



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# HEALTH AND SPORT COMMITTEE

Tuesday 17 June 2014

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**Tuesday 17 June 2014**

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**HEALTH AND SPORT COMMITTEE**

**20<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

**DEPUTY CONVENER**

\*Bob Doris (Glasgow) (SNP)

**COMMITTEE MEMBERS**

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Colin Keir (Edinburgh Western) (SNP)

\*Richard Lyle (Central Scotland) (SNP)

\*Aileen McLeod (South Scotland) (SNP)

\*Nanette Milne (North East Scotland) (Con)

\*Gil Paterson (Clydebank and Milngavie) (SNP)

\*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Archie Anderson (Association of Meat Inspectors)

John Connaghan (Scottish Government)

Paul Gray (NHS Scotland)

David Martin (Scottish Retail Consortium)

Tony McAuley (East Lothian and Midlothian Councils)

Christine McLaughlin (Scottish Government)

Uel Morton (Quality Meat Scotland)

Colin Wallace (Royal Environmental Health Institute of Scotland)

**CLERK TO THE COMMITTEE**

Eugene Windsor

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Health and Sport Committee

*Tuesday 17 June 2014*

[The Convener *opened the meeting at 09:46*]

### Decision on Taking Business in Private

**The Convener (Duncan McNeil):** Good morning and welcome to the 20th meeting in 2014 of the Health and Sport Committee. As usual at this point in the meeting, I ask everyone in the room to switch off mobile phones and other wireless devices, as they can interfere with the sound system and disrupt the meeting. I also point out that officials and members are using tablets, but they are doing so instead of having hard copies of their papers.

Agenda item 1 is a decision to take in private item 5, which is consideration of the committee's budget approach, and future consideration of draft budget 2015-16 reports to the Finance Committee. Are we agreed?

**Members** *indicated agreement.*

### Subordinate Legislation

#### Regulation of Care (Social Service Workers) (Scotland) Amendment Order 2014 (SSI 2014/129)

09:47

**The Convener:** Agenda item 2 is consideration of a negative Scottish statutory instrument. No motion to annul the order has been lodged, and the Delegated Powers and Law Reform Committee made no comments on it.

As members have no comments, does the committee agree to make no recommendations on the order?

**Members** *indicated agreement.*

## Food (Scotland) Bill: Stage 1

09:48

**The Convener:** Agenda item 3 is continuation of our evidence taking at stage 1 of the Food (Scotland) Bill. We have one more round-table session before we hear from the minister.

I think that we are few enough in number for us to take our usual approach and introduce ourselves before we begin the evidence taking. I am the convener of the Health and Sport Committee and the MSP for Greenock and Inverclyde.

**Uel Morton (Quality Meat Scotland):** I am chief executive of Quality Meat Scotland.

**Bob Doris (Glasgow) (SNP):** I am a Glasgow MSP and deputy convener of the Health and Sport Committee.

**Tony McAuley (East Lothian and Midlothian Councils):** I am trading standards partnership manager for East Lothian Council and Midlothian Council.

**Nanette Milne (North East Scotland) (Con):** I am a North East Scotland MSP.

**Gil Paterson (Clydebank and Milngavie) (SNP):** I am the MSP for Clydebank and Milngavie.

**Archie Anderson (Association of Meat Inspectors):** I am president of the Association of Meat Inspectors.

**Colin Keir (Edinburgh Western) (SNP):** I am the MSP for Edinburgh Western.

**Richard Lyle (Central Scotland) (SNP):** I am a Central Scotland MSP.

**Colin Wallace (Royal Environmental Health Institute of Scotland):** I am president of the Royal Environmental Health Institute of Scotland.

**Rhoda Grant (Highlands and Islands) (Lab):** I am a Highlands and Islands MSP.

**Aileen McLeod (South Scotland) (SNP):** I am a South Scotland MSP.

**David Martin (Scottish Retail Consortium):** I am head of policy and external affairs at the Scottish Retail Consortium.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** I am a Mid Scotland and Fife MSP.

**The Convener:** Thank you all for that.

We have an hour and 10 minutes or so for this session. The main purpose of these sessions is, we hope, to allow the various people around the table to have a dialogue. My preference is always

to let the panellists speak but, first of all, I ask Rhoda Grant to get us going with the first question.

**Rhoda Grant:** What additional powers and responsibilities should the new agency have? Does it have any powers and responsibilities that it should not have been given?

**The Convener:** Are there any takers for that question?

**Tony McAuley:** I will speak on feed enforcement, which historically has been one aspect of trading standards enforcement. There is a lack of capacity in local authorities to exercise official controls on feed enforcement and there is scope for the new food body to take on some of that work centrally, or through a regionalisation process. We could build capacity for that work by having neighbouring authorities join up—one authority could lead on such work for the east of Scotland, one for the north-east, one for the north-west and so on—and by looking at economies of scale.

Expertise and capacity at a local level are gradually diminishing. The new food body could take a lead in that area and provide some momentum to drive up compliance in the area of feed hygiene and enforcement.

**Colin Wallace:** The institute supports the proposals on compliance notices and fixed-penalty notices. Environmental health officers and other associated food safety professionals provide a lot of assistance and support and deal with enforcement issues.

We feel that at present there is a gap with heavy rather than light enforcement. Some technical offences could be dealt with much more easily and successfully without criminalising a food business operator. I am talking about issues such as operators not registering a business and other minor matters that are not necessarily linked to public safety or food safety.

Those matters are still important, of course, and need to be dealt with. Fixed-penalty notices were used very well in enforcing the prohibition of smoking in public places—they were used not that often but just when they were required. That approach does not criminalise people who are just trying to do what they are doing and who may be acting with good intentions rather than trying to mislead the public.

**The Convener:** Does anyone else want to come in on the enforcement angle, or on any broader issues?

**Uel Morton:** On Tony McAuley's point about feed inspection, the Government has inspectors out on farms from the rural payments and inspection department, but someone should have

a look at the inspection process so that we are not sending out different inspectors to inspect different things. We should try to join things up a little bit.

The Scottish Government had a very good programme a while ago called SEARS—Scotland's environmental and rural services—which took a joined-up approach. In the specific area of feed inspection, there is some scope for streamlining the number of inspectors who go to farms and for ensuring that there is a more joined-up approach between Government departments.

**The Convener:** I will bring in some of the other witnesses on that point. What prevents you from developing at present the strategies that have been suggested? Do we need the Food (Scotland) Bill to do those things?

**Tony McAuley:** On Colin Wallace's point about fixed-penalty notices, in trading standards we have been using fixed penalties for quite a while now in areas such as underage tobacco sales, home report legislation and energy performance certificates, and that fixed-penalty regime has worked successfully.

I can see that such an approach—not decriminalising the issues, but having a lesser penalty—would be advantageous, and I support Colin Wallace's point about the need to move the process forward. Feed enforcement is currently at a very low level among local authorities in Scotland, and there are big disparities. For example, City of Edinburgh Council and Glasgow City Council hardly do any feed inspections, because they do not have that many farms in their area, whereas the more rural authorities, such as those that cover places such as Inverness and Aberdeenshire, which have feed and food businesses in their area, have driven up standards internally.

However, across the board in trading standards and, to a certain extent, environmental health, capacity and resource are diminishing as councils reduce the staff head count. It is a case of maximising the staff that we have. I hope that some form of joined-up approach, whether on a regional or an interauthority basis, will be adopted to drive up those standards and those competencies.

Following on from that, the Scottish Government rural payments and inspections division and the Animal Health and Veterinary Laboratories Agency must adopt a more joined-up approach when it comes to passing on intelligence and information to each other on who has been inspected and when they were inspected so that there is no duplication. That is extremely important. We have diminishing resources, so we need to use them effectively.

**The Convener:** I was trying to get at what prevents you from adopting such an approach now. There is no legal impediment to doing that at the moment. I realise that the new food standards agency could be a driver for that, but is there anything that prevents you from working more closely together and using the limited resources to better effect at present?

**Tony McAuley:** There are some stumbling blocks in the sharing of information between the Scottish Government and local authorities relating to data protection and data sharing. Those obstacles are not insurmountable, but I am aware that there have been data protection issues to do with our passing on information on our database to SGRPID, the Scottish Government and the AHVLA.

**Uel Morton:** I have an ancillary point to make. The issue comes down to something as simple as the aye been syndrome—the view is, “It’s aye been that way, and that’s the way it works.” I think that the new food standards Scotland will act as a catalyst in allowing us to review and take a view on all these areas, and to take a more sensible approach for the betterment of food safety in Scotland.

**The Convener:** I know that Bob Doris wants to ask another question, but I think that Rhoda Grant wants to follow up on that.

**Rhoda Grant:** I suppose that I am asking whether you are suggesting that, because the inspection regime currently falls to local government, local authorities should work with the Scottish Government departments that do farm inspections, head counts and the like. Given that the inspectors normally do a particular piece of work, would they require to receive a degree of training? If they were to check something else, how much training would that involve? I can see that the costs that would be incurred in staff developing their knowledge would be a barrier.

**Tony McAuley:** A scoping exercise would need to be carried out to find out exactly what we wanted the Scottish Government enforcement staff to do. It may well be that, in the very early stages, a partnership approach between local authority staff and Scottish Government staff could be developed to build capacity and expertise, and to enable the transfer of skills from local authority staff to Scottish Government staff. There could be a two-stage approach, the first stage of which would involve looking at the problem and working on it together; then, if the Scottish Government staff had the necessary capacity, they could receive training from the local authority staff.

**Uel Morton:** I have another point on the general issue of where legislation is needed. It relates to food labelling. We in Quality Meat Scotland feel

that not enough weight is given to protected food names, examples of which are Scotch beef and Scotch lamb. Those are the two protected food names that QMS operates on behalf of the industry. Arbroath smokies and other products with protected geographical indication status are other examples.

We feel that the new food body should ensure that a robust approach is taken to protected food names, which are given that status because of their quality. Such products usually attract a premium in the market, and we need to ensure that there is no scope for food fraud. An example of what I am talking about is the passing off of inferior products, such as beef from Ireland or Argentina, which is cheaper, as Scotch beef. We need to ensure that the labelling regime takes account of protected food names.

**The Convener:** I am sure that we will return to labelling, because there have been some issues there.

10:00

**Bob Doris:** Mr Wallace made an interesting comment about the nuts and bolts of the bill and I want to ensure that I understood it correctly. You support the idea of fixed-penalty notices and the fine scale, but you query whether the bill would focus on food safety and food fraud rather than on administrative and bureaucratic breaches, which you said could be dealt with in a more streamlined fashion. I do not want to put words into your mouth, but I think that that is what you said. I would like to be clear about what specifically you were saying about that.

**Colin Wallace:** Enforcement provisions are available now, but they can end up in court by referral to a procurator fiscal and in many cases that may be like using a sledgehammer to crack a nut. We are looking at slightly lower-level offences. I know that the convener has said that we will move on to labelling issues. Currently, powers are available in relation to the labelling of unsafe food, but there are no powers for dealing with incorrect food labelling as a food standards issue.

Enough powers are available to deal with food that is potentially unsafe and environmental health professionals can deal with that, but food that is of a lower safety level—not necessarily food that is incorrectly labelled—could ultimately turn out to have food safety implications and that could be much better dealt with using lower-level measures such as fixed penalties.

**Bob Doris:** Perhaps I misunderstood, because I was looking at the bill as you were talking and it seems as if that will be dealt with in regulations. The idea of a relevant offence will be specified in regulations laid by Scottish ministers. Did you just

want to ensure that that provision was as broad as possible to minimise the amount of unnecessary enforcement matters that would have to go through a judicial process, where fixed-penalty notices could be used?

**Colin Wallace:** You are quite correct. The bill gives that breadth and flexibility to introduce legislation. That will not necessarily be enshrined in the bill, but secondary legislation could come from it.

**Bob Doris:** That is helpful. From your initial comments, I thought that some things would not be covered by fixed-penalty notices but that was my misunderstanding. I just want to be clear on that. Am I right in thinking that you are not suggesting that something will not be covered by a fixed-penalty notice? This would be a good opportunity to put that on the record, if you think that there is a gap in relation to the future use of fixed-penalty notices.

I see that you have nothing to say about that. Okay.

I would like to ask about food labelling, convener. Is that okay?

**The Convener:** I will bring in David Martin to respond to some of your earlier questions. We heard evidence about how seriously the courts were taking some of those issues. For many of the issues that could be resolved by a fixed penalty, there will be a penalty, whereas previously a lot of issues fell by default because of the expense and the length of time involved and because of how seriously the courts took them. It seems that, on balance, everybody supports the proposal.

**David Martin:** The Scottish Retail Consortium is looking at fixed-penalty notices from a different direction; we are the regulated, rather than the regulator. From our perspective, we are a little bit more sceptical about fixed-penalty notices. We understand some of the rationale behind trying to make justice more expedient and cost effective, but if that line is to be pursued, we would be keen to have safeguards built in. Our members' experience is that fixed-penalty notices can often lead to a tick-box approach to enforcement that does not really drive better performance or compliance. Such an approach deters retailers from coming forward for advice, because they are worried about more penalties for minor infringements; it makes it easier for a penalty to be imposed.

There is also an issue around the burden of proof, and I note that the explanatory notes state that future regulation will look at whether the test will be beyond reasonable doubt. Obviously, we would support that.

We think that the move towards FPNs will lower the bar somewhat and make businesses more hesitant about coming forward for advice and speaking to the enforcement agencies about compliance, because it will be much easier to slap a notice on someone for what is, in effect, a minor infringement.

Unscrupulous retailers might regard fixed penalties as the cost of doing business. An FPN will not necessarily have the impact that being taken to court and pursued for a criminal offence would have. For that reason, we said in our submission that in light of the FPN approach we would like there to be an acknowledgement that much of the provisions will be brought into the scope of the primary authority arrangements. That would deal with a lot of what Tony McAuley talked about, and I know that previous witnesses gave evidence to the committee on the advantages of such an approach.

The Scottish Government introduced the primary authority arrangements in the Regulatory Reform (Scotland) Act 2014. We thought that that was an admirable move, which we very much supported, and we have been working with the Scottish Government on a range of areas in that regard. The issue is most pertinent to food regulation. If there is a move towards dealing with more infringements by FPNs, the approach would provide us with a safeguard, in that we would have the due diligence, and dialogue with and advice from the enforcement agency could be sought without that necessarily leading to punishment. If the FPN approach is to be pursued, we want much of what we are talking about to be brought into the scope of the primary authority arrangements.

On labelling, which links to the FPN point, the better regulation delivery office has set up a group with retailers in England to look at how the primary authority will deal with the provision of food information to consumers regulation when it comes into force next year. The FIR is a complicated regulation, which will change a lot of the law around labelling. To be honest, the interpretation of the regulation is still very unclear from the perspective of both regulated and regulator.

It is good to have a mechanism whereby we can agree on our understanding of what is required, because no one wants to break the law. People want to stay on the right side of the law, but they want to know that there are safeguards.

**The Convener:** Let us sweep up any points about the retailers' view of fixed penalties.

**Colin Wallace:** I understand Mr Martin's point, given his members' perspective, and I take it on board.



I want to reassure Mr Martin. The environmental health ethos is to provide advice, support and guidance to businesses, with the ultimate aim of achieving compliance. Environmental health officers are there to help businesses, and they spend an awful lot of time doing that. Enforcement is rarely the first resort; it is mainly the last resort, and it is always done to protect public safety—we would much rather have compliant, successful businesses, which contribute to the local economy. Only when people are minded not to comply or are minded to be obstructive, and at the end of a particular process, are sanctions applied. We do not do that at the start of the process.

**Tony McAuley:** I echo what Colin Wallace said about the ethos. Trading standards officers—and councils—are more focused on their single outcome agreements with the Scottish Government, and their individual service plans and business plans are very business friendly and orientated towards business support. We want to drive up compliance by giving advice and support. We understand that businesses are more focused on their operation than on considering trading standards and environmental health law. Trading standards enforces something like 1,200 different acts and regulations, so we understand the complexities of the law for business.

As Mr Wallace said, prosecution and reports to the fiscal are a last resort. However, there are habitual offenders, albeit that they are a negligible percentage of business operators, who persistently try to break the law with impunity.

It is about driving up compliance by supporting local businesses and helping them to thrive and be successful.

Previously, trading standards was called consumer protection; I never liked that name. Our ethos was that we were enforcers and the first enforcement was written reports to the fiscal. We have stepped back from that approach and we now take a more light-touch approach to enforcement. I echo Mr Wallace's point that we are there to advise businesses and support them as opposed to using a hammer to crack a nut, but sometimes enforcement is necessary.

**The Convener:** Is moving away from reports to the fiscal and prosecutions a consequence of your taking a more light-touch approach, or is it because a realistic view is being taken that making reports to the fiscal or pursuing prosecutions is very time consuming, expensive and uncertain in its outcome, so the fixed penalty in the bill should be used?

I presume that we have reduced the number of reports to the fiscal and prosecutions. How many fixed penalties would you expect to issue? Has there been any calculation of that in the analysis of

the use of fixed penalties? What makes the fixed-penalty notice an enforcement tool? What creates a deterrent? Is it the awareness that you are prepared to use it and, indeed, the level of use? A year later, will politicians start asking why you are not using the fixed penalties?

**Tony McAuley:** I will give you an example, which relates to underage sales of tobacco. Trading standards officers have the power to issue a fixed-penalty notice when a trader sells cigarettes to someone who is under 18. Again, it is my staff who are involved in the process rather than me. The first fixed penalty is £200; there is an escalator if there is a second offence, so the amount goes up to £400. If there is a third offence, again there is an escalator, so the amount can be £600. On the third offence, we can apply to a sheriff for a banning order. That trader will be banned from selling tobacco products for a period of time that is set by the sheriff.

Incremental penalties are available, because mistakes happen. If a trader sells cigarettes to someone who is underage, in the first instance they are given a fixed penalty. Hopefully, that conduct would be driven up to compliance as a result of that fixed-penalty incident. The habitual trader—there are some who habitually sell cigarettes to underage buyers—will break the law because of the financial aspect: he is making more money selling cigarettes to underage schoolchildren than he is losing by paying the fixed penalty. That is why there is an escalator; we hope that it assists with driving up compliance in such cases. I do not have the figures with me.

**The Convener:** Those are good examples. Mr Martin, that is perfectly reasonable, is it not? Dealing with repeat offenders, giving warnings, help and assistance, making people aware and taking an incremental approach towards punishing the people who are ignoring the law—is that not reasonable?

**David Martin:** To some degree, but I posit that if we consider the challenge that is involved in a trading standards officer taking a retailer to court compared with the officer putting a fixed-penalty notice on the retailer, there is a difference not only in relation to the burden of proof but in how expedient the action is to take. If we are going down an FPN route, that is fine—we can accept some of the arguments around the experience of that system. However, we want to ensure that the notices are handed out fairly and proportionately and that there is an ability to some extent, as there would be through the court process, to challenge some of the decisions.

We have 32 local authorities and sometimes, I regret to say, they take 32 different decisions or interpret things differently. From our perspective, when it comes to a national regulatory approach,

we do not want that regulation to be interpreted in different ways. However, everyone is human—that is what happens. Therefore, mechanisms have to be in place to ensure that where there is a difference of opinion, for example, there is that check and that safeguard. Frankly, retailers should not have to accept an FPN simply because a trading standards officer or an environmental health officer has decided that that is their local authority interpretation of what should and should not be on a label, for example.

10:15

As I mentioned with regard to the FIR, there is still not agreement between the enforcer and the regulated on what a lot of this will mean. The fact is that a lot of the regulation on food is incredibly complicated. I am certainly not criticising trading standards officers or environmental health officers—I am positive about them, and our members tell us that they discharge their duties in a good way in Scotland. However, things slip through the net and people interpret legislation differently. It is not often that all businesses and the regulator read a piece of regulation in the same way. We just want to ensure that, before it gets to the point of FPNs, everybody is on the same page and that is where the primary authority kicks in. At present, if someone is taken to court, the two parties can fight it out and prove who has the right interpretation. If we just hand out FPNs, there will not be the same ability to challenge.

The reason why the Scottish Government introduced the primary authority arrangements last year is that, as my members, including businesses that operate throughout the UK, have told it, frankly, when it comes to this sort of issue, the regulatory environment in England and Wales is better, because we have a closer working relationship with the local authority trading standards departments and we have that safeguard. Businesses are a lot clearer. We have the due diligence, the advice and the assured guidance, which we do not have in Scotland.

Finally, if we are going to issue FPNs, our plea would be that they be issued not just to the store or store manager but to headquarters. Our members want to know if a store is perceived as not being compliant. If an FPN is just handed to the store, obviously, the chain of command might not feed that all the way up to the top.

**Colin Wallace:** I am afraid that I cannot agree at all with a lot of what Mr Martin said. I do not know whether the committee is aware of the Scottish Food Enforcement Liaison Committee, or SFELC, which comprises enforcers, the Scottish Government and trade bodies such as Scotland Food & Drink. It is a multi-agency body that has met regularly for a number of years, including

under previous Administrations in its previous incarnations. The body provides excellent consistent advice to enforcers across Scotland, including training advice, matrixes for qualifications and guides as to how the industry should comply with legislation and how enforcers should apply it. The model is actually envied by people in England and Wales. In Scotland, we benefit from having 32 authorities that can all get together regularly in one room. That group works really well, so I feel that we are more than adequately covered in that regard.

On fixed penalties, the current code of practice for food visits means that, if an officer finds a contravention, they notify the food business operator. If the contravention is still there when the officer goes back, they have to escalate the issue. After maybe two or three visits, an improvement notice will be served. Really, it is ridiculous to have to do something like that over a repeat contravention. As the convener said, it takes time to write the reports, go to court and so on. When there is a repeat contravention, a fixed-penalty notice is a means of dealing with the issue without it having to go any further.

**The Convener:** I will move on to labelling, given that we have had quite a good balance of views on the issues to do with fixed penalties. We do not need to resolve the issues now—we will do so from the evidence that we have received. Other aspects that have been mentioned are labelling, the FIR and the legislation that is working its way through.

**Bob Doris:** I will try to be brief, because some of the issues have already been mopped up. I have asked this question at each evidence session on the bill. It seems bizarre that, at present, officers have the power to seize unsafe food and courts have the power to destroy or dispose of it, but that does not apply to fraudulent food. If something is claimed to be lamb but it is beef, technically, the courts do not at present have the power to seize and destroy it. They will have that power. My understanding—I do not know where I get it from and I am happy for the witnesses to tell me what they think—is that the bill's policy intent is to deal with not minor labelling infringements but fairly blatant food fraud within the food chain and in the retail sector.

Are witnesses content that officers should have the power to seize food and that courts should have the power, if need be, to destroy fraudulent food? It seems bizarre that trading standards officers could seize and destroy trainers that are not Adidas or Nike but that, when it comes to food, they do not have that power. Does the bill redress that balance? Does it do so in a commensurate and measured way?

I think that it is the right thing to do anyway but, more important, is there any evidence that, when food fraud has been identified, the food has continued to be in the food chain because the powers are not there to remove it? Is the approach that is taken in the bill right? To what extent is there a problem?

**Archie Anderson:** We condemn food because it is unfit for human consumption. No one has any objection to that whatever. However, it would seem ridiculous to condemn food that is fit for human consumption. It is true that someone is committing a fraud by selling lamb as pork or pork as lamb. However, to take your analogy with the trainers, when trainers are seized they are often sent to charities. There is no reason to condemn the food. Fraud is committed when food is sold under a different name, but that does not mean that the food is condemnable; it should be given to charities to use. For heaven's sake, do not condemn good food.

**Bob Doris:** You make a reasonable point. The food should be seized and destroyed or directed elsewhere. However, my point is about whether the food is put back into the food chain and returned to the supplier for the offence to be perpetuated, rather than being seized by the courts and redeployed elsewhere.

**Archie Anderson:** No. It should be taken from the people who committed the fraud.

**Bob Doris:** That point is well made.

**David Martin:** Our interpretation of the bill as drafted is that without the necessary and appropriate controls we could end up with some pretty disproportionate enforcement action, if we take it to its logical conclusion. That is not to say that I do not agree with the principle of what you are trying to say, but we have to ensure that the bill does not result in some pretty calamitous outcomes, which is what—on our reading of it—it could end up doing.

I completely agree with Archie Anderson's point about what happens if the food is not condemnable. There is also an issue about proportionality and about the consistency of interpretation of provisions such as those on labelling, which are very complicated.

We would like a two-stage approach to be built into the process. First, there should be a right to challenge the decision on whether the food should be seized and destroyed. The food should not just be taken and destroyed, at which point someone can appeal the decision and have the monetary value made up, because some important things are at risk. For example, consumer confidence is dented when there is a product withdrawal and damage is done to the supplier and the producer.

In our case, if we are forced to withdraw a product—let us say that it comes from a small Scottish producer in the Borders—because of a misdemeanour on a label, there is no guarantee that that slot will be filled again by the same small indigenous Scottish producer. It will very quickly be filled by something else, so there is damage to the producer as well as to consumer confidence. There is also damage to the retailer, as a result of a response that might be deemed to be disproportionate.

When there is an issue of food safety, we are very clear about what happens and there is regulation that deals with that. There is no question but that the product has to be removed immediately. Even in the case of horsemeat, when there was not an issue of food safety but there was an issue of consumer confidence, my members removed the products immediately. There was no question about that and it all came off the shelves. However, if the issue is to do with labelling rather than safety, there is a question of proportionality. Is it just about a misspelled label? Is an ingredient wrong? Is the product misbranded? Those issues could all be considered.

There is also the issue of consistency. Is our interpretation of the labelling regulations the same as the enforcer's interpretation? It might not be, so we need the ability to appeal. Given that, from April, this area will be governed by the FIR, we can bring it under the primary authority arrangements, so we can have those checks and balances.

**Uel Morton:** It is important that the legislation targets the right person. To some extent, the retailer is a soft target, because he is there and he is available. As we know from the horsemeat scandal, the substitution of beef with horsemeat in ready meals and burgers occurred further down the chain. It was not committed in the UK. It happened in Ireland, in the case of the burgers, and in France, with a background in the Netherlands. It was a complicated international food fraud.

It is important that in our efforts to move forward on this and promote the integrity of Scottish food, we look at all levels of the supply chain. Quality Meat Scotland is doing the work on farms and in abattoirs to underpin the integrity of our brands, but there is a gap, which we have started to look at since the horsemeat scandal, in terms of the integrity of further manufacturers, what they are doing with products, how they are doing it and the audits that are required.

The committee should consider whether we are targeting the right people, given who is actually committing the fraud. It is important that the penalties are proportionate to the amount of gain

that the perpetrator has had. There must be some link with turnover or the degree of profit that that person has had. For example, horsemeat cost 70p a kilo and beef was about £3.20 at that time—it has since gone up to £4 a kilo. You can see what the adulteration factor of 25 per cent can do in terms of generating additional margin. We need to target the legislation at the unscrupulous people further back in the chain.

**The Convener:** Is the bill in its current form sufficient to assist you in that aim? Does it make the difference that you would want it to make in order to get that focus? It is the bill that we are looking at today. Does it do the job to help you ensure the outcome that you would want?

**Uel Morton:** I have read the bill and I do not feel qualified to give you an answer to that, because I am not a lawyer. I would push that question back and say that we need to make sure that the bill can achieve that aim.

**The Convener:** How do we do that? What does the bill need to say, not in legal jargon but in general terms?

**Uel Morton:** You need to be able to get further back in the supply chain. The point that I am making is that it is not necessarily down to the retailer. He is the guy who is sitting there with the product on his shelf, but he might have been duped by the unscrupulous operator further back in the chain. We need to make sure that the bill has scope to dig into the area between the primary producer and the person who puts the product on the shelf so that we can root out habitual offenders. Those offenders are probably the same people who are not paying their tax returns; people who cheat across a wide range of areas. We need to use intelligence across government to identify where some of those operators are.

**Colin Wallace:** This is not an option that would be used that often. Food would be detained for further investigation to get more information with regard to what is wrong and the implications. There are certain compliance measures that some of the food business operators could take in relation to rewrapping, relabelling or reprocessing that would achieve compliance. You would not need to use the tool in that case, because it would be inappropriate. Enforcers would not be going into businesses and issuing seizure and detention notices willy-nilly every day. It would happen only where the mechanism that currently exists cannot resolve the issue and where there are concerns about potential food safety issues linked to the food standards issues.

10:30

**David Martin:** From my perspective, the question is what we want to do with the labelling provisions. There is an issue around food safety. If the label is incorrect with respect to an allergen problem, that would be about food safety; it would not be a fraudulent label. Is the label just incorrect? Is there something on it that is misspelled, or is there something on it that has been included that should not have been included? That is a different matter.

Finally, there is the issue of food fraud. Fraud is a criminal activity. Labelling provisions will not stop criminal activity. Uel Morton is absolutely correct: that is a supply chain issue, which needs to be dealt with much earlier on in the supply chain.

I in no way belittle the seriousness of the horsemeat situation, which my members took incredibly seriously—it was a very serious issue. The retailers went to their suppliers, they gave them a schematic and asked them to give them a product and to label it, and the retailers would then sell that product. What they often asked for was British beef; what they got was neither British nor beef.

As Uel Morton has said, much of the problem stemmed from complex supply chains that were outwith the UK. Since the horsemeat issue, our members have upped the amount of random testing and auditing that they have done, as well as sharing intelligence. A working group has been set up under the Food Standards Agency. With other industry groups, our members now pool intelligence to target testing at at-risk products and supply chains. There is more auditing of supply chains, including supplier to supplier. In particular, there are more unannounced audits on suppliers, much to the consternation of some of them.

A lot of things are happening in order to root out fraud, but they have to be targeted and evidence based. In the case of horsemeat, we tested more than 10,000 products. Of those products, 0.1 per cent revealed evidence of horsemeat above the 1 per cent threshold, so they were 99.9 per cent clear. Again, I do not cite that statistic to belittle the seriousness of the incident, but it shows how targeted we must be to root out that fraud.

We need to deal with the supply chain. That involves evidence sharing and adopting a risk-based approach. It is about getting our resources in the right place. Will a label change all of that? I do not think so. If it is possible to defraud a product, it is possible to defraud a label.

**The Convener:** Job done. Are you all working together, as suggested, and sharing such information?

**Uel Morton:** There is a lot of working together across the industry and supply chains, and we need to increase that. However, the retailer has a responsibility. Retailers have adopted a global sourcing policy. They are driving what they would describe as costs out of the system, and they are taking tenders for products. That price competitiveness among UK retailers is the driver for the race to the bottom that there sometimes is. Quality can get compromised. That was the driver in the horsemeat scandal. There was someone out there who could supply a product at a cheaper price—it would be possible to get 10 burgers for 80p or whatever it was. The driver was the cost. We know that all retailers have a premium offer, a standard offer and a value offer, but the retailer has to ensure that his supply chains have the necessary integrity.

**Tony McAuley:** I am not particularly qualified to speak on food issues, but we in trading standards work in the general fraud environment, and horsemeat was an international fraud. It was serious, organised criminals who were involved in that exercise. If those are the people who are involved in it, they will seek an advantage where they can.

It is a matter of traceability, of being more intelligence led and of being able to pass intelligence between agencies so as to stop the frauds happening. That can involve European agencies, international agencies and our own agencies in the UK. That allows intelligence to be passed so as to identify food fraud.

As I say, however, food is not my locus, so I am not qualified to speak on that.

**The Convener:** Everybody would accept that the bill will not deal with such matters around the horsemeat scandal, for instance. However—and considering the good intent of the Scottish Government—we cannot, after a horsemeat scandal, not have that in our thoughts as we seek to bring in measures to protect the quality of the brand and so on.

Food fraud is a sexy title, but we have heard evidence that the issue is much more common with cod and haddock. Things need to be put in perspective, which is where the bill comes in. This is not all international fraud; it can be about cod and haddock, or lamb and beef—about what is in someone's curry on a Friday night. Will the bill tackle such issues? Does nobody want to comment? I suppose that you do not want to speak about the bill and talk about cod or haddock, rather than horsemeat. David Martin wants to speak—I have provoked someone.

**David Martin:** I am happy to jump in. Having provisions to threaten the withdrawal of a product on the basis of labelling will not solve the problem

of whether a fish is cod or haddock, because such provisions are for a reaction after the event. The problem needs to be dealt with much earlier in the supply chain.

We need to be sure that the supply chain has integrity. For example, when a retailer gives a supplier a specification for a product that contains elements of a fish, the retailer must ensure that that is exactly what they get in return.

Uel Morton is right that there is an onus on retailers—the horsemeat situation increased the pressure on them to do this—to ensure that they are satisfied not just with how they retail a product but with their supply chain all the way to the end. The only way in which we will do that is through a lot of the measures that we are already taking, such as targeting our testing, sharing our intelligence, auditing our supply chains more often, and taking complexity out of the supply chains—that was an issue in the horsemeat situation—and shortening them. We are doing unannounced audits on suppliers—they dislike that, because it drives up their costs, but it secures our supply chains.

Such steps are being taken but, to be frank, the bill does not deal with any of that. The bill deals with labelling.

**The Convener:** A fish processor recently told us that it is heavily audited by local environmental people and constantly by supermarkets. It sells into the bigger UK market and its worry is that, if labelling requirements became more prescriptive in Scotland, it would have a difficult job and incur costs in dealing with the big supermarkets. Does anyone want to reflect on that evidence from a producer about the balance?

**Colin Wallace:** I do not think that that is the particular issue; the concern is about misleading the consumer. We would like accurate labels, so that the consumer can make up their own mind about what they are buying. The consumer should not be misled.

You mentioned the haddock, whiting and cod issue. People should get what they ask for. Another issue is meat substitution, which could have a grave effect on people of certain religions, who would be outraged at eating something that they thought was something else.

Often, people are misled by accident, but sometimes, it happens by design. We must deal with the issue appropriately and proportionately. The bill sets out provisions to deal with all such issues.

**The Convener:** There is an ambition on health and nutrition. The committee is interested in whether the bill will give us an opportunity to create healthier lifestyles by promoting healthy

eating and dealing with obesity. Does that come into the same sphere?

**Colin Wallace:** Very much so. We in REHIS are keen to take that approach, but it is all about compliance at the moment. Such work has to be taken forward slowly. We do a lot of work with our communities through food and health courses. It might sound bizarre that we do an elementary cooking skills course, but the number of youngsters in schools and so forth who do not know how to cook is amazing. A lot of their parents are not aware of how to cook things properly and in a nutritious way—the way in which the likes of my mum used to cook, which she taught me. A lot of good preventative work could be done.

**Richard Lyle:** Most of the questions that I was going to ask have already been asked. I am interested in the points that have been made by Mr Morton and Mr Martin. Last week, I divulged the fact that I was a grocer for nearly 20 years, and, with the greatest respect, I do not agree with the points that Mr Martin makes about environmental health officers. I always found them quite amiable and reasonable, and they tried to help before they came along and, as Mr Martin would suggest, stuck the boot in. They are reasonable guys.

Various proposals were made on the size of the board. Three members and a chairman is too few. How many members do you think should be on the board, and what type of people would you like them to be?

**Uel Morton:** In our written submission, we suggested that three members and a chairman was too few. We feel that it is important for a balance to be struck so that there is a broad representation of people who know the industry and how it works. At the moment, the FSA national board does not achieve that because it does not appoint industry people—it says that they would have a conflict of interests. I take the opposite view, which is that we need a balance between independent board members and members who have detailed industry knowledge of how supply chains work. It is also important to strike a balance between having enough board members to reach a consensual decision on any issue under discussion and not having so many board members that the board becomes unwieldy or too expensive to service. As a layman, I would suggest having between eight and 12 members.

**David Martin:** I would not necessarily put a number on it, but there are certain principles to be observed. The board must be fully independent and free of any special interests, whether from industry, public health or any other sector that has an axe to grind. On that basis, I would preclude the retail sector and industry. As long as there are

people around the table who have the relevant expertise and understanding of the sectors with which they are dealing, that will be satisfactory and will prevent any special interest bias. The Scudamore review did not manage to achieve that, as it did not have the expertise to deal with retail and anyone beyond the farm gate.

From our perspective, the board needs to be truly independent and not vulnerable to being captured by special interests or pressure from the outside. It must also be free of those on the inside. As long as there is relevant expertise and industry knowledge, I would not necessarily suggest that there should be people from industry around the table.

**Archie Anderson:** I would like to see one specialist group on the board—the consumer. The consumer should be represented on the board, as they are the end user who is going to eat the stuff. They should be represented fully.

**Uel Morton:** In response to David Martin's point, I would say that one man's bias is another man's detailed insight into a particular situation.

**Colin Wallace:** I will make one final point. The balance is correct; it is the skill set that requires that board members will be specialists in other areas. I think that Mr Martin meant that he did not think that somebody from a certain sector of public health should be on the board. However, to me the bill is all about public health—it is about improving the health of the public and providing the consumer with confidence in their safety. That should be the overarching objective for any board member, and I am sure that it would be because it is the same for yourselves.

10:45

**The Convener:** Mr Martin, will you tell us what you said?

**David Martin:** I did not mean that public health should not be represented. I was talking about, for example, those who lobby on behalf of public health interests—lobbying organisations or other organisations, which are perhaps equivalent to the SRC but on the public health side. There absolutely should be a public health input—that is right—but it should not necessarily come from people who have a slightly more political agenda.

**The Convener:** The committee has had quite a lot of evidence about the need to pool resources as much as possible in relation to food research, so that we draw in all the information that we need if we are to be more proactive, not in pursuing prosecutions but in using research and knowledge to have a bigger influence. I presume that the witnesses value the current approach and want it to continue.

I see that Richard Lyle wants to come in. I was not asking your opinion, Richard, I was trying to elicit—

**Richard Lyle:** I thought that I would come back in on my question, convener.

**The Convener:** I will let you back in, as I always do, but first—

**Richard Lyle:** Perhaps you cannot see me, because I am sitting up here with the witnesses. I—

**The Convener:** Richard, I was trying to elicit a response from the panellists. If they do not want to respond, that is fine, but if they do, I will bring them in first.

**Colin Wallace:** You asked earlier whether we think that our collaborative working arrangements are sufficient to enable us to consider and put together all the information and intelligence, and I mentioned the Scottish Food Enforcement Liaison Committee.

I will run through who is represented on the committee. Its members include: the Society of Chief Officers of Environmental Health in Scotland; local food liaison group reps; the Association of Public Analysts; the Scottish microbiological group; Health Protection Scotland; the Society of Chief Officers of Trading Standards in Scotland; Citizens Advice Scotland; REHIS; the Convention of Scottish Local Authorities; the Food Standards Agency in Scotland; the British Hospitality Association; the Scottish Food and Drink Federation; the Scottish Retail Consortium, which is invited to come along; the consultant in public health medicine group; the Scottish Food Advisory Committee; National Farmers Union Scotland; and the Scottish Government rural payments and inspections division.

That gives you an idea of how broad the committee is. A lot of information comes in and a lot of consultation goes out about what should and should not happen. We have the building blocks to be able to continue to take things forward.

**The Convener:** My question was badly communicated. I was asking whether you have any influence on the development of research into issues that are pertinent to Scotland. We have heard that Scotland has particular problems with *E coli* 0157, for example. Will the bill give us more opportunity to focus expertise so that we get to the heart of such issues?

**David Martin:** Before I answer your question, I will offer a rebuttal to Mr Wallace's point: the Scottish Food Enforcement Liaison Committee cannot hand out assured guidance that is backed by statute and enables people to know that if they follow the guidance and behave themselves they

are within the law and have nothing to worry about in relation to enforcement action.

On resources, we said in our submission that our members are concerned that a move from having a single body that does everything across a single market, which is what the UK is, in effect, might lead to resources and expertise being denuded. The UK is a very integrated market, particularly from our perspective; our members throughout the UK are probably the lion's share of the export market, if not the only export market for Scottish producers. I have seen the evidence that other witnesses have given, and the Scottish Retail Consortium has discussed the matter with the Scottish Government, and we are aware that there will be memorandums of understanding and protocols. That is all fine, but we would appreciate having a lot more detail now, as opposed to having to hope that everything falls into place after the bill has been passed.

The area is far too important for us to take a chance on it; we must be absolutely sure that the new body, when it is set up, has exactly the same resources—not a penny less—and that the resources go to everything that we want them to go to. We must have consistent, co-ordinated advice and the necessary access to and influence over the appropriate advisory committees. There is currently an element of taking things on faith. We are slightly sceptical, but we hope that, at the end of the bill process, how everything will work will be clear and transparent.

Public health is an additional area that the new body might be asked to deal with. Any addition to the body's scope should be properly resourced.

Members of the committee might be aware that over the past three years the retail sector provided £95 million to the Scottish Government in the form of a public health supplement. The supplement would be an ideal funding source for action on public health and obesity. However, we are still clueless about how the public health supplement has been used to support public health. There is no clear audit trail on how the money has been used. Money is coming in from us again this year, which is specifically targeted for public health.

**Uel Morton:** We have talked a lot about food safety and labelling, and enforcement in that regard. The new body will also need to consider how to improve the national diet. The bill as drafted does not make enough provision on how that will happen. David Martin mentioned obesity; we can see the effects of obesity in Scotland in the context of heart disease and other health problems.

I know from speaking to ministers that there is a desire to create a healthier and better Scotland. At the moment, our citizens are making the wrong

choices. I would be interested to see how the committee can influence the bill so that it provides greater scope for the new food body to take more of a lead and do more educational work.

I have been at Quality Meat Scotland for eight years, and every year that I have been there we have done more and more work with young people in schools. There is a great desire for more information on how to have a healthy and balanced diet. We need to take the issue seriously and influence the citizens of tomorrow while they are at primary school and at a stage at which they will take on information, so that they will put their learning into practice when they have grown up and are raising their own families.

I agree with what Colin Wallace said about the lack of cooking skills. We do a lot of work on that, but we are a small body with a limited budget. We would like the new food body to be able to really take the issue on and we would be delighted to work with it—putting our little bit with its bigger bit—to make changes in the area.

**The Convener:** Does anyone else want to comment on public health?

**Uel Morton:** May I make another point, convener? We need to make the distinction between what we traditionally regard as public health, which is about safety, and the dietary and nutritional aspects of public health. When you ask a group of professionals about public health, they will think about the safety aspect, but the issue needs to be considered more widely.

**The Convener:** Okay. I thought that I would give Richard Lyle the last question, but—

**Richard Lyle:** I am quite happy to take that on board—

**The Convener:** Yes, but Bob Doris wants in. What do you think? Do you want the last question or the second-last question?

**Richard Lyle:** I have two quick questions. Bob can have the last question.

**Bob Doris:** You are too consensual, convener.

**The Convener:** Richard Lyle.

**Richard Lyle:** Thank you, convener.

I agree with Mr Morton about labelling. I had an interesting meeting with Coca Cola. Did members know that Coca Cola adjusts its formula in every country, to meet the local requirements? I found that interesting. I do not know how the formula varies between the UK, France, Luxembourg and wherever, but it changes throughout the world, which is quite interesting.

On the question of who should sit on the board, David Martin is a sceptic in a sense. I agree that

the board could possibly be bigger, as I am sure that there are many people out there with the required expertise who are not the Asdas or the Morrisons, or the retail consortium guys.

**The Convener:** Bob Doris will ask the last question.

**Bob Doris:** I will try to fit a question in, but first I praise Mr Morton and Mr Anderson as the only two witnesses who have told us who should be on the board, while everyone else has ducked the question. I thank them very much for that.

On the public health levy, it is worth putting on record that it was given that name because it targeted the largest retailers selling both alcohol and tobacco.

I will not go back to the detail on labelling just now. I asked my previous question to get some reassurance that there will not be microdetail in labelling, and that the provision is more about food fraud. I think that people readily assume that, if they are paying for lamb and getting beef, that is just wrong. It is not a minor labelling infringement; it is fraud. Likewise, if a retailer is offered a deal for beef that is too good to be true, and the beef turns out to be horsemeat, because the latter is 70p a kilo while the former is £3.80 a kilo, there is a responsibility on the retailer to say something.

I take on board that you would have to follow up such an issue not only with the retailer but right through the food chain, and I am sure that the expertise exists to do that. I wanted to mop up some of those issues because I thought it was important to provide balance.

My question is on how all that fits in with the duty to report. If a retailer, or whoever it is in the food chain, gets a deal that is just too good to be true, and they know it is iffy and a bit dodgy, I would expect there to be a statutory obligation on that retailer to raise that with the authorities. Is there now a duty to report when it is believed that there could be an infringement? Some views on that would be welcome.

I do not know how widespread that is, but I praise the retail sector for its action. A representative from Tesco came before the committee the other week and said that, since the horsemeat scandal, there is much more transparency in the testing that Tesco does and in reporting the results.

Tesco is working in partnership with food standards experts and other large retailers on taking a more risk-based targeted approach to testing. There was a feeling that, before the horsemeat scandal, people sometimes tested to validate what they thought was safe. We need to build in the risk element and target products that it is more appropriate to test.



There are two aspects to my question on the duty to report. Do people see the duty as an important part of the bill with regard to everyone meeting their responsibilities? Is enough being done to provide transparency in testing by the large retailers? Is that better done voluntarily, or should we consider putting it on a statutory basis?

That is not a very brief final question, but it fits in well with previous questions.

**The Convener:** Thank you, Bob. If you agree, I will ask the panel to focus on the duty in the bill and the inspections. I would like quick responses, please.

**David Martin:** I will start with the duty. We may have slightly misinterpreted it in our reading of the bill, and we have no problem with it in principle, but I am at a bit of a loss to understand why it has been included in the bill, given that the food information regulation will make that provision anyway in April 2015. The FIR states:

"Food business operators which do not affect food information shall not supply food which they know or presume, on the basis of the information in their possession as professionals, to be non-compliant with the applicable food information law".

We will be compelled and legally obliged to report from April 2015 next year anyway, so although in principle the duty is fine, I do not understand why it is in the bill.

Tim Smith from Tesco is right about transparency. The view that transparency is key is shared by all our members, and we need to ensure that we get it right. As I have said, we have, since the horsemeat incident, tested approximately 10,000 products and shared all that information publicly and voluntarily with the FSA. However, the FSA is probably not interested in every single one of those 10,000 tests, so they are probably not a good use of resource. We are probably better off sharing trends with the FSA and making that information public on a targeted basis. That would be an easier way to make the information more relevant and digestible, and more pertinent for enforcement reasons.

**The Convener:** Thank you. Colin Wallace can go next.

11:00

**Colin Wallace:** Yes, there should be a duty to report. A lot of businesses work closely with environmental health and give us information about areas that they are sceptical and concerned about, because they know that we are there to help and to provide them with support, advice and guidance. The reason why I say that they should have that duty is that there would then be no reason for them to turn round and say, "We weren't aware. We didn't think there was anything

wrong." If they know that there is a duty on them, which is what we would advise, we can assist them in understanding their responsibilities.

I agree with everything that has been said about transparency. My one concern is that local authorities have consistently reduced their sampling budgets over the past 10 years to make savings and that has caused difficulties in relation to properly targeting risk-based approaches to local and national food sampling. Local authorities want to do as much as they can. Ironically, once the horsemeat DNA scandal broke, all of a sudden a flurry of samples was taken. The scandal might have been found out earlier had local authorities been sampling at the rate at which they had done previously.

**The Convener:** You mentioned that part of your role is to keep people informed about legislation. Have you been briefing people about their responsibilities from 2015? As David Martin pointed out, the food information regulation will be law in 2015. Do people know that, and have you made them aware of that in your role?

**Colin Wallace:** Environmental health personnel will discuss that with the people whom they meet on a daily basis. Environmental health is much wider than just food safety, although food safety is an integral part of that, but when environmental health personnel are dealing with other issues they advise people about what may be on the horizon.

**The Convener:** I confess that I did not know that the FIR would be law in 2015, although we are scrutinising the bill. It is important for the people who will have to apply the laws and comply with them to be well aware of them; that might be part of an education programme.

**Tony McAuley:** I concur with what has been said about the duty to report. The FIR will come into force in April next year. If a retailer or trader has guilty knowledge of a possible fraud, they must pass on that information. That duty must be applied.

I agree with Mr Wallace's point about transparency, which is desperately needed. Ultimately, it is the consumer, as the end user, who must have all the information. Something as simple as the substitution of spirits is an example of that. If there is a Smirnoff bottle behind the bar but it is filled with supermarket vodka, that is a simple fraud, but it means that someone is paying a higher price for a branded vodka, or for whisky or some other drink, and getting a substituted spirit. Environmental health can take that as a food safety offence, and we in trading standards can take it as a trading standards offence under the Consumer Protection from Unfair Trading Regulations 2008, so we can be creative about

how we enforce the legislation, but more transparency in the marketplace is desperately needed.

**Uel Morton:** It sounds as if the duty to report is dealt with, so I will comment on testing. Testing should be proportionate, otherwise we are wasting resources. I would ask a more fundamental question, though. I would ask, why are we testing? We are testing the product to see whether it is what it says on the tin or the pack, and one of the issues that the consumer faces is that there is too much confusing information on the pack. Some of the logos and symbols that are currently being used do not actually mean anything; they have no legal definition. For example, the Scotch beef logo means that the meat has come from an animal that was born, reared and processed in Scotland, but the saltire on a packet of beef means nothing and has no legal definition. We need to ensure that we are testing for the right reasons. The information on the pack must be relevant to consumers so that they can make a decision and the enforcement authorities can enforce what needs to be enforced.

**The Convener:** Thank you—you got the last word. On behalf of the committee, I thank the witnesses for the time that they have given us this morning. The evidence that they have provided has made it an interesting session. Thank you very much indeed.

11:05

*Meeting suspended.*

11:10

*On resuming—*

## **NHS Boards Budget Scrutiny**

**The Convener:** Agenda item 4 is our continuing scrutiny of national health service board budgets. Today, we are hearing from the Scottish Government. We welcome Paul Gray, who is the director general of health and social care and chief executive of NHS Scotland; Christine McLaughlin, who is deputy director of finance health and wellbeing in the Scottish Government; and John Connaghan, who is the Scottish Government's director for health workforce and performance.

I believe that you wish to make an opening statement, Mr Gray.

**Paul Gray (NHS Scotland):** I thank the committee for this opportunity to discuss the budgets. We start from a strong base in NHS Scotland budgets; we plan for the long term and the short term, and we have clear financial planning assumptions. Our base is built on the fact that boards have delivered services within financial plans for the past six years, and they continue to deliver efficiency savings at or above the targets that have been set.

I assure the committee that budgets are not developed in isolation; they form part of boards' planning for service delivery and workforce. Our methods of funding are designed to provide equity as well as stability, and to incentivise the right behaviours around efficiency and planning.

Boards' plans for 2014-15 will deliver a balanced position. We recognise, however, that it is becoming increasingly challenging to do so, and that will continue. That is why we have such a strong focus on improvement and efficiency, and it is why we are proceeding with the very important work on integration of health and social care.

If there is information that the committee wishes to know that we do not have immediately to hand, I undertake, as I always do, to provide it as quickly as possible.

I will make good use of the colleagues who are with me, and who have expertise in particular areas in which the committee may have an interest.

**The Convener:** Thank you for those short opening remarks. We will go directly to questions.

**Nanette Milne:** It will probably come as no surprise to people in the Government that, as a member for North East Scotland, I have a particular concern about the NHS Scotland resource allocation committee—NRAC—formula. At this point, NHS Grampian is £34.7 million below parity, while NHS Greater Glasgow and Clyde is

above parity by more than that. I know that there is an aim to make things more equal over the next three years or so, but I would be interested to know how the Scottish Government expects to find the resources to bridge that gap. Given the financial pressures on health boards and alignment towards parity, how can NHS Greater Glasgow and Clyde be expected to undergo a reduction to get towards parity, and how can NHS Grampian expect to have an increase towards parity?

**Paul Gray:** Christine McLaughlin will say a little more about the detail. One of the reasons why we have set a trajectory to bring boards close to parity within the next few years is to give them foresight of what we plan to do, so that we do not introduce a series of shocks into the system.

We recognise the pressures that are faced by boards. We seek to support them through a number of measures, including interventions that John Connaghan and his team lead, to ensure that boards that face short-term pressures are supported. Christine McLaughlin will give you a slightly more detailed account of our approach to moving towards NRAC parity.

11:15

**Christine McLaughlin (Scottish Government):** The planning assumption in 2014-15 is that we are putting £47.5 million into bringing boards closer to NRAC parity. We have planning assumptions on additional funding over the next three years, as part of the budget-setting process, to put aside money to bring boards closer to parity. The trajectory based on the current figures for NHS Grampian shows that the money that we are putting in over the next three years will bring it to within 1 per cent. That involves a planning assumption for that period.

NRAC is about relative shares. We do not take money from boards that are funded above parity, but additional money goes into boards that are below parity. All territorial boards are receiving a real-terms increase for 2014-15. The plan is for that to continue in future years, including 2015-16. Boards such as NHS Greater Glasgow and Clyde would still receive a real-terms increase in their funding, but they would not get the additional top-up on NRAC funding. That is how we manage the relative shares so that no board is below 1 per cent below parity.

**Nanette Milne:** How can the NRAC formula guarantee that the allocated resources reflect the true needs of an area, and that they are not based just on proportion of the population and age groups, which I think has previously been the case?

**Christine McLaughlin:** I can give more information on how that is done, if you want more detail. In general terms, the formula takes account of population, and it takes into consideration morbidity and life circumstances. There is an adjustment within the formula in relation to the number of hospital admissions in an area and the average length of stay. There is also a mechanism within the formula for understanding relative need and the cost of that need within each population.

There is a group that represents boards and which has health economists on it, which always tries to refine the formula as it goes. Work is currently being done on acute morbidity and life circumstances over a two-year period. The group is considering whether all the relevant factors are being taken into account.

**Nanette Milne:** I return to the two board areas that I mentioned. The NHS Grampian area clearly does not have the extent of deprivation that NHS Greater Glasgow and Clyde has to deal with, but we do have a particularly rapidly ageing population in Aberdeenshire. There are also hidden pockets of deprivation that perhaps do not always come to light. There is a real concern there. It is about getting a bit more parity so that we can achieve what is best for the population as a whole.

**Paul Gray:** As Christine McLaughlin has explained, we seek to keep a close watch on the formula. Populations change; we want to be sure that we reflect population mobility. No funding formula will be perfect. It cannot change weekly or monthly; it changes slowly over time to reflect changes in population and other factors. We are considering the impact of providing remote and rural services through the addition of an element that would reflect variations in the cost of providing out-of-hours general practitioner services across urban and rural geographies, and which better reflects the higher costs of providing services in the islands.

We try to keep the formula under close review and to ensure that changes in circumstances are reflected. However, given the allocation process that we have, there will never be a perfect fit for every circumstance.

**The Convener:** The matter is important to those of us who live in the Greater Glasgow and Clyde NHS Board area and who represent constituencies there. Populations can change; they are usually declining and they leave behind—in crude terms—the old, the lame and the sick. That has not changed. Populations may change, but the disproportionate need of those people grows.

We have had evidence from both sides of the argument, including from senior board members, that although everyone accepts that there is no

perfect funding mechanism, more work needs to be done to refine the system. If you have seen that evidence, what is your response to it?

**Paul Gray:** I will turn again to Christine McLaughlin in a second. It is fair to say that senior members of most boards can advance compelling arguments about the local conditions that they face. I do not want in any way to underestimate or undervalue the multiple deprivation that is faced by communities that are served by Greater Glasgow and Clyde NHS Board. That is why we keep the formula under review.

I want to avoid—I do not think that it happens—NRAC funding turning into a competition among boards. I do not say that simply to make the point; the situation is as fair as we can make it at any given time and changes will inevitably introduce elements of perceived unfairness, which is why we try to keep the matter under review.

Would you like to hear more about that from Christine?

**The Convener:** Yes, please.

**Christine McLaughlin:** In 2014-15, Greater Glasgow and Clyde NHS Board is receiving a 2.6 per cent uplift, so there will be no funding reduction. Glasgow receives a higher amount of funding than the formula would suggest, based on current assumptions.

The review of acute morbidity in life circumstances to which I referred started in February. Glasgow is heavily involved in that and has a number of health economists and other public health representatives on the group to look at whether anything else should be done to change the formula.

Every board, Glasgow included, will have our best estimates of the likely NRAC funding over the next three to five years, so that they have some financial planning certainty over that period. If something changes, we would accept the group's recommendations and make amendments to the formula.

**The Convener:** That is good to hear. Given the efficiency savings target that Greater Glasgow and Clyde NHS Board is expected to meet, and that it will not receive its current share of NRAC funding—I am not sure whether that is a reduced or a zero share—what is the comparison between the amount of money allocated now and how much that money will reduce by over the coming year, if you play in the efficiency savings?

**Christine McLaughlin:** Boards that are above parity do not receive additional NRAC funding, but they receive their uplift. In 2014-15, the uplift for Glasgow will be 2.6 per cent. The efficiency savings that Glasgow generates are all retained locally. There is no baseline cut; its baseline,

along with that of every other board, has been increased. Therefore, the question is about the value of efficiency savings that the board must generate in order to maintain and redesign its services and to deal with cost pressures. All those funds are retained within NHS Greater Glasgow and Clyde for reinvestment.

**The Convener:** My basic point is that the disproportionate need will not change over the three or four-year period. Will Greater Glasgow and Clyde NHS Board have more or less money to work with to meet that need over that period?

**Christine McLaughlin:** In baseline terms, the board will have more, not less, money.

**The Convener:** In simple terms, if the board has £100 now, will it have £100 in four years? Will the amount be less or more?

**Christine McLaughlin:** It will be more, because there is an annual uplift.

I guess that your point is about what the boards need to do with that money.

**The Convener:** Yes.

**Christine McLaughlin:** In absolute terms, they will have more rather than less money.

**The Convener:** In absolute terms they will have more, but the money will not increase proportionally with inflation.

**Christine McLaughlin:** There will be a real-terms 2.6 per cent uplift to the baseline. There is no cut to Glasgow's funding.

**The Convener:** I am just trying to figure out the position. In your opening remarks, you said that Greater Glasgow and Clyde NHS Board would not get additional NRAC funding.

**Paul Gray:** Greater Glasgow and Clyde NHS Board will not get the additional uplift that, for example, NHS Grampian will get.

**The Convener:** How can it get the same money if it does not get the additional uplift?

**Paul Gray:** All the boards get a baseline uplift, which I think is 2.5 per cent. Greater Glasgow and Clyde NHS Board will get 2.6 per cent, which reflects its different circumstances. On top of that, Grampian NHS Board gets an additional uplift to bring it closer to parity. Greater Glasgow and Clyde NHS Board does not need to be given uplifts to bring it closer to parity, but it will get 2.6 per cent, as opposed to 2.5 per cent, in recognition of the prevailing circumstances.

All the boards will get at least a 2.5 per cent uplift. Greater Glasgow and Clyde NHS Board will get 2.6 per cent and, in addition, Grampian NHS Board will get more, because it needs to be

brought to within 1 per cent of parity. We could give you a table.

**The Convener:** Yes—I think that you need to do that.

**Christine McLaughlin:** I will make it as simple as I can. In 2014-15 Greater Glasgow and Clyde NHS Board will get an uplift of 2.6 per cent and Grampian NHS Board will get an uplift of 4.6 per cent. All boards will get an uplift, but there are different levels.

**The Convener:** Rhoda Grant wants to come in on NRAC and funding.

**Rhoda Grant:** I will start by seeking clarification. You say that all the boards will get an uplift in real terms; they will get an increase in real terms. Is that calculation based on basic inflation or on health inflation?

**Christine McLaughlin:** The uplift is based on the gross domestic product deflator, which is at the core of the definition of “real terms” for local government.

**Rhoda Grant:** If you were to base the figure on health inflation, what would that mean in real terms?

**Christine McLaughlin:** I do not have such a comparator just now.

**Rhoda Grant:** Could we get that information in writing? It would be useful.

**Christine McLaughlin:** Yes—although I do not think that we have such a definition. I can give you the cost pressures and the inflation that boards identify as a cost within that, but I do not have the equivalent of the GDP deflator for health.

**Rhoda Grant:** There used to be a figure for health inflation.

**Christine McLaughlin:** I can give you the figures that boards quote as the inflationary factor for different pressures such as pay and prescribing, if that would help.

**Rhoda Grant:** That would be helpful.

**Christine McLaughlin:** I can give the committee something in writing on that. I can also give it the table on the percentage uplifts for each board, so that members can understand the differences between boards.

**Rhoda Grant:** The second issue on which I seek clarification is whether the NRAC formula is a blunt instrument. Is it responsive enough to changing circumstances? Highland NHS Board, for example, has been trying to cut budgets for so long, but it is now suddenly underfunded. Change seems to be happening, but the formula does not reflect it quickly enough.

**Paul Gray:** As I said, the NRAC formula is the best instrument that we have at the moment, but it does not, for example, enable us to make significant in-year changes to reflect changing circumstances. However, were we to do so there would be great uncertainty about what health boards’ budgets would be. We must balance carefully the need to take into account the factors that affect the formula with the need to give boards current and future certainty. I would describe NRAC as an imperfect instrument, but it is the best one that we have. It replaced the Arbuthnott formula—a lot of work went into producing NRAC and into making it more flexible and responsive. It is certainly a flexible and responsive instrument, but I do not think that any such instrument in the world could be claimed to be perfect, and I would not make such a claim.

**Dr Simpson:** We have been at this for a long time. In 1976 the then principal of Heriot-Watt University, Robin Smith, produced the initial share system to try to redistribute funds, but we have never quite got to a situation in which there is parity.

I have two brief questions. First, given that under NRAC, which is a blunt instrument, Greater Glasgow and Clyde NHS Board has received funding that is greater than its share, what do you do to hold the board to account for the fact that health inequalities have not improved at all in Glasgow? For NRAC, the two big factors are age and deprivation, and rurality is also a factor. However, given that deprivation is one of the main features of the distribution formula, the boards that get a greater share of the distribution should apply the funds to tackling health inequalities. How do you hold the board to account for that?

11:30

**Paul Gray:** We hold boards to account through their health improvement, efficiency, access and treatment—or HEAT—targets. I will bring in colleagues in a second, but without wanting to deflect the question, I point out that I would not hold an individual health board to account with regard to health inequalities, because I believe that the issue stretches across the range of public and voluntary services that are commissioned in any area.

For example, through the early years collaborative, we are trying to recognise that the only way of tackling persistent health inequalities and, indeed, persistent inequalities in general is to have cross-sector working that delivers locally. With something like the childsmile programme, we are attempting to tackle long-standing, persistent and deep-rooted inequalities, and we are very alert to the risk of population shift to which the

convener referred, as it could result in inequalities increasing, not decreasing.

I know that Linda de Caestecker, the director of public health in NHS Greater Glasgow and Clyde, takes the whole agenda very seriously. John Connaghan will be more specific about health inequalities.

**John Connaghan (Scottish Government):** Perhaps I can amplify some of Mr Gray's comments about HEAT targets.

Over the years, we have given boards a number of targets to pursue, including increases in dental registrations, reductions in suicide rates, delivery of smoking cessation targets, drug and alcohol waiting times and child and adolescent mental health services, reductions in infection rates and so on. Because some of those are clearly related to deprivation and inequalities, we will want a relatively better performance from boards that are below the norm in some of those areas.

When we track HEAT performance over the years, we see that boards set individual trajectories that are part of the local delivery plan that is signed off annually. That is one of the ways in which we can hold boards to account for relative differences in performance.

**Dr Simpson:** Paul Gray has already alluded to the other issue that I wanted to raise, which was about shifting the balance of care.

In various reports, Audit Scotland has made it very clear that there is not a great deal of evidence that the balance of care is being shifted. General practitioners—I should at this point declare an interest as a fellow of the Royal College of General Practitioners and a member of the British Medical Association—are increasingly campaigning against and clamouring about the massive pressure that they are under. Indeed, my mailbag is filling up with correspondence from GPs about the fact that they are under such pressure at a time when their share of the budget has gone down rather than up. I admit that there has been a rising tide in the overall budget, but their tide has been rising less than others' tides.

My question about NRAC, therefore, is: how do you hold health boards to account for shifting the balance of care?

**Paul Gray:** Again, I will ask colleagues to say a bit about local delivery plans and the trajectory and expectations that we are setting health boards for their funding of primary care in general.

I am very clear that primary care can play a fundamental role in the integration of health and social care, and I expect that, when the integrated joint boards are fully established and the functions are fully up and running, that will in time help us make the shift towards out-of-hospital care. We

have said that our vision for the health service is that by 2020 more people will lead longer, healthier lives at home or in a homely setting, and I think that that vision speaks for itself.

I should say that I am using the broader term of "primary care" deliberately. GPs make an enormous contribution, but the contribution of the wider primary care family is also very valuable. I am quite happy to tell this committee that I regard the utilisation of primary care as a key component in the successful delivery of the integration of health and social care.

**Dr Simpson:** Thank you for that. I entirely accept that the plans are about speech and language therapy, physiotherapy, community nurses, school nurses and all those groups as well. Is it possible for you to let us have the local delivery plans, which I know encompass those areas? Are they now available in the public domain? If not, when could the committee get hold of them to see what is planned for shifting the balance?

**John Connaghan:** All local delivery plans are available on board websites, so they are available now and have been for some months.

It might be useful to draw the committee's attention to the guidance on producing plans that we sent out to boards this year, as it might help you to understand the context of how those plans were set. In the fullness of time, the committee will also need to be briefed on the health and wellbeing outcomes that we are currently consulting on as part of integration. The consultation is currently under way, but that is another important factor in shifting the balance of care.

**Dr Simpson:** That is helpful. Thank you.

**Bob Doris:** I have a supplementary question about the share of the budget that general practice gets. It may be more of an accounting question, but it relates to two things that are going on now.

First, link workers are based in the deep-end practices in Glasgow. There is a cash cost to that, but it alleviates pressures on GPs in those deep-end practices, because those link workers are dealing with matters that a GP would otherwise deal with. I am not sure whether that shows up in the GP's budget or in another budget, but it is an example of a spend that contributes towards general practice. I am not sure how that is accounted for.

Another example is prescription for excellence. One of the first workstreams relates to medications reviews and health boards paying money to different areas. I understand that work has already been done on that in Glasgow and that some of that money will go into health centres

and into work in general practices, with pharmacists going in and doing medications reviews. Again, it is not money that is being paid to GPs, but it relieves pressures and burdens on GPs. Does that money go towards share of spend in general practice?

I am not sure that we are capturing all the public spend in general practice appropriately, so it might be a false share that we are looking at. Maybe you could write to us about this, but where do those things sit on the budget line?

**Paul Gray:** We would certainly be happy to do that, to ensure that the funds provided are properly represented.

As you have mentioned the deep-end practices, I want to take the opportunity to say that I have had some conversations about what they are doing and I think that it is a valuable piece of work that sits well with the approach that we are trying to take to tackling persistent inequalities. They are a good example of work in progress.

**Bob Doris:** Thank you.

**The Convener:** I call Aileen McLeod—and I thank her for her patience.

**Aileen McLeod:** I want to go back to the health and social care integration agenda. Health boards and local authorities will be required to put in place the local integrated arrangements by April next year, with full integration of services by April the following year. The key will obviously be how we implement that on the ground. I know that the Scottish Government has made available an additional resource of £100 million for the integrated care fund, but I would like to ask Mr Gray for more detail about the criteria that will be used to determine the allocation and distribution of that fund and how it will be implemented to ensure that there is real and genuine partnership and collaborative approaches between the key stakeholders.

**Paul Gray:** I shall ask Christine McLaughlin to comment on that in a second, but first I would like to say that, for me, the key criterion on the integration fund is that it is used to fund projects or implementations that make a real difference to the way in which we deliver services for the benefit of people. There will be many more criteria, but for my part the focus of the integration of health and social care is to ensure that we provide, within available resources, the best possible services to individuals and that our approach to delivering services is focused on need rather than on a provider-centric approach. A key element of what I want to be delivered through the integration fund is that focus on individuals and communities.

Christine McLaughlin can give more detail.

**Christine McLaughlin:** I will provide a bit of context. There are three components of funding in relation to what Aileen McLeod is talking about. The current financial year, 2014-15, is the final year of the reshaping care for older people change fund; the integrated care fund, to which Aileen McLeod referred, is for the year 2015-16. In addition to that, we are providing transitional funding for partnerships to support the implementation of integration, and we have just agreed on the allocation of £7 million to go out to partnerships.

We expect plans for the £100 million for partnerships to be developed in partnership between NHS boards, local authorities and the third sector, as the change fund has been. We will give partners further guidance on that so that they can develop their plans, but the funding is very much intended to be an enabler—to help partners to unlock some of the improvement that we are looking for.

Partnerships already have a good sense of what they think that the money could be used for, in preparation for integration, but in this financial year they are able to make good use of the change fund, so they do not have to wait until 2015-16. Our strong message to all partners is to get on with things now and to use this year's change fund money to pump prime some of the work that we are looking for. There will be slightly different criteria for the 2015-16 fund on integrating care, but the key themes of working in partnership and keeping people out of hospital by having services in the community and the home setting will apply.

One difference between the change fund and the 2015-16 fund is that the latter fund applies to people who are under 65 and who have co-morbidities and complex needs. We will be looking for the fund to have an impact on that group.

**Aileen McLeod:** How will that link in with strategic commissioning and the national health and wellbeing outcomes?

**Christine McLaughlin:** Partners are starting to work on draft strategic plans, so they are able to consider how to use the change fund in 2014-15 and the integrated care fund in 2015-16 as enablers, to deliver their ambitions. The work starts now, and a number of partnerships already have draft strategic plans. They will consider how to use the non-recurring funds to kick-start some of their initiatives.

**Aileen McLeod:** That is helpful. Maybe plans could be shared with the committee, so that we can see how the integrated care fund sits with everything else around health and social care.

**The Convener:** The committee accepts the principle that integration and collaboration are not simply the responsibility of health, although health

has a big part to play. We will want to know what lessons have been learned from how the change fund has been spent and whether we can be confident that the third and voluntary sector is engaged. The sector has complained bitterly to us that it does not have the sign-off that it should have and that it feels like the poor relation at the wedding. Those are important issues.

Health is contributing £100 million to integration. What are others bringing to the party? Integration will involve many issues that relate to the education budget, the justice budget and the social work budget. What will the pot look like? Will initiatives on integration and collaboration get the maximum buy-in from others?

11:45

**Paul Gray:** That is a fair point, convener. We will certainly bring forward some of the lessons that we have learned from the change funds. One test will be when we get to the 2015-16 financial year and beyond, as we seek to be integrated by the end of that year. One of the tests, which will apply equally to health as it does to every other portfolio, is to get the sense that there is a real willingness to devote resource to making integration happen and to ensure that there is a sense of equity and parity.

I do not want to pass by your point about the third sector. One thing that I have consistently said to senior colleagues in the health service is that we must make it as easy as possible for the third sector to make a contribution and that we must not overbureaucratise our approach to engaging with it.

**The Convener:** Can you update us on what is going on between COSLA, the NHS and the department? At one stage we had evidence that the budget was being top-sliced and handed over. We know that there has been constructive discussion about who is funding what and whether funds can and will transfer. You have referred to on-going discussions. What stage are those discussions at?

**Paul Gray:** The discussions are continuing. I understand that the Cabinet Secretary for Health and Wellbeing and Peter Johnston are about to issue a letter of guidance to the health board chief executives about the policy expectations, so I do not want to pre-empt that. My understanding is that that letter should go out shortly, and I would want to ensure that it is shared with the committee immediately. I do not know whether Christine McLaughlin wants to say any more about the discussions with COSLA at this stage.

**Christine McLaughlin:** One thing that has been quite consistent is that there will be an identification of resources in relation to the total

spend on adult social care. That needs to cover hospital care in the community, social care and the part of acute care that relates to that population. Partners are working on how they can use the integrated resource framework to identify all of that resource. We have had discussions about that with the directors of finance of some territorial boards. The integrated resource framework allows partners to identify the resources through the whole pathway. The costs will be calculated on that basis, so that they are transparent for the partnerships going forward.

**Richard Lyle:** I return to the HEAT targets, but not in the way that you might think. I previously served on the Rural Affairs, Climate Change and Environment Committee, which is interested in asking other committees to look at the contribution made in their respective areas to the reduction of climate change. The Scottish Government has an excellent programme, but in some ways we have not met its aims.

What is the health department doing to reduce energy consumption? Given that the budget as a whole is £12 billion to £13 billion, what is the current energy cost across all the boards within that budget? I am sure that you will have a figure that you can give me straight away. In any hospital, the main costs are for staff and so on, but energy costs are also tremendous. Most lights are on 365 days a year. What are we doing to reduce energy costs in the NHS?

**Paul Gray:** Mr Connaghan will comment on that, and Christine McLaughlin will follow up.

**John Connaghan:** We will need to reflect on your question about the amount of money that is spent on energy and what we are doing to reduce the figure. I am afraid that I do not have the figures to hand, but we can send them to you.

You mentioned HEAT targets. We have HEAT targets to reduce energy-based carbon dioxide emissions and to continue the reduction in energy consumption to contribute to meeting the greenhouse gas emissions reduction targets that have been set in the Climate Change (Scotland) Act 2009. There are specific targets for the boards to chase. In our written submission to the committee, we can give you an update on where boards are on delivering on the targets.

**Christine McLaughlin:** I add that the "Annual State of NHSScotland Assets and Facilities Report for 2013" identified that energy consumption has reduced by 9.7 per cent and that boards are continuing to reduce energy consumption. The report estimates that the cost would have been about £9 million higher if that reduction in consumption had not taken place in the last 12 months.



**Richard Lyle:** So basically you are taking active steps, such as not reducing lighting but putting in the better type of lamps that give the same light at a reduced energy cost.

**Paul Gray:** Yes. The new hospital in Glasgow is being designed in line with the latest energy efficiency standards. When we open or develop new premises, we ensure that they conform to those standards. We can give more detail from individual boards, as John Connaghan has said, but the overall reduction has, as Christine McLaughlin has said, saved us £9 million and has reduced carbon emissions.

**Richard Lyle:** I welcome that. We have substantially reduced energy costs in this building. I welcome the good news that you have reduced your energy consumption, too.

**Bob Doris:** I suppose that I should declare an interest, as Dr Simpson did. I am afraid that I do not have any particular qualifications, as Dr Simpson does, but I will ask about workforce planning tools in relation to nursing. My wife is a nurse—I suppose that I should put that on the record—and I tell her on a daily basis how wonderful the NHS is, then she tells me what happens on her ward on a daily basis. Sometimes, the truth lies in the middle somewhere.

A lot of progress has been made on workforce planning tools, in conjunction with the Royal College of Nursing and other stakeholders, to nail down, in certain circumstances, the size and shape of the workforce and the workload that is expected of nurses.

I would be interested to know a little bit more about how that relates to future budget settlements. Workforce is the largest part of the NHS budget and head counts are a very politicised affair. It would be helpful to have some more information about how workforce and workload management tools feed into budget settlements. I am referring not just to the current year that we are scrutinising, but to future years. Where would you signpost us if we are to scrutinise future budgets in that regard?

I also wish to ask what the Scottish Government's plans are. Could you develop that a bit further? Allied health professionals will have an additional significant role, particularly with health and social care integration. There will be a lot of change in the workforce as it becomes a lot more community based. It is not a matter of simply saying, "Isn't it good that we have a workforce planning tool?" That is a good thing, but by its very nature that tool will have to develop and change radically in the years ahead. How will that be managed? How will the financial underpinning of that be fed into NHS budgets?

**Paul Gray:** I will bring in both John Connaghan and Christine McLaughlin on that, but first I will mention that, this year, the use of those tools is now mandated. In the past, it was optional. We believed that it was right to move to making them mandatory. We have already seen some improvements in the way in which boards have been able to assign the resources that are available to them.

**John Connaghan:** I think that it was in 2008-09 that we introduced the first workforce and workload planning tools, particularly for nursing in the NHS in Scotland. In 2010-11, the national RCN held up Scotland as an example of good practice in this area and commended that approach to the rest of the UK. You are right to say that Scotland did a little bit of path breaking on the issue.

The tools have developed over the past three or four years. Our director general has intimated that we have now made them mandatory, because we think that they work and that they produce good results. As for how they relate to budgets, we expect each board to produce an annual workforce plan, and we have guidance on that in chief executive's letter or CEL 32 (2011). Each health board is required to produce an annual workforce plan and projection, and to relate the plan to two other things: budgets and service changes.

Workforce planning cannot take place in isolation. It needs to have some degree of triangulation with the resource that is available and some degree of triangulation with service changes and plans. All those are subject to the annual planning process. Furthermore, boards are requested to look further ahead, such that they have some forecast of workforce planning requirements. All that is refreshed annually.

You mentioned the development of tools. Most of the tools that are currently in practice are used for nursing, and we are considering how we can expand their use. We have opened some discussions around expanding the use of the workload planning tool into accident and emergency departments. That will cover not just nursing but also doctors and allied health professionals. That is at a relatively early stage, however. In the fullness of time, when we are a bit further down the track, we can return to the committee to inform you about how we are developing that into other areas.

**Bob Doris:** That is helpful, but I am trying to link that to the budget scrutiny that is taking place. You are quite right to point out that you do not change staffing and skill mixes overnight, and that there is a wider picture. Health and social care integration is, I hope, developing apace. Across parties, there is a dramatic move away from ring fencing.

Would the funding of the staff mix by territorial health boards come under an NRAC formula? Would that be part of the normal uplift? NHS Greater Glasgow and Clyde got its 2.6 per cent—it gets a real-terms, above-inflation increase. It is not a dramatic amount, but it is still an increase. When that was done, was the staffing mix taken into account, or was it a case of health boards having to manage large budgets and redesign services themselves?

I suppose that I am trying to ask to what extent things are micromanaged from the top. To what extent is it up to health boards to get on with using the mandatory planning tools and designing the service accordingly?

**John Connaghan:** I have a few additional remarks that I can make on that and Christine McLaughlin can fill in some details.

I think that I am right in saying that NHS boards simply have their broad NRAC allocation, and they then need to determine how best to use it for their local population, taking into account the mix of what they have available at local level in terms of expenditure on fixed costs and resources versus variable costs, which involve the workforce. Obviously, not all boards are at the same place when it comes to their investment plans for using the bricks and mortar that they have available. There needs to be some degree of local flexibility.

In relation to workforce and workload tools, I should also have mentioned that a significant element of discretion is left to local practitioners, managers, clinicians and senior nurses as regards how they adjust what the workforce planning tool tells them for local circumstances. If they have a mix of patients who are more frail than the norm, they are able to adjust the workforce tool to provide for additional staff to cope with the requirement for flexibility.

**Christine McLaughlin:** It is very much at the discretion of the boards. Their baseline funding, which is the majority of funding for territorial health boards, will comprise the nursing costs. It is for the boards to consider their service redesign, their efficiency savings plan and how they manage all that, taking into account how they achieve change. Their turnover levels would form part of that.

We do not micromanage that process, although we do consider how boards compare, what they are doing and their relative percentages. We would always seek to understand why there are differences across boards. It is for the boards, however, to decide how to use their baseline funding in the provision of services for their populations.

**Bob Doris:** I will make a brief comment, rather than asking another question. Hindsight is a wonderful thing. We are trying to establish how

best to carry out board budget scrutiny. Perhaps there are more detailed questions that we should have been asking of boards. In particular, we might have asked where they see their nursing staff numbers in three years' time, what their budget assumptions around that are for this year and how they can move towards them while identifying other pressures.

Those are not necessarily questions for you, but we are trying to find a meaningful way of developing budget scrutiny around something as significant as nursing numbers and the workload.

**Paul Gray:** The committee will want to bear it in mind that NHS Education for Scotland looks ahead to demand for training places for nurses and doctors and so on. There is a long-term planning horizon to ensure that, as far as possible, we have the right number of people available to come into the system in years to come.

The committee is right to recognise that it is a complex environment. We certainly do not attempt to reach down from the centre to try and define dispositions at hospital and ward level.

12:00

**The Convener:** This line of questioning is relevant, not just to the committee's scrutiny but to the future of the NHS. A couple of years ago Mr Connaghan presented department figures that clearly showed that there would be a reduction in nurses but a substantial increase in allied health professionals. I presume that that fitted with ideas about where we were going and the 2020 vision of treating more people at home.

We have a workforce planning tool that is focused on nursing, and there have been recent announcements about appointments to accident and emergency—I do not know whether those appointments were in the long-term planning. Mr Connaghan mentioned the need for a degree of triangulation between the money that is available, the service changes and plans and—what was the other one?

**John Connaghan:** The workforce that is required.

**The Convener:** The workforce. I do not know whether that is a triangle or a see-saw, given the political pressure under which we are all working.

Bob Doris was right to say that workforce planning is essential. Are you confident that we are planning the workforce of the future? We currently do that by measuring the number of consultants, nurses, hospitals, procedures in hospitals and so on, but we need to move away from an approach that does not enable us to focus on how the new workforce will look.

**John Connaghan:** We did a fairly large piece of work recently on best practice in strategic-level planning for the workforce. The work was about a year and a half in preparation. It might be useful if we gave the committee sight of the guidance that we are issuing to boards in that regard.

**The Convener:** We would welcome that.

**John Connaghan:** It is a good piece of work, and it helps boards to look ahead five or 10 years. It brings together all the evidence that we have collected over the past year and a half about what really happens.

We should not set out a stall that says that the only way forward is to have more staff in a particular area. Staff mix, skill mix and services change. For example, the introduction of one-stop clinics in Scotland over the past 10 years has reduced the requirement to have half a dozen clinics that are staffed by half a dozen sets of administrative staff. It is a better deal for patients, but we have tended to put the associated savings into clinical staff.

That is why when I scan down the NHS workforce I can see significant changes in staff groups. All that happens against a plan that says, "This is how we will do it", which is refreshed annually by boards. I am happy to give you something on that.

**The Convener:** We would appreciate that, because I cannot see how the 2020 focus on treating patients closer to home fits with the thinking and planning for hospital-based clinicians.

Of course, planning the workforce is not just an issue for health—that takes me back to the point that I made earlier. We need to plan for not just the clinical workforce but the social workers, support workers and carers who we will need in the community. Aileen McLeod mentioned commissioning services; we need to know where the workforce will come from. That is pretty important.

**Paul Gray:** That is a good point, convener. A key task for the integrated joint boards will be to provide foresight on workforce requirements. You are absolutely right to say that by no means all the workforce that provides care will come from health.

The one figure that I would put in front of the committee is that, in September 2009—I am deliberately taking it out of any political space by quoting figures that begin then—there were 9,579 allied health professionals, such as occupational therapists and all the others that we have mentioned, and in March 2014, there were 11,194. If I compare that with the changes in other staffing ratios in the health service, the most significant increase that I can see is in the allied health

professionals. Similarly, the staffing in personal and social care has gone up from 763 in September 2009 to 909 in March 2014.

I am deliberately making a comparison within one Government's term of office to show the trajectory on some of the relevant areas.

**The Convener:** Yes but, of course, we have been reminded in previous committee meetings that we find it difficult to change the existing services. We add on services but do not necessarily tackle the others. It is an interesting area and we would happily engage with the Scottish Government on exploring it. There is no doubt about that.

That leads on to the other side of the argument. There are concerns about the shifts in nursing care and availability. There is a question of quality. Indeed, some of the savings that the special boards propose relate to reducing the number of people that they employ. How do we do that safely and, in the process, maintain quality and achieve the changes in the workforce that we need to achieve?

**Paul Gray:** What we do not do is drop our quality standards. I have had a number of interesting conversations with, for example, the Scottish Ambulance Service about the changes that it has already made to the way in which it delivers services that provide a much higher level of care to people before they reach any hospital setting.

Part of what we do in that process is take advantage of new techniques and new technologies. We are also benefiting from, and spreading the implementation of, telehealth and telecare, which remove some of the need for home visits. I have seen that working effectively in NHS Ayrshire and Arran, which I pick only as an example.

Christine McLaughlin or John Connaghan might want to come in on the way in which we ensure quality in the delivery by special boards in particular, given the resource pressures that we face.

**Christine McLaughlin:** Some of the evidence that the committee heard from people such as Simon Belfer from NHS National Services Scotland was about the focus within its efficiencies on, for example, rationalising its estate. In some ways, it is perhaps an exemplar of how to go about such a review. It has considered what it could make more efficient in the way in which it provides services and its overall infrastructure. It has been able to make its staff savings within its existing turnover levels. There has been a very successful programme of redeployment and retraining for staff in quite specialised areas.

NSS has been able to do all that within the context of being one of the four special health boards that returned funding of £144 million over four years and within existing policies of no compulsory redundancies. We would like some of the examples that NSS gave the committee to be spread more across the boards. Special health boards have had a different set of circumstances and a different uplift and we have set them some quite challenging savings targets while looking for them to generate savings within the territorial health boards as well. The story from the special health boards is quite positive.

**John Connaghan:** Convener, I will give an example that more directly answers your question about the quality and cost balance.

Each year, we support across Scotland what we call a framework for quality, efficiency and value. Through that, we try to spread best practice and support lower cost but better quality. For example, we are running across Scotland a little project called productive general practice for practice nurses in which we outline the benefits to practice teams of streamlining activity across the practice, eliminating waste and enabling practice nurses to add value and spend more time with patients. That is a practical example in productive general practice, in which we can see the achievement of a lower cost base and better quality outcomes. There are many such examples. The committee might want to see the annual report that gives a number of examples from all health boards in Scotland.

**The Convener:** Thank you.

Members have no further questions, but I have a final point. The committee is interested in preventative spend and how the Scottish Government is supporting health boards in estimating preventative savings. In response to a questionnaire on the issue of preventative spend, some boards said that it was not possible to provide us with information on financial savings; given those responses, it seemed that some boards did not understand the question of outputs and outcomes.

The evidence is there for you to see. I do not know how much work you do in that area and whether you need to do more to bring about a situation in which boards can identify what they are doing and what their preventative strategy will gain, and can understand the difference between outputs and outcomes.

**Paul Gray:** You make a very fair point, but I do not think that there will ever be a line in any health board budget that clearly encapsulates preventative spend and shows a percentage. The difficulty is that quite a lot of what we do is preventative spend. For example, statin therapy is

part of the management strategy for the primary prevention of cardiovascular disease for adults. An economic model that was developed by the Department of Health in England estimated that vascular checks every four or five years for all those aged 40 to 70 was cost effective.

I mention those two examples to show that preventative activities are undertaken as part of a regular visit to a GP surgery. Preventative activities are also undertaken by NHS 24; when people phone up, they get advice and do something that prevents them from having to go to hospital. We are also doing preventative activities around exercise and wellbeing. Encapsulating all that in budget lines is virtually impossible. However, you referred to outcomes, which I think is the place for us to look.

To put it simply, I am keen that we do more on understanding the value for money of intervention so that, if we are in an age of resource constraints—as everyone in the public and private sector is—we can ensure that our interventions are the ones that are most likely to deliver positive outcomes for people and communities. Part of that is about involving people and communities in discussions about what would work for them.

A top-down imposition of solutions is not always effective, so part of our programme for the integration of health and social care is to ensure that the conversations that happen in localities are meaningful to the people concerned. I am quite certain that what will work in the convener's constituency might not work in one or two of the constituencies that committee members represent. That is why it is important that we take our preventative spend agenda right into communities and ask what is most likely to work for them, given the resource and options that we have.

All that is a long way of saying that it is the focus on outcomes that will actually start to bite. Trying to strip out budget lines will probably not work.

**The Convener:** We might overuse the term “preventative”, but we all seem to use it.

Thank you for your attendance, which we appreciate. We look forward to using the information that you have offered during this evidence session to complete our report. The committee will be happy to play a role in addressing some of the challenging issues that we face.

12:15

*Meeting continued in private until 12:28.*

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