, I will deal with the regulation issue, which I know has been raised by some of the committee's witnesses. When we consulted on the bill, it was clear that there was considerable anxiety among some stakeholders about the potential overprofessionalisation of personal assistants or medicalisation of the care they provide and the challenges and difficulties that that could create for individuals. We have to weigh that against having flexibility in the system to allow people to make informed choices on the best provision of care to meet their needs. Because of the concerns expressed in the course of the consultation on the bill, we decided that we did not wish to regulate personal assistants.

That is not to say that we do not recognise that there are some risks; the issue is how those risks can be managed. We are working with local authorities and stakeholders on ensuring that individuals who are making an informed choice about care options are aware of the associated risk factors and the measures that they can take to address them. We are looking at good practice among local authorities. Some local authorities have user agreements with individuals who use direct payments for the provision of their care. Part of the user agreement is about the individual's awareness of the protecting vulnerable groups scheme and the benefits that they can get from it. That is a way of helping to reduce some of the risks associated with being an employer.

We would encourage someone who is going to employ a personal assistant to ensure that they are a member of the protecting vulnerable groups scheme. We should ensure that local authorities have systems in place to encourage people to be aware of the scheme and the benefits that can come from it. That would allow a potential employer of a personal assistant to ask them for sight of their disclosure certificate. In addition, because of the changes under the protecting vulnerable groups scheme, checks are no longer just snapshots in time but can be updated at any point if a person's circumstances change. Information goes to Disclosure Scotland and then to the police, and the police may consider it important that the information is passed on. It is a much more dynamic system than it was previously, when the information was just a snapshot in time.

We need to encourage good practice while acknowledging that people might well want to have choice and flexibility in making decisions about those they employ.

12:30

On your second question, some local authorities have been inconsistent in how they have applied the threshold for direct payments with regard to individuals who might wish to employ family members. Under the existing threshold for direct payments, such a move is possible in exceptional circumstances. However, I feel that the threshold is too high and is not being applied consistently and we intend, through regulations, to provide guidance on the circumstances in which the employment of a family member as a personal assistant would be appropriate. That will make the system clearer, give people more of an opportunity to take a family member on as a PA and help to address some stakeholders' concerns about difficulties in that respect.

Fiona McLeod: I was interested in your comment about checks being made through the PVG scheme rather than through Disclosure Scotland because you seem to be saying, with regard to the safeguards surrounding the employment of personal assistants, that the onus will be on the PA to be registered with the PVG scheme rather than on the user to undertake a Disclosure Scotland check. After all, people on the PVG scheme will have already been checked by Disclosure Scotland. It sounds like a very useful way of turning all this round.

Michael Matheson: The approach is partly to ensure that, instead of those who seek to employ

PAs being responsible for carrying out checks, those who want to be employed as PAs will have to demonstrate that those checks have been carried out. Rather than being a snapshot in time, the system will now be much more dynamic, which will provide additional security. For individuals who wish to be employed as PAs, the message will be clear: they will be expected to be part of the scheme. Moreover, if Disclosure Scotland’s system has something on a personal assistant that would prevent them from applying for a job, the person will be committing a criminal offence if they try to do so. It is important that we maintain flexibility and choice by ensuring that individuals are aware not only of the risks, but of mechanisms to reduce the potential of such risks and by placing the onus on the person applying for the post of personal assistant rather than the cared-for person to ensure that all the checks have been done.

The Convener: Might there be any risks in such an approach? Obviously the capacity of the PA network will have to be developed if people are going to have a choice, but what if in some areas there simply are not PAs? How much does it cost to get a Disclosure Scotland check in the first place?

Michael Matheson: I do not know, off the top of my head.

Chris Birt (Scottish Government): I think that it costs £89.

Michael Matheson: I can provide the committee with the actual cost of a check, but I should point out that the system now is more dynamic. There is a one-off cost, but if a report comes in or information becomes available that requires the police to inform an individual—

The Convener: That is not the only barrier. As we have discovered in previous inquiries, there are other barriers to encouraging people into and developing that workforce. For a start, the work does not pay a lot of money and has a low status, and the scheme will simply put another burden on people who might be currently unemployed.

Michael Matheson: The important thing is to ensure that the cared-for person is aware of the risks of choosing to employ someone. We are working with local authorities on that. Some local authorities encourage individuals who use direct payments to ensure that the individual whom they employ becomes a member of the scheme, so that a check can be carried out.

Under the old system, every time someone applied for a job a new disclosure check had to be carried out. A friend of mine who worked as a freelancer in outdoor education worked for nine local authorities and had to pay for disclosure checks nine times. Currently, when a person has paid for a check to be carried out they are registered under the scheme, and if information becomes available that the police think is appropriate to pass on to the employer, that can happen. People no longer have to have repeated disclosure checks.

The Convener: Will money be available to develop the workforce during the transitional period? The workforce needs to develop. What plans are in place to ensure that people will have the qualifications and training that they need if they are to provide care?

Michael Matheson: Part of the resource that we are providing under the transitional arrangements will assist third sector and independent sector organisations in developing capacity and the systems that will be necessary to support the workforce. I think that about £6 million is going towards helping the independent sector to gear up for the change and to ensure that it is better aligned with a system in which people will make much more informed choices about how their care is provided.

In addition, as part of the self-directed support strategy there is a work stream that is developing a workforce plan and is considering measures to support and develop the PA profession.

Jim Eadie: Earlier, we heard powerful testimony from Omar Haq and Margaret Cassidy about the benefits of direct payments and employing personal assistants; they talked about flexibility, choice, continuity and so on. The greater independence that the arrangement has brought to their lives was eloquently expressed.

The bill says in section 3(2):

> “‘direct payment’ means a payment of the relevant amount by a local authority”.

The term “relevant amount” is defined as

> “the amount that the local authority considers is a reasonable estimate of the cost of securing the provision of the support to which a direct payment relates during the period to which the payment relates.”

You made the important point that people will be able to use the resource in the way that best meets their needs. However, in the context of other care arrangements, the Learning Disability Alliance Scotland said that there is inconsistency around the country in respect of the charges that people pay. Is it inevitable that local authorities will set different levels of direct payments? If that is an issue, how might it be addressed or avoided? Could that be done through guidance to local authorities?

Michael Matheson: The cost of providing services will always vary in different parts of the country and among local authorities. Some forms of direct care are more expensive in rural areas than they are in urban areas. We are working with local authorities to identify core factors that should be taken into account in the resource allocation system when they decide what the cost will be for a service.

It is intended that the section of the bill that Jim Eadie referred to will ensure that, although the relevant amount will not be consistent throughout the country, it will be reasonable for provision of the service. We do not want individuals to have been offered direct payments that are entirely unreasonable in the context of the cost of a service.

We are also encouraging local authorities to examine resource allocation systems that are in use in Scotland and England and some of the key factors that can be used to ensure that the system is aligned with the costs of the provision of a service. That is what we are doing with local authorities just now, and that work will also form part of the on-going work with local authorities in preparing for the bill by looking at the issues and sharing practice so that they can use existing resource allocation systems. The bill does not set out what a resource allocation system should be, but we are working around the bill to assist local authorities to develop their systems, to make sure that they are sensitive to changing developments in the sector, and to make sure that there is consistency in the core factors that they take into account in arriving at what they believe would be the cost for a particular service.

Jim Eadie: Can you make sure that you engage with the learning disability community so that officials take on board and address any concerns that it might have about inconsistent provision as we work through the bill process?

Michael Matheson: I am more than happy to do that. During the development of the bill, we engaged with a range of organisations that work with individuals who have learning disabilities and we will continue that work and dialogue in the future.

Jim Eadie: Has the Government considered placing a duty on local authorities to ensure that independent advocacy is provided for service users who are making their way through the SDS process? Are you willing to consider it? I am talking about something that would be analogous to the provision that I believe already exists under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Michael Matheson: We have looked at how the bill can ensure that individuals are provided with the information and advice that will help them to make informed decisions. For example, we have already provided resource to some advocacy organisations to assist us with implementation of self-directed support. In my constituency, Central Advocacy Partners has been provided with resource to allow it to develop materials and programmes for its work on helping people who have learning disabilities.

Section 8 of the bill sets out the duty that will be placed on local authorities to ensure that individuals are provided with information about decisions and the implications that those decisions can have for them, as well as making sure that those individuals are given information about the services outwith the local authority area, which will help them to make decisions.

Jim Eadie: Am I correct that the bill does not place a duty on local authorities to provide independent advocacy?

Michael Matheson: That is correct.

Jim Eadie: I ask again, on behalf of the organisations that have given evidence, whether the Government has considered independent advocacy and decided—for whatever reason—that it is not appropriate.

Michael Matheson: We have considered it, and one of the reasons why it is not in the bill is because not everyone will want or require independent advocacy to help them to make their choice. We have put section 8 in the bill to place a duty on local authorities to provide information and advice on the implications of the decisions that they make, and to direct people towards services that can provide such advocacy support. Some of the financial support that we have provided around the bill is to support organisations that can provide that advocacy role.

Jim Eadie: There is an on-going discussion and a debate to be had, but I welcome that clarification.

12:45

Fiona McLeod: I seek clarification that sections 1(3)(a) and 1(3)(b) and section 8(2)(c)(i) almost guarantee that the local authority has to provide the support, advice and information that advocacy would be. That is my reading.

Michael Matheson: Under section 8,

> “The authority must give the person ... information about how to manage support, and ... information about persons (including persons who are not employed by the authority) who can provide ... assistance or information ... to assist the person in making decisions about the options”.

Although the duty that Jim Eadie talked about is not in the bill, the bill places a requirement on the local authority to provide the person with information on whom they can go to to get advice and information. As I said, we are providing resources to organisations to allow them to provide that type of support and advice.

The Convener: Members have no further questions. However, last week, we took fairly important evidence from the Office of the Public Guardian and the Mental Welfare Commission for Scotland, which have raised concerns. I know that the Government is aware of those concerns. I ask the minister to give us an update on that in writing, as I am aware of pressures on his time and on members' time.

I thank the minister and his officials for attending and for their evidence. We look forward to working with you on the bill as it progresses.

Annual Report

12:47

The Convener: We move quickly on to agenda item 2, which is our annual report. The style and content of the report are entirely the norm. If members have no questions or comments, we will finalise the report for publication.

Richard Lyle: It is an excellent synopsis of the committee's work under your convenership and it highlights all the important items that the committee has dealt with in the past year.

The Convener: Are we content with the report?

Members *indicated agreement.*

The Convener: I thank members for their patience and participation.

Meeting closed at 12:48.

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