



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Public Administration Committee

Tuesday 25 October 2022

Session 6



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**FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
26th Meeting 2022, Session 6**

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

Daniel Johnson (Edinburgh Southern) (Lab)

COMMITTEE MEMBERS

Ross Greer (West Scotland) (Green)

*Douglas Lumsden (North East Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Donna Bell (Scottish Government)

Fiona Bennett (Scottish Government)

Paul Manning (Society of Local Authority Chief Executives and Senior Managers Scotland)

Sarah Watters (Convention of Scottish Local Authorities)

Sharon Wearing (Chartered Institute of Public Finance and Accountancy)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 25 October 2022

[The Convener opened the meeting at 09:32]

National Care Service (Scotland) Bill: Financial Memorandum

The Convener (Kenneth Gibson): Good morning, and welcome to the 26th meeting in 2022 of the Finance and Public Administration Committee. We are joined in the public gallery by members of the California Lawyers Association. I welcome them all to the Scottish Parliament.

We have received apologies from Ross Greer and Daniel Johnson.

The first item on our agenda is an evidence session with Scottish Government officials on the financial memorandum to the National Care Service (Scotland) Bill. I welcome Donna Bell, director of social care and national care service development, and Fiona Bennett, interim deputy director for national health service, integration and social care finance.

I understand that Donna Bell would like to make a short opening statement.

Donna Bell (Scottish Government): Thank you, convener, for having us along to give evidence and take questions on the financial memorandum to the National Care Service (Scotland) Bill, which is an enabling bill that sets out a number of provisions.

As proposed in the bill, the national care service will bring together social work, social care and community health in order to strengthen health and social care integration for adult services.

The Convener: Could you speak up a wee bit? I am finding it difficult to hear you, and I think that other members are, too.

Donna Bell: Of course.

By the end of this parliamentary session, accountability for adult social work and care support will transfer from local government to the Scottish ministers. A decision has not yet been taken on whether children's services or justice social work will be included in the scope of the national care service. The Scottish Government is establishing a programme for gathering evidence and undertaking research to inform future decisions.

The aim of the national care service is to provide consistent, fair and high-quality care for everyone in Scotland, thereby reducing the current variations across Scotland, which many people have raised as an issue over recent years. It is important to note that the bill is not about the nationalisation of services. The bill proposes that, at the national level, the functions are focused on consistency through national oversight. Services will continue to be designed and delivered locally. That is right so that we support delivery with and for our communities and the people whom they serve.

The principles of any new system will be person centred, with human rights at the heart of social care. That means that the NCS will be delivered in a way that respects, protects and fulfils the human rights of people accessing care support and their carers.

The bill sets out a framework for change. The detail relies very much on co-design—co-design with people with lived experience of, and people who deliver, community health and care support. Our partners and stakeholders will also play a vital role in that co-design.

The delivery of social services, in their widest sense, has been reviewed and revised a number of times since devolution. The independent review of adult social care was clear that, each time, there has been a gap between legal and policy intent and delivery. This new and different approach to drafting the detail intends to reduce that gap and to deliver public service improvement collaboratively.

The financial memorandum sets out the estimated costs of establishing and running the national care service and the proposed local care boards. It does not cover any proposed changes to wider policy, such as those set out in the independent review of adult social care—for example, reopening the independent living fund or changes to free personal nursing care rates.

The integration of health and social care has long been the joint ambition of local government and national Government, but people who access and deliver care have told us that the system is not consistently delivering the quality of services needed. Combining national oversight with local expertise will ensure that the right balance can be struck in ensuring a consistent and fair quality of service provision across Scotland. It will allow for better sharing of good practice and innovation, and it will remove unwarranted duplication of functions and make best use of public funds.

The financial memorandum includes significant assumptions about required investments in pay and in terms and conditions for front-line local government care staff if they were to transfer to

the national care service. Discussions across local government about the future role of staff have not concluded. The approach that was taken to the financial memorandum was to ensure that Parliament was provided with the broadest range of costs in order to promote transparency.

To be clear, we are not waiting for the creation of the national care service before starting to improve social care. We are already taking steps to improve outcomes for people accessing care and support, and our priority will continue to be maximising front-line spending. The Scottish Government's commitment to fair work and support for fair pay and conditions is a long-standing policy that will be embedded in the values of the new national care service. By rewarding and valuing the workforce to deliver the best possible service for the people of Scotland, we will make the sector fit for the future and more attractive to people coming into the profession.

The Convener: Thank you very much for that opening statement. Given the submissions that we have received, you will understand that it is likely that there will be a number of questions from me and from colleagues around the table.

In its submission, the Convention of Scottish Local Authorities mentions

"the long-term resourcing of the National Care Service; matters in relation to borrowing, holding of reserves, pensions, audit and VAT; and shared services",

and it says:

"Disappointingly, the draft Bill and memoranda do not address these points explicitly and there is an unacceptable lack of clarity."

Another issue came to the fore in all the submissions. We asked whether there was sufficient time to contribute to the consultation, and every respondent gave a one-word answer: no. We asked them to elaborate on that, and they said that the consultation took place over the summer and the period was far too short, given the magnitude of the bill and the depth of the financial memorandum, which is one of the most detailed—if not the most detailed—financial memorandum that I have ever seen.

How do you respond to those concerns and the other issues that I have raised?

Donna Bell: The consultation was very well responded to, and it took place over a number of months, as you would expect. Overall, we received 1,291 responses, and a variety of views were expressed, so we got a very good response to the consultation.

The Convener: That might be the case in numerical terms, but people are saying that, for a bill of such magnitude, the consultation period was simply not long enough for them to provide the

detailed responses that they would have liked to have given. Why was the length of the consultation constrained in the way that it was? For something so momentous—which includes, for example, the transfer of 75,000 staff—one would have thought that getting it right would be the most important thing and that the consultation could and should have been extended to allow for more detailed deliberations. As I mentioned, it took place over the summer, when there was a lot of disruption—people were still coming out of the pandemic, and they did not have the same ability to communicate with colleagues. Why was more time not given as a result to enable people to tease out a lot of the issues that have been raised?

Donna Bell: The time given for the consultation was in line with the time given for any other consultation on legislation. It is important to note that the bill is an enabling bill and that significant detail is yet to be worked out through the co-design process.

The consultation focused on the primary legislation, but there will be significant opportunity to continue to consult, in particular around the co-design process. The difference with this bill is that we will work with people to co-design the detail, which will give them plenty of opportunity to engage on the detailed matters that you raise, convener.

The Convener: To be honest, though, it looks to me—and, I think, to many others—like we could be building a house on sand here. You have to get the primary legislation right first before you can think over the secondary legislation.

I am struggling to remember a time when I have previously received submissions that have been quite so excoriating with regard to the financial aspects of a bill. COSLA also made the point that no business case was produced before the publication of the draft bill,

"setting out the rationale, costs, benefits and risks of the National Care Service to facilitate meaningful scrutiny by Parliament".

Why was that not done in the financial memorandum?

I know how bills have been produced in the past. Over the years, I have seen financial memoranda that have necessitated only one or two pages, and there has not been a lot of meat in them. However, this bill involves a monumental change over a number of years that will affect an extremely vulnerable section of all our communities. Surely much more in-depth thought should have been put into the financial aspects of the bill and its deliverability in financial terms.

Donna Bell: I agree that it is a very complex and significant bill. With regard to a business case,

the programme business case is currently in development, and it will be published shortly. Given the nature and complexity of the proposed changes, I suspect that three business cases will be brought forward to address the very specific nature of the change around the care boards, the integrated health and social care record, and any organisational change that is required.

The work to develop the detail is currently under way but, again, that is subject to the co-design process, which will influence the final shape of the national care service, as set out in the financial memorandum and in the bill itself. There is detailed—in fact, very detailed—work currently going on to set all that out, and that will give Parliament and others the opportunity to scrutinise the matter in quite some detail.

The Convener: I am interested in the fact that you have mentioned the co-design phase a couple of times. There is a feeling among organisations such as local authorities that they have been bounced into the process and that co-design is not really a meeting of minds or, indeed, of equals. How is the co-design process actually going to work? I am thinking specifically of the financial structures, because that aspect, rather than the wider picture, is the committee's remit.

Donna Bell: We have already launched the lived experience experts panel and the stakeholder panel. That happened in advance of the national care service forum that was held at the start of the month. We have begun the co-design process, and a number of events are planned to support it.

We have been very clear, particularly with the people who use the services, that form must follow function. The important part of that is to work with people to understand what they need to be delivered for them and with them. I am not sure about your comment about people feeling that they have been “bounced”—

09:45

The Convener: That is my expression. That is how people feel. They feel that there has been a lack of consultation and almost that there is an imposition with regard to how it is going to work as opposed to people working together to create a system that might actually deliver over the next decade and beyond. That is the impression that I am getting. Colleagues might have a different view, but that is certainly the impression that I have got from the submissions to the committee and from speaking to my local authority and others.

Donna Bell: Okay. Certainly, the approach to co-design has been hugely welcomed by the people who use the services and people who work

in them. The approach has been almost universally welcomed by people who want to be involved in shaping the national care service and the delivery of services that they use now or are likely to use in the future. That was reinforced at the national care service forum a few weeks ago. There is huge enthusiasm for the co-design process. It is in line with the Scottish approach to service design, which has been used in the development of Social Security Scotland and has been very successful. The people who were involved in that process found it to be very useful. It has improved the development and the delivery of services for them. Clearly, there are mixed views on the co-design process, but what we hear from people who use and work in the services is that they welcome the approach.

The Convener: All the submissions that the committee has received express concern about the VAT baseline, which is included in the figures in table 2 of the financial memorandum. To be fair, time has trundled on, and that was published before the latest skyrocketing levels of inflation. However, in its response, COSLA states:

“These figures are misleadingly uprated each year, from a 2019/20 baseline, by inflation plus 3%. This uprating does not reflect subsequent Local Government settlements”.

That is important, given that it was announced way back in May. The response goes on to say that the uprating

“is completely at odds with the reality presented by the Scottish Government's own Resource Spending Review, of a 'flat cash' settlement”.

Surely that alone means that the financial memorandum is no longer fit for purpose and requires to be updated at least.

Fiona Bennett (Scottish Government): There is a slightly different basis for the two figures that we have mentioned. The numbers shown in table 2 are intended to show what might happen to spend over the coming years, so they are different from the resource spending review figures, which set out what the budget might look like. We note that those are indicative figures while we do further work through the co-design process on the exact services that will be transferred.

Inflation is another key point. That was written in May, and there have been significant changes to inflation since then. Therefore, behind the scenes, we absolutely have a live model of changes to financial assumptions. However, it is important to note that those are numbers for indicative future expenditure rather than the budget, which is what the RSR is intended to set out.

The Convener: The concern is that those costs use current expenditure as a starting point rather than the actual costs of the delivery of social care. All those who are responsible for the delivery of

social care fear that there just will not be enough money, frankly, for the delivery of the service, especially given that, as a Parliament, we are already under severe financial pressure, local authorities are already facing financial restrictions, and we have an ageing population. How is that circle going to be squared?

Fiona Bennett: As noted, the financial memorandum does not intend to set out the full range of policy commitments that are being looked at with regard to social care. It is focused on the establishment of the national care service, so—

The Convener: I realise that. A number of caveats are given right at the start of the financial memorandum, where that point is made, and the Scottish Parliament information centre repeated that in its briefing, so we are aware of that. At the same time, a structure is being developed that seems to have unrealistic parameters, and that is of concern to all of us.

Fiona Bennett: On the calculation method that we have used in table 2, we have tried to be as transparent as possible. We have taken publicly available data on expenditure for the services in question. We have used the inflation figures that are set out at the bottom of paragraph 30, and we have used the 3 per cent inflator in relation to increasing demand. We know that inflation has gone above the figures that are given. We have tried to be transparent about how the calculations have been done and, through that process, we will do much more work with local authorities to understand the true cost base.

The Convener: If that is the case and the true cost base is accepted, where will the resources come from to fund it?

Fiona Bennett: Ultimately, that will be answered through the annual budget-setting process. The financial memorandum gives indicative costs that relate to the provisions in the bill. Budgets are set annually. Through the business case work that we have discussed, we will have to think about affordability.

At the moment, there are different processes for funding social care across local authorities from the different income streams, such as council tax, the general revenue grant from the Scottish Government and charges to service users. A rigorous financial assessment will need to be carried out to understand all that.

The Convener: Basically, you are saying that, ultimately, local authorities might have to find money from somewhere else.

Fiona Bennett: We have not gone through that process yet, so we do not know that.

The Convener: There are mountains of questions that I could ask, but colleagues will have

issues that they want to raise and I do not want to steal all their thunder.

One issue that I want to ask about is VAT. From paragraph 52 of the financial memorandum, it looks almost as though a cavalier approach—a fingers-crossed, “it’ll be alright on the night” approach—is being taken. On pensions, it says that

“More work and engagement will be required to determine the most suitable and affordable design”.

On VAT, it says that

“If care boards are not able to reclaim VAT in a similar way” to integration joint boards,

“there could be a significant financial impact.”

It goes on to say:

“Work is underway to understand this potential cost and how it might be mitigated to ensure maximum support for front line services. VAT costs are not assumed”.

What level of certainty do you have that we will be able to deliver the national care service if we do not get the VAT allowance that we hope to get and that integration joint boards get?

Donna Bell: I want to make it clear that we have not taken a cavalier approach to the issue at all.

The Convener: I know that you have not. I am just saying that the way in which that part of the financial memorandum is written suggests that it is a case of, “If it happens that way, it happens that way.” I am fully aware that you will have spent countless hours on this, but it jumped out at me that there seemed to be a feeling, “Well, we’ll just have to work it out some other way.” Therefore, I am a wee bit alarmed about what the probability is that the issue will be resolved, given the financial impact that it will have.

Donna Bell: I invite Fiona Bennett to respond.

Fiona Bennett: As part of the work that we are doing on VAT, we have engaged independent advice to fully understand the VAT consequences of any options that might be taken. At the moment, section 33 bodies can have full VAT recovery, but section 41 bodies—which NHS boards are—cannot. Depending on the way in which the care boards were set up, they could fall into either of those categories. HM Treasury is carrying out a review of whether section 41 bodies will fall into the full recovery category in future, and that decision will also have an impact on us.

Ultimately, through the options appraisal and business case process, we will continue to seek independent expert advice to make sure that we are fully aware of any VAT risks and mitigations.

The Convener: On pensions, there is a real concern about viability, given that it is not known whether the national care service would be admitted as a member of the local government pension scheme, which is fully funded. Can you advise us of anything in that regard?

Fiona Bennett: As with VAT, we want to make sure that we have robust evidence before we make any suggestions or put forward any options for what might happen with local government pension schemes. We recently put out a contract on Public Contracts Scotland to procure advice on that, to make sure that we take an unbiased and evidence-based approach.

We would like to fully engage with the 11 local government pension schemes to understand the impact of any members moving out of the schemes. However, ultimately, the bill provides the ability for staff to move, but it does not say that they definitely will do so. Again, that would have to be considered on a local authority by local authority basis.

The Convener: I will ask just a couple more questions, because I want colleagues to be able to come in. One is about charging. The Chartered Institute of Public Finance and Accountancy has said that there is

“Concern that the recommendation to increase Free Personal and Nursing Care for self-funders will not necessarily deliver a reduction to the amount paid by self-funders.”

What is the thinking behind that?

Fiona Bennett: The financial memorandum does not go into those recommendations, which I believe were based on an independent review on bringing up free personal and nursing care rates to those in the national care home contract and, potentially, the removal of non-residential charging. Both of those policy areas are being worked on in line with the work on the national care service, but they can happen outwith that. Those are some of the areas that we are looking at in conjunction with the work on the national care service, and their financial impacts will have to feed in to our assessment of best value and affordability for the national care service.

The Convener: I have one final question. One positive aspect of the bill is the right to breaks from caring, but that has cost and staffing implications. CIPFA has said that

“There should ... be a role for professional assessment of need, as we see currently in social care and in the NHS”,

and that

“this will require financial investment in the professional workforce but is dependent on the workforce being available.”

To me, that seems more of an issue. We know that there is a chronic shortage of people working in care settings, with a figure of 300,000 across the United Kingdom. How deliverable will the measure be, given the staff issues? Will we be able to do it, given the workforce challenges?

Donna Bell: The workforce challenges are well understood. We have been working closely on that with COSLA. In my opening statement, I referred to the activity that we are undertaking now to improve social care services, and that is being done on a joint basis with COSLA, local authorities and other partners. We have plans under way to place a greater focus on workforce planning, recruitment and retention and on activity relating to learning and development for social care staff, which has been one of the key issues that has impacted on retention, along with pay, terms and conditions.

Significant work is under way to develop the social care workforce and ensure that it can meet demand, in terms of numbers and in terms of skills and capacity.

The Convener: Thank you. I am sure that colleagues have a number of other questions that they wish to ask.

John Mason (Glasgow Shettleston) (SNP): As the convener said, there is quite a lot in here. I understand the point that pay for care workers is not part of the bill and therefore not part of the financial memorandum, and that whether care workers get paid more is a completely different issue. However, the right for carers to breaks from caring is part of the bill. Therefore, should all the costs of that be in the financial memorandum?

Donna Bell: Obviously, the purpose of the financial memorandum is to ensure that we cost the implications of the bill. We have been clear that work is happening anyway, and I have already referred to the activity with COSLA. Therefore, although the two things are linked, there is not necessarily a direct implication of the bill arising from pay, terms and conditions.

John Mason: I get the point about pay, terms and conditions, but surely the cost of breaks for carers is part of the bill.

Donna Bell: Yes. On the associated figures in the financial memorandum, I ask Fiona Bennett to go into a bit of detail about the assumptions.

Fiona Bennett: Tables 12 and 13 set out the cost of easy-access breaks and the additional cost of the right to breaks. As is noted in two previous tables—tables 9 and 10—the costs would vary under a number of different assumptions, including whether residential or non-residential care would be more fitting in supporting the right to breaks, the length and frequency of breaks and the

number of people taking up that level of care. We have set out as best we can in tables 12 and 13 the estimated additional costs of the right to breaks.

10:00

John Mason: That has been included in the financial memorandum.

Fiona Bennett: Yes.

John Mason: That means that the financial memorandum contains quite a lot of assumptions. As you work on and develop the bill, how will the Parliament and the committee be able to keep an eye on things? As has been pointed out, we will look at an FM in quite a lot of detail, but we do not often see much of the detail with regard to secondary legislation. How can the committee and the Parliament look at that?

Donna Bell: As I have already made clear, we know that, as the co-design process proceeds, we will have to do significant further work to set out the financial implications and the value-for-money questions that we will need to answer. We would be very happy to provide the committee with all the information that we produce; indeed, we would expect to do so. After all, ministers will expect us to do so to ensure that parliamentary scrutiny can take place. Arrangements can be made in that respect.

John Mason: Would you provide that information, say, every quarter or when you reached a significant stage? Would you do that by updating the financial memorandum?

Donna Bell: I have already referred to the business cases that we will produce and that will set out the real detail of the costs and implications. It would be absolutely appropriate for us to provide the committee with that information and any updated financial projections.

John Mason: Thank you very much.

Another point raised by COSLA and others is that the present care service is funded partly by Government grants and partly by council tax and so forth. If, for example, a council spends £100 million on care services—I am just using round figures—£80 million of that will come from grants and £20 million will be raised locally through council tax. When the transfer happens, will the Government take the £80 million or the £100 million away from the council?

Donna Bell: We have a lot of work to do in working through all of those issues. Every council will have a different set of arrangements; the proportions of funding will be different and, as we know, funding will be secured from a mix of sources. We will have to work through all that as

part of the business case process that we will need to go through for each of the care boards. The situation might well differ across the country.

Does Fiona Bennett want to add anything?

Fiona Bennett: What you have said is right. The affordability of the services provided by care boards will have to be rigorously assessed before any final decision is made. Some local authorities might well maintain service provision at local level if they feel that they are best placed to do so, and the assessment will show as much. The transfer of funds will therefore take place on a case-by-case basis.

John Mason: It sounds quite complicated. I think that I am right in saying that, when the colleges came together and everyone got paid the same, it took quite a long time to bring all the staff levels together, because people were on all sorts of pay and conditions. Is that not an issue here, too? Might staff in the 32 councils not be paid in 32 different ways?

Fiona Bennett: It would definitely be an issue. Indeed, similar issues arose with the police and fire services.

In table 8, we have tried to estimate figures for pay and for terms and conditions with regard to local government staff who could be in scope for transfer. It was very difficult to get a baseline for that with 32 different rates of pay, terms and conditions and so on, but we have done our best to show what the annual increase in pay and terms and conditions might look like if no staff were to transfer all the way up to all staff transferring. It is therefore helpful to note that, in table 8, the bottom two lines are for staff in direct delivery social care roles.

John Mason: The whole area of assets and borrowing could also be complex. CIPFA, I think, has raised the question whether—to take an obvious example—a care home that belonged to the council would transfer and, if so, what would happen with the borrowing. After all, most councils will have borrowed to finance such provision, although, in Glasgow, I think that a number of smaller care homes were got rid of in order to build some larger new ones. Would that sort of thing be taken on a case-by-case basis, too?

Fiona Bennett: Yes, it would. There will be different arrangements, depending on whether the local authority owns or leases buildings such as day care centres and care homes, or has them under private finance initiative agreements. To fully understand that, we would have to proceed not only on a local authority by local authority basis but on an asset by asset basis.

Through the Care Inspectorate, information on local authority-run care homes and other services

is publicly available, so we have an indication of the level of assets that might be in scope, but we would have to do much more work with local authorities to understand the current cost base, which includes the cost of things such as backlog maintenance. Various factors must be taken into consideration in addition to the capital value of the asset.

Donna Bell: I make the point that it is absolutely not a foregone conclusion that assets would transfer, and the same goes for staff—that will be a matter for discussion.

It is important that there is the ability to transfer assets, but that will not be a necessity. It is necessary to have the ability to support the transfer of accountability. Ministers might need the ability to step in or to appoint an operator of last resort.

It is important that we do not assume that all assets or all staff will be transferred before we have had the opportunity to go through the co-design process.

John Mason: I agree that you should not make a sweeping assumption. However, that makes it very difficult for the committee to examine the situation, given that all the assets could be transferred or none of the assets could be transferred, or it could be somewhere in between, and we have no idea of the cost of that. I suspect that other colleagues will want to ask about that.

On the issue of transferring staff, the suggestion was made that not all staff might be covered by the Transfer of Undertakings (Protection of Employment) Regulations, and I was a bit surprised by that. I would have thought that all the terms and conditions of staff who were employed by a council or an IJB would be protected if they were moved into the national care service.

Fiona Bennett: Yes, that is right. I apologise—I am not sure where that suggestion came from.

John Mason: It was not made by you; it was made in one of the submissions.

Fiona Bennett: I would say that that is not correct. Under employment law, the TUPE arrangements mean that, when staff have to transfer, there must be no detriment to their terms and conditions. That is the principle that we will adopt.

John Mason: The convener mentioned VAT. You said that the UK Government or HM Revenue and Customs would take a decision on that and that you were aware of what was going on. I want to press you on that. Regardless of what HMRC decides to do, is it possible to design a set-up that will mean that we do not end up having to pay VAT? With the police and fire services, we got into a situation in which Westminster, or HMRC, was

being inflexible and we ended up paying VAT, which we would not otherwise have had to pay. Is it possible for you to design a system whereby we will not have to pay VAT, regardless of what Westminster decides?

Fiona Bennett: A number of options are still open with regard to how care boards will be set up, where the commissioning arrangements will sit, whether local authorities will still be service providers at a local level and so on. There are a number of variables, all of which will have different effects on whether the boards will be subject to VAT.

With HM Treasury, the two main variables are to do with the wider review at UK level of whether section 41 bodies will come under the full recovery model or whether care boards could be added to the section 33 bodies, as happened with the police and fire services. We have had early discussions with HM Treasury at an official level to understand the process for that, and we will look to learn lessons from what happened with the police and fire services.

Ultimately, there are still numerous options available to us, and we definitely want to understand any VAT implications before we make any further decisions.

John Mason: Could you not rule out VAT being paid because we will design a system that fits in with what HMRC wants?

Fiona Bennett: I do not think that it would be right to look at that in isolation. It is important to think about the range of things that we want to achieve. VAT not being paid is definitely one of those, but we must ensure that the model that is set up delivers the numerous things that the national care service is being set up to achieve. The VAT issue will be considered in the round, along with other factors.

John Mason: Is the issue related to the kind of legal bodies that the care boards will be?

Fiona Bennett: Yes, it is about the type of body that they will be set up as.

John Mason: I will leave it at that, convener.

Michelle Thomson (Falkirk East) (SNP): Good morning. My question goes back to the top level. How did we get to this point? I am surprised by the financial memorandum's complete lack of what I regard as fundamentals. We have covered a number of those issues so far, in this session. I would like to understand why that is the case. I understand that the financial memorandum has to be produced alongside the bill, but how did we end up with an FM that does not even begin to cover the fundamentals? Speaking personally, and based on my experience, which is mostly in business, I say that I have no confidence whatever

that the FM represents any level of accuracy or, therefore, of value for money. How did we get here?

Donna Bell: You will know about the process of development of the bill. The independent review of adult social care reported and set out a series of recommendations that suggested significant change, as you know. Obviously, the Government committed to the development of a national care service and to co-designing it with people who work in the system and those who use social care services. That is an essential tenet of the work.

The implementation gap that Derek Feeley set out in the independent review is incredibly important. I think that he referenced the world-leading legislation that we have on self-directed support and the Carers (Scotland) Act 2016, but his main issue was around the implementation gap. We have world-leading legislation that is not being implemented consistently—certainly, people tell us that it is not being implemented consistently and fairly.

Therefore, for good reason, we have taken a different approach to the development of the bill, which obviously has implications for the financial memorandum because we have significant co-design work to do. As you know, the bill is an enabling bill, and there is work to be done with people and stakeholders to work through the specific costs. The approach is different: the costs that have been supplied in the financial memorandum are based on publicly available information, and ranges are set out that give a good understanding. However, it is true that there is more work to do: as I said, clear business cases will be developed for the detail of the plans, which will allow parliamentary scrutiny.

Michelle Thomson: So, it is policy driven—I understand that. You are correct that the amalgamation of health and social care has been a wish for a long time. However, that different approach has clearly introduced significant other risks, even with apportioning or estimating costs up front. The ranges that you have set out are very wide.

Let me put it this way: if it was your personal money, you would not be risking it. How will you mitigate the risk of there being significant cost overruns in a multitude of areas? My colleagues have mentioned issues with VAT, defined benefit pensions, assets, staff, double running, IT and even uncertainty about the governance of boards. Each one of those issues would introduce additional costs. How will you mitigate the risks in the process that you have adopted?

Donna Bell: I begin by saying that we are very aware of public value and the costs to the public purse. That is at the front of our minds at all times,

as we are developing the work. You have highlighted a range of areas, and Fiona Bennett has already outlined a number of the risk management strategies.

The programme of work that is under way is very clear about all the risks in the programme, whether they are risks around the safety and effectiveness of delivery, financial risks, or the range of other risks that might emerge. We are very clear that there are risks. Fiona Bennett can say a wee bit about financial risk management.

10:15

Fiona Bennett: One of the biggest drivers of the range of risks is whether local government remains a service provider in the local areas. That process has yet to be worked through. We have tried to be transparent and to show the full extent of all staff transfer or if no staff transfer. There are a lot of workings behind the ranges that are given.

On the financial risk of overruns, we have set out a financial estimate at a point in time. Through the annual budget process, we would set out the available budget for national care service development for the future year. That would be backed up by the business case approach—the value-for-money assessment, along with the economic and financial cases—in line with green book guidance. We will make financial commitments only when we have evidence to show value for money.

Michelle Thomson: You make a point that reflects my personal experience, which is that a programme plan is only ever accurate after the programme has finished. That is the standard issue and risk for all the spend. What you are describing makes that more likely, rather than less likely. You are talking about the business cases in the areas that you mentioned earlier, but only at that point will we start, from a financial perspective, to get a sense of the risks to the public purse. There are concerns about parliamentary scrutiny, on which I absolutely back up what my colleague, Mr Mason, said.

I looked in the financial memorandum specifically for the word “risk”. It is mentioned only twice. However, this is screaming out that there are huge risks, to me. It might be that you are under pressure in terms of timescales in which to deliver, but from my perspective of financial scrutiny, I am seeing a blank cheque. That is deeply worrying in respect of the public purse.

If you had had a choice, would you have produced that financial memorandum or would you have wanted more detail and further breakdowns based on the policy provisions? Were you pushed to bring forward the financial memorandum?

Donna Bell: No. Fiona Bennett and others have spent a huge amount of time developing the financial memorandum. That is the nature of the approach. As I have said, form needs to follow function. We want to be really clear that what we are developing works for people. We have talked a lot about the risks; I can provide real reassurance that, as part of the programme work, the risks—whether they are delivery risks, financial risks or whatever—are very much at the front of our minds. We are aware of and are actively managing the risks that are associated with the programme.

People have talked to us about the opportunities that we achieve through the development work. The feedback from the forum and through other discussions has been that there is a huge opportunity to develop services that really work for people and are consistent and fair. We want to maximise those opportunities while managing the risks very carefully.

Michelle Thomson: This is my last question and is for my own clarity. Will this be the only financial memorandum? Will you break down the detail, associated risks and potential cost overruns, which are what we are concerned about, through the detailed business cases and regular updates to the committee?

Fiona Bennett: Yes, that is right. It is not the case that work to estimate the financial impact stopped on the day that the financial memorandum was submitted—that work has continued since the memorandum was submitted in June. That will continue as we get more evidence and work through the co-design process to understand the financial estimates and risks. It is a live process.

Michelle Thomson: When do you anticipate baselining your estimated costs, so that you can nail your colours to the mast a bit more? At what point will that occur?

Fiona Bennett: The financial memorandum is the initial public-facing document setting out our initial cost projections. The first programme business case that we publish will set out the next iteration of the costs. That will be clear about any changes in assumptions between the documents, so that there is a clear audit trail.

Michelle Thomson: Thank you.

Liz Smith (Mid Scotland and Fife) (Con): I put on the record similar concerns to those that my three colleagues have spoken about so far. The financial memorandum is an important part of any bill or legislation, and it is important that, when we pass bills, they are good law. Good law has certain principles—namely, it has to have clarity of purpose, it has to be understood and it has to be workable, but it also has to have a strong evidence

base. Although we are considering only the financial memorandum and not the wider policy commitments, the committee is struggling with the lack of an evidence base.

You have just given an answer to Michelle Thomson that makes it clear that work is being done on an on-going basis and that the information will be updated. Our problem is that we have to scrutinise the financial memorandum. Do you accept the criticism that has been levelled at you by the people who will give evidence later this morning and others who have provided written submissions? The convener described it as “excoriating” criticism. Do you accept that those people have a point and that there is not enough information for them to make a value judgment about how to proceed?

Donna Bell: We have had a number of conversations with colleagues who have made that criticism over the past months. That all goes back to the way in which the bill is being developed using the co-design process. I understand what you say about good law: although we absolutely need to have good law and it needs to be clearly evidenced, the really important point to make is that we also need excellent implementation. Working with people to co-design in full the national care service will help us and it will help people to effectively implement the national care service.

Liz Smith: Do you accept that we have moved too quickly? Obviously, you have to take evidence from stakeholders who will be on the front line in delivering what will, in effect, be a new system. Would it have been better to take a slightly different approach to designing the bill so that we had a more substantial financial memorandum with greater detail than we have at present?

Donna Bell: I think that we are comfortable with the approach that we have taken, and I know that ministers are comfortable with it. It is clear from the people who use services that they are hungry for change. There is an opportunity to work concurrently to develop the detail while making sure that the bill is effective, that it is good law and that it is implementable.

Liz Smith: I understand fully why people might wish to see a policy change—you are right that a lot of people would like change in delivery of health and social care and how it is organised. However, this is about the procedure and how the change can best be put into practice. The stakeholders who are giving evidence to you and the committee are not comfortable with the process, in which they are, in effect, being left in the dark when it comes to many of the costs, which have not been laid out. Do you accept that that criticism must be addressed?

Donna Bell: Obviously, I cannot speak for other people who will give their own evidence, but our engagement has been very proactive and many discussions are under way. I would say that the stakeholder feedback is mixed. I have read the submissions to the committee: some organisations are of the view that not enough time has been provided and that there has not been enough consultation, while other organisations are, as I have said, very keen to progress the change.

Liz Smith: Mr Mason cited the example of college regionalisation, which represented a substantial change to the college sector. I also remember the passage of the Children and Young People (Scotland) Bill, which was a huge bill. At the beginning of those processes, there were issues with the accuracy of the financial memorandums to the bills. Such substantial pieces of legislation take a lot of time to go through Parliament. In addition, at this time cost inflation is rising substantially, which will affect the financial memorandum, over time.

The setting up of a national care service is a huge policy change. I will not argue about the merits and demerits of that policy change, but the financial memorandum that accompanies it is really important. I feel that, at the moment, we are not in a position to make a very good judgment, because we do not have enough information.

Fiona Bennett: I would definitely accept that the financial memorandum shows the best evidence, based on the data and information that we had at that point in time. We have made a commitment to provide further financial information and to give the necessary level of detail once we know what the more detailed design options are.

I apologise, as I have mentioned this before, but I come back to the point that the financial memorandum does not make a direct financial commitment; rather, it provides an outline of the costs that could be incurred as a result of the bill being passed. Ultimately, through the budget-setting process, the value-for-money assessment and the business cases, we will make sure that we have evidence before we make any direct decisions.

Douglas Lumsden (North East Scotland) (Con): I will come back to VAT, which is a big risk. In the worst-case scenario, how much are we talking about?

Fiona Bennett: A detailed assessment of the potential VAT impact was done when the integration joint boards were set up in 2013-14, and it estimated that impact to be in the region of £32 million. That assessment was done on an individual local authority basis. Data was collected and an analysis was done. We are not yet at that stage with the bill. As I have said, we have

appointed an independent external adviser to enable us to understand the high-level impact. We will seek to do more detailed calculations over the coming months in order to understand what the figure will look like. The work that was done in 2014 showed a potential impact of £32 million.

Douglas Lumsden: Will that figure come back to the committee?

Fiona Bennett: The figure will be part of updates that we will give, whether in quarterly updates or business case updates. The VAT impact on different options in the business case will be set out, and the number will be part of that.

Douglas Lumsden: Another issue that I want to raise is information technology costs, which was touched on by Michelle Thomson. It is mentioned in the financial memorandum that a key aspect of the bill is to

“enable the creation of the nationally-consistent, integrated and accessible electronic social care and health record.”

We understand that the detailed costs of that cannot be provided yet, but the FM does not even give an indication of what those costs will be.

Fiona Bennett: The indicative costs will be set out through the strategic outline case, when it is published. The bill does not directly say that a care record will be established. We do not need the bill in order to establish the care record, which is why it is not a focus of the financial memorandum. The high-level envelope of costs will be set out through the strategic outline case as part of the business case process for the care record.

Douglas Lumsden: At this point, do we have any idea what those costs will be?

Fiona Bennett: No—we have not yet done detailed costings on that. We have done some preparatory work, as part of which there is a live international comparison that is looking at other countries that have set up something similar. We can also look at other large-scale digital projects—for example, the social security programme includes digital costs in its business case—but those projects are not directly comparable to the creation of the social care and health record. Therefore, I do not think that it would be right for the financial memorandum to give the envelope for that, given that some of the detail was not known when the FM was prepared.

Douglas Lumsden: Asset costs have been mentioned. You said that those could vary across boards, depending on whether they own the assets.

Fiona Bennett: Local authorities may own a care home, for example, under a lease agreement or a private finance initiative agreement. We do not currently have the detail of that—it would have

to be worked out in conjunction with local authorities.

10:30

Douglas Lumsden: Is the aim for the new national care service to take ownership of those assets or would the local authority still be a provider to the service? Is that still to be worked out? It may not be known yet.

Donna Bell: It is still to be worked out. In the independent review of adult social care, which has absolutely been agreed by ministers, Derek Feeley and his panel made it clear that local authorities have a clear role in the future of social care and that they absolutely could—and, in his view, should—be an on-going provider of social care.

Obviously, as we work through the process with local authorities, there will be a choice for them to consider. We are certainly keen to continue to engage. We know that local authorities provide many high-quality services.

Douglas Lumsden: That leads me to my next point. There will be a choice for local authorities, because the statutory duty will move away from them on to the Scottish Government. As Mr Mason said, provision often costs more than local authorities actually take in, and local authorities could, if they wish, say, “Well, we don’t want to provide this service any more—over to you, national care service; you can buy this building if you want.” Would that be right?

Donna Bell: That could be one outcome, but there are many other outcomes that would lie between the current arrangements and such an arrangement.

Douglas Lumsden: As we go through the business cases, there will, as you say, potentially be additional capital costs to the Scottish Government in buying assets from local government where authorities have chosen to pull out of providing the service and leave it up to the national care service.

Fiona Bennett: Potentially, yes. Again, there are numerous complexities with regard to the valuation method that would be used for those assets, and whether there is a market value; things like backlog maintenance; and any insurance liabilities on the buildings. The process would have to be undertaken almost building by building in order to understand the complexities of each building.

Douglas Lumsden: From my time in a local authority, I remember a private care home going into administration. The local authority had to step in and buy that asset, because there were residents with complex needs who had to be cared

for. In the future, it would be the national care service that would have to step in and provide that service and buy the asset if it was felt that that was the right thing to do.

Donna Bell: That is the point that I made earlier about the provider of last resort, so the answer is yes.

Douglas Lumsden: I have one other slight question. Some local authorities have arm’s-length external organisations providing care. I guess that, in future, it would have to be decided whether an ALEO would remain part of the local authority or whether it would potentially move across to the national care service, or continue to provide care as a provider. Is that right?

Fiona Bennett: Yes. We need to do that analysis to understand the most effective model in terms of cost and delivery of services. We would have to understand whether ALEOs would transfer or remain.

Douglas Lumsden: This is my last point. The Scottish Government desires to reduce its estate and offices and have more people co-locating. From the financial memorandum, it looks like there will be new offices as the extra level is created. Does that not go against what the Scottish Government is doing in trying to rationalise?

Fiona Bennett: We have tried to be transparent in showing what the cost of new premises would be. We would absolutely try to get synergies with the existing public sector estate, and try not to take on new premises where at all possible. We have tried to be transparent in the financial memorandum by showing the upper end of what the cost could be if that was not possible for some reason or if the existing estate was deemed not fit for purpose. Nonetheless, we would absolutely seek to maximise the use of the existing public sector estate before taking on any new property commitment.

Douglas Lumsden: The Convention of Scottish Local Authorities, as the voice of local authorities, has been vocal in committee in saying that there are many unknowns for its members. They will be going into the budget-setting process in the next few months. When will they have a bit of clarity, or at least start to get some?

Donna Bell: The intention is to publish the programme business case later this year.

We continue to engage with COSLA and local authorities on all this work. It is complex, and as we know that local government has a huge amount of expertise, we are keen to work with it. We intend to produce a series of business cases, and we are keen to work with COSLA and others to develop those.

Douglas Lumsden: As a final final point—sorry, convener—I think that you mentioned earlier that boards might differ in how they provide service. I am not sure whether that is what you said.

Donna Bell: I am not sure, either. In which context was that?

Douglas Lumsden: I thought that the whole idea was to provide consistency across Scotland. If different boards are doing things differently, we lose that consistency.

Donna Bell: There is consistency of quality and standards. We are clear that, for example, the delivery of services in rural and remote areas will not be the same as in urban areas, and that chimes well with local delivery of care. It is important that there is delivery flexibility and an opportunity to co-design services locally, so that they are the best fit for people. There is a mixture of national frameworks for standards and quality and the ability to design services locally to meet the needs of the population. There will be consistency in standards and quality, but the delivery mechanisms might differ across the country.

Douglas Lumsden: We might potentially still have a postcode lottery, in which the kind of service that someone receives depends on where they live.

Donna Bell: I would probably instead describe it as intending not to have a postcode lottery on standards and quality, but to have flexibility with regard to the best means to deliver for the local population. A service would be designed with people to ensure that it met their needs.

Douglas Lumsden: Could you not have those standards and quality as things are now?

Donna Bell: We have a number of national standards at the moment, and we see real inconsistency across the country. The issue is accountability for those standards and how those who are accountable can be held accountable at present.

There is significant variation across local authorities and integration joint boards. People routinely tell us about portability—the ability to move packages of care—and the standards and quality. We know that very high-quality supports and services are being provided now, and that the staff groups that provide that care and support are extremely committed, highly skilled and highly valued. However, we also know that that is inconsistent.

The Convener: That concludes questions from members. I have a few to wind up with.

The first is a follow-up to Douglas Lumsden's point. The briefing by the Scottish Parliament information centre says:

“The stated purpose of the Bill is to improve the quality and consistency of social services in Scotland.”

From our discussion today, it seems like you are using a sledgehammer to crack a nut. Surely, if there are issues of consistency and quality, as you have just touched on in your answer to Douglas, they should be addressed directly. Who has the problems of quality and consistency? Name and shame them. Would it not be easier just to impose duties to ensure that they raise their standards to the level of those who are doing best? I would be happy for you to name them, too.

As Michelle Thomson pointed out, it seems to be a monumental risk to have a bill of this nature, with all the financial implications, because a few service deliverers are not up to scratch.

Donna Bell: In the independent review of adult social care, there was a huge amount of consultation and engagement with providers of services and so on. That led Derek Feeley and the panel to conclude that a national care service was required to achieve consistency and quality. On the cross-boundary issues that were made very clear to Derek and the panel, it is really important that we have the means to ensure that there is consistency and quality across the country.

At the moment, there is real variation. We have talked a lot with colleagues from local government about local democratic accountability, and there is currently no means—

The Convener: I am sorry to interject, but you could say that about any service. You could say it about education, which is not the same everywhere. Bin collections are probably not the same in North Ayrshire as they are in Aberdeen. Are you saying that we have to have a national bin collection service and a national education service? Surely, if there is an issue that is affecting some local authorities—I do not know how common the cross-boundary issue is—you should address that, instead of throwing the baby out with the bath water. The whole policy is taking a sledgehammer to crack a nut.

It is not for us to criticise the policy per se, but the financial wraparound is of concern. The Fraser of Allander Institute said that, if the service is underfunded, it is

“unlikely to be any better than the system it seeks to replace”.

If we are to put colossal sums of money into new structural changes, surely that means that there will be less money available for delivery at the coalface.

Donna Bell: I cannot comment on any other services that might require a national approach, but the strong view from the independent review and in the consultation responses was that the preferred approach is a national care service to promote quality, fairness and consistency. Ministers have absolutely got behind that and are clear that that is the direction of travel.

It is a significant change—we are well aware of the significance and complexity of the change. However, the independent review and the consultation have told us that a national care service is well supported by people who use services and people who work in services. There will be others who disagree, but that was not the overwhelming response to the consultation.

The Convener: So the priority now, given the political commitment behind the national care service, is to ensure that it is delivered as effectively as possible.

In your evidence today, you have talked about the co-design process and working with stakeholders. You said that engagement has been very proactive. However, the Society of Local Authority Chief Executives and Senior Managers said in its submission that

“Local Government was not involved in the development of the proposals prior to the publication of the paper.”

If there is all this proactive work, why was local government not involved?

SOLACE went on to say:

“The consultation paper provided very little information about what the proposal would mean for vulnerable adults, children and families who rely on social work and social care services.”

It also said that the consultation was

“in a largely tick box format.”

What are we, as a committee, to take from that? What is your response to that?

10:45

Donna Bell: We meet COSLA, SOLACE and other local government representatives regularly to discuss current arrangements and improvements to social care and the national care service, and we have invited COSLA and SOLACE to be part of the strategic delivery board for the service and to contribute to the programme. We are absolutely engaging, and we did so during the consultation process. The consultation was clear about the aims of the national care service and the structure of the bill, and local government colleagues had the opportunity to respond to that and to engage with us over the period.

The Convener: We will no doubt question the next panel about that when they appear before us in a few minutes' time.

The financial memorandum anticipates savings or efficiencies through shared services across the national care service, but it does not acknowledge the corresponding loss of economies of scale for local government. It has been pointed out to the committee—I have heard this directly from local authorities as well as read it in the submissions—that there will be an impact on the viability of some of our smaller local authorities. What do you think will be the unintended consequences with regard to the finances involved?

Fiona Bennett: It is important to note that we are not saying that all services will transfer away from local government. If economies of scale mean that it will be better and more appropriate for a service to stay with local government—we might be talking about, say, a smaller or more remote rural community—that will still be an option under the bill. Before any such decision was made, we would have to engage on an authority-by-authority basis to understand the impact of withdrawing social care services and to ensure that we have made the decision on the basis of the best available evidence.

The Convener: So there might or might not be a withdrawal of 75,000 staff from local authorities. Is that what you are saying?

Fiona Bennett: Yes, that is what is set out. The total range of staff in scope at the moment is, from SSSC data, 75,000, split between the 32 local authorities.

The Convener: My question is whether the viability of local authorities will be taken into account or whether all this will be taken forward as a result of some purely isolated look at the delivery of the service.

Fiona Bennett: We will absolutely need to understand the impact across local authorities.

The Convener: SOLACE also said:

“Organisational changes appear likely to consume much of the total funding available for the NCS, which is stated to be over £840 million by 2026-27. This is about half of the total investment in adult social care alone that COSLA, Social Work Scotland and others consider is needed. In addition, this would not include the investment in justice and children's social work and social care services that is desperately needed.”

As I said at the beginning of the session, we are in a situation of financial difficulty and challenge in Scotland and across the UK. How will we square the circle of having these huge organisational changes while delivering for the people who require the service?

Fiona Bennett: It is important to consider the types of costs in the financial memorandum. You have already referenced the public commitment to a 25 per cent increase over the course of the parliamentary session but, if we look at the pay and terms and conditions costs in table 8, which form a substantial amount of the care boards' costs, we will see that they are for the 75,000 local authority staff who will potentially transfer. Those staff already exist, so those costs are already in the system; we are just trying to be transparent by showing that they will fall to the care boards. However, the pay and terms and conditions uplift each year will happen within local authorities now—

The Convener: I am sorry, but I am talking about the organisational changes.

Fiona Bennett: Yes, but when we compare the 25 per cent increase—the £840 million that has been quoted—with the costs in the financial memorandum, we will see that not all the costs in the memorandum are for organisational change. Some are, but there are other substantive amounts such as those for pay and terms and conditions.

The Convener: The last question from me—and the last in this session—is: does the financial memorandum, in your view, deliver best estimates of the cost of delivering the legislation?

Fiona Bennett: I believe so, based on the time when it was written, the data and the evidence—

The Convener: Hold on a second—we are not at the time when it was written any more. I am talking about where we are now, which is more important as we move forward.

Fiona Bennett: Things that we have already mentioned such as inflation are extremely volatile at the moment, and the numbers that are presented for inflation will have to be—and are being—reviewed regularly. However, I believe that the financial memorandum sets out the best estimate of the envelope costs that we have at present.

The Convener: It has been a fairly long session, and I thank Donna Bell and Fiona Bennett for their evidence.

We will now have a five-minute break, after which we will take further evidence.

10:49

Meeting suspended.

10:59

On resuming—

The Convener: We continue our evidence taking on the financial memorandum to the National Care Service (Scotland) Bill. I welcome Sarah Watters, director of membership and resources at the Convention of Scottish Local Authorities; Sharon Wearing, chair of the integrated joint boards chief finance officer section, Chartered Institute of Public Finance and Accountancy; and Paul Manning, executive director of finance and corporate resources and deputy chief executive, South Lanarkshire Council, representing SOLACE Scotland.

We move straight to questions. What do you believe has motivated the Scottish Government to take such momentous steps in bringing forward the bill?

It seems that you all want to take the fifth amendment, so I will help you out. The Government has said that the bill seeks to ensure consistency and quality of services. In what way do the services lack the quality and consistency that we all want to see?

Go on, Paul Manning—I know that you are desperate to speak first.

Paul Manning (Society of Local Authority Chief Executives and Senior Managers Scotland): Thank you, convener.

I am absolutely sure that good intentions have motivated the Scottish Government. You referred to consistency, and in the discussions that we overheard earlier there was an absolute desire—which also come through in consultation—to improve the quality of services; everybody, including us and the witnesses who preceded us, shares those goals. The issue is the route via which we get there.

The change that is mapped out in the financial memorandum—what we are here to talk about, specifically—is seismic. It means a wholesale and complete change for services that are currently being provided by health and social care partnerships and by local authorities and NHS boards across Scotland. It will be far reaching and there is a massive degree of risk attached to it. There are loose ends in the financial quantification of that risk that are considerable and also far reaching.

To come back to your question, convener, the bill is absolutely founded on good intentions. We all share those intentions, but we have misgivings about the path that is being laid out to take us there.

The Convener: To be fair, having read all your written submissions, I think that you have more

than misgivings. Correct me if I am wrong, but from what I am reading it is clear that there is strong opposition to the whole philosophy of the bill.

We are looking at the financial aspects of the bill. Sharon Wearing, what alternatives could the Scottish Government deliver if it was not going down this path?

Sharon Wearing (Chartered Institute of Public Finance and Accountancy): I go back to the point about the role of the Care Inspectorate, and quality and standards. Mechanisms are in place to look at the quality of services and drive that up. The question is how we build on the existing arrangements.

Integration joint boards have been up and running for seven years. That is not a long time. There is also a lot of legislation that has been held in reserve that could be brought in to take the boards on to the next step. However, it seems that we are throwing the baby out with the bath water and starting again. Some of the aspects could be addressed by developing the integration joint boards further. The original legislation allowed for that to happen in due course. There are options for taking that forward and allowing the integration joint boards to grow, become a bit more independent, and run more of those services—as was the original intention.

The Convener: Sarah Watters, is that COSLA's view? There is an element of frustration, I understand, among Scottish ministers and other MSPs, with the fact that there is still inconsistency and that there is not the same level of quality everywhere. For example, as you will have noted, the bill team talked about specific issues across boundaries. I do not know how big an issue that is.

Sarah Watters (Convention of Scottish Local Authorities): COSLA maintains the position that part of the reason for the perceived inconsistencies and differentials in quality is that councils have had to make really tough choices over the past 10 or 15 years in relation to resources. No area has been left untouched by those decisions.

Some of the witnesses in the previous session talked about a lack of investment in care assets and in fleet for social care workers, but councils have had to take tough choices in a range of areas. The term “postcode lottery” is overused now, but it is not a lottery—we do not take decisions by pulling a ball out of a machine. Decisions go through due process in council chambers and are based on the considered opinion of officers. It is not a lottery; it is just different.

Paul Manning is absolutely right—we are motivated by the same things. In policy areas such

as early learning and childcare, the end point was potentially not as prescribed as the national care service answer has been. We worked with the Scottish Government in a space that involved thinking about different types of service provision in different local areas and what would be most appropriate. In this case, a desire for absolute consistency has got us to where we are now.

Every ELC service is not identical, but we are delivering the policy intent, although in different ways to respond to local circumstances. An approach more like the previous one could have been taken in this case in order to—as Paul Manning said—get to the same end goal.

The Convener: In the consultation, you all responded to the question of whether there was adequate time for consultation with a one-word answer, which was “No”. You might have missed some of the previous evidence session today because you were travelling here, but I put that point to the bill team, who obviously tried to defend the length of the consultation period.

How much time do you feel that there could have been for the consultation? How could it have been improved? What further consultation could there be? I will ask all three of you the same questions. What confidence do you have in the level of engagement on co-design, which the bill team mentioned on at least four separate occasions in the previous session? They talked about being proactive and engaging with stakeholders and so on, but that does not appear to be your collective view. Perhaps you can talk us through that. Sarah Watters may want to go first on this occasion.

Sarah Watters: One cannot deny that there has been an engagement and consultation process, but the proposed change is huge. It is not a standard policy consultation for which the Government can simply roll out the national standards for community consultation and engagement.

The other problem is the definition of stakeholders. The three organisations that are represented here today are pretty significant stakeholders, if we think about the number of staff and the fact that the bill could potentially remove a third of staff and budgets from local government. We are a pretty hefty stakeholder in the whole process. The process has involved a one-size-fits-all approach to how engagement and consultation have taken place. It was quite difficult for organisations such as ours to put forward that view and ensure that everybody was aware of the scale of the stakeholder in this case. That has perhaps been part of the issue during the process.

The Convener: Yes—that is a really good point.

Sharon Wearing: The challenge for us was that the consultation came at a time when we were looking at recovery and we were still dealing with another wave of Covid. In addition, it took place over July and August, which is the main time when staff try to take some annual leave. Trying to get the work on the consultation done over that period was challenging for us, given the context that we were all dealing with—another few months would have enabled us to do some further work on the consultation, and to try to understand what was in the document and what it was saying.

As Sarah Watters said with regard to the comment about stakeholders and engagement, we work in this arena day in, day out, but we were involved in just the same way as other stakeholders were. We feel that it would have been better if there had been more detailed involvement with us, and a better understanding of what it is that we do and the services that are involved, and the implications of the bill in that respect. More detailed engagement with us as part of the process would have been helpful, but—as Sarah Watters said—we have been treated just like everybody else.

At one level I understand that, but the implications for us are significant. It would have been more helpful to have more detailed engagement with us as we go through the process. Having a bit longer, particularly given the timing of the consultation, would have helped us all to respond to it and, as we work across Scotland, deal with it better collectively.

The Convener: So you are saying that because so many people were consulted your own contributions have been hugely diluted as regards what the bill team took on board as the financial memorandum was being put together.

Paul Manning: Again, I back up everything that Sarah Watters and Sharon Wearing have said. The convener mentioned that there has been a theme of cursory responses of “No” to the question whether people had enough time to respond to the consultation. As Sharon Wearing has said, much of that will have been driven by the timeframe across which the process was carried out, which felt unnecessarily compressed into a period in late summer when many people take holidays.

The committee will have picked up from the SPICe summary of responses that there is a consistency to their themes. The bodies that responded, which did not have enough time, drew on existing views that had already been expressed to the Scottish Government over a period of time across which dialogue on the issue had taken place. There is a consistency of theme in the responses that was there to be drawn on. However, it does not feel as though that side of

the argument is being listened to. The outcome that we are being pointed towards, which is a huge change, does not seem to have varied across the process.

The Convener: Sharon Wearing, in your submission you mention the importance of strong financial leadership and the fact that it has not been recognised in the consultation, the financial memorandum or indeed the bill. You also mention a lack of robust information. For the record, what additional information do you require at this point?

Sharon Wearing: We have highlighted our concerns around VAT, pensions, information, transfer of assets and the implications of that. VAT is a big concern, as is the status of public bodies. Currently, under the Local Government (Scotland) Act 1973 we are section 95 officers, but in the bill, there is no reference to what the status of chief finance officers will be. There is also nothing about the future legal status of the bodies, which leads to concerns about VAT, around which there is a great deal of risk. I also think that that risk is a lot more significant than the figure that was quoted earlier.

We are currently able to reclaim VAT. To give the example from my area, an IJB has the status of a section 106 public body, so we—Glasgow City IJB—can reclaim all the VAT that we pay. If that changed tomorrow and we could not recover VAT, that would mean a loss of £7 million for us alone. We account for 11 per cent of Scotland, so that will give the committee an idea of the range of the problem.

It could go further, depending on the extent of the services that are within the scope of the bill. There are huge risks there. We need to understand those areas first before we move forward, because there will be significant cost implications if we do not understand the legal status and role of each body, as well as the situation in respect of VAT, pensions, transfers of assets and other issues relating to buildings and the costs of maintaining them.

The Convener: In your submission you say:

“the level of uncertainty and remaining unknowns do not allow for any certainty around the reasonableness and accuracy of the costs and savings included.”

You go on to say:

“The use of large ranges in costing do demonstrate the uncertainty within the”

financial memorandum. I put this question to the bill team when you were there: has the financial memorandum met the best estimates criteria?

11:15

Sharon Wearing: The figures and ranges that are laid out in the financial memorandum look as though they cover the costs of the bill, albeit that inflation has moved significantly. However, there are gaps, which is recognised in the financial memorandum. We are concerned about the gaps because they will cause significant costs, which will add to the implications.

One area that I am a bit concerned about is the range for new demand for services. That demand is growing significantly. We have seen increases associated with demographic growth, particularly post-Covid. Only 3 per cent is built into the financial memorandum but, just now, we are seeing ranges of between 4 and 6 per cent, so it is running higher than what is in the financial memorandum. We know that we now have an ageing population and the challenges for future years will only grow. Therefore, the figure for that is possibly on the light side.

The Convener: Paul Manning, you said:

“Whilst the Financial Memorandum acknowledges that further work is required, this should have been undertaken prior to the publication of the Bill, to support adequate scrutiny.”

Paul Manning: To come back to the question that is at the back of that comment, which is what is in the financial memorandum and whether it represents information that the Parliament—

The Convener: Funnily enough, that was going to be my next question, so I may as well ask it now. What should and should not be in the FM? Is there anything in it that should not be there and what additional content should there be?

Paul Manning: I will make a number of points on that. On what is in the financial memorandum, a representation of what is spent currently is drawn in, but it is based on 2019-20 figures. As Sharon Wearing said, it is uplifted for demographic pressures by a level of 3 per cent, which is an assumption in itself. There is also an estimate of inflation moving forward across a period of years, which, sadly, will be dated by now.

As a local authority director of finance, I would need to weigh that up against the fact that we have a spending review that is based on flat cash settlements for local authorities without uplifts for demography or inflation. There are currently limitations on spend in the financial memorandum, but that does not represent what the cost of a national care service could be. There is another leap of faith in turn in that.

The financial memorandum does not represent the outcome of the Feeley review or the national care service consultation. You cannot see the total costs. You are not able to look at what the

priorities would be within them or to properly compare alternative models against what is laid out in that financial memorandum.

Our point of view is that we are entitled to a clear picture of what the national care service would cost. That would extend to improvements in the service, which is what everybody is after, and investments that need to be made. I acknowledge that the financial memorandum sets aside a number of improvements in health and social care that are other aspects of Government policy not directly related to the bill, but they are probably requisites for the success of a national care service.

The comments in the SOLACE submission about the misgivings—I use that word again—about what is in the financial memorandum are founded on that. For me, a piece of that is the question of what it will cost in total. We talked earlier about a figure of £840 million that is referenced in the spending review, and an explanation was given of that but, if we weigh up those factors, weigh up the cost of structural change and compare that to £840 million, the question is whether there is money in the financial memorandum to fund improvement. That is genuinely concerning for everybody in the local government community.

Again, I appreciate that some pieces need to be kept out of the financial memorandum. However, there is a summary of economic benefits from paragraph 16 onwards, and it is reasonable to assume that all the system changes that are in the orbit of health and social care now are referenced in the benefits that would accrue from that improved system.

There are several shortcomings and leaps of faith in the financial memorandum, but they take us to a position where we are acknowledging that there is a risk in making a massive change.

Sarah Watters: I am glad that Paul Manning mentioned the resource spending review. It was published at the end of May and the financial memorandum came out in June. The resource spending review gave the figure of £840 million. That could be swallowed up by the cost of running the service and the set-up costs, which come to about £750 million. It is welcome to see the acknowledgement in the financial memorandum that there are increases in demand so there need to be increases in cost, but nowhere else do we get that recognition of those cost and demand pressures.

The RSR absolutely did not do it for local government—it stated that there is £10.6 billion core funding, with an uplift of £100 million in the last year of the spending review. I am not quite sure how we can, on the one hand, acknowledge

that there are cost and demand pressures and yet, on the other, say to local government in the resource spending review, “Sorry, we don’t recognise population and demand increase, inflation and pay inflation.” One document was published the month after the other was.

I welcome the fact that that point was considered in the FM, but we need to do that across the piece and not just in one particular area when there is a proposal in mind.

The Convener: I do not necessarily speak for all my colleagues, but I think that I would be on safe ground to say that we were all concerned about that particular aspect of the FM.

I have a question about viability before I move to other colleagues. I have asked it of the bill team, which did not give a particularly comprehensive response.

Paul, you mentioned that point the last time you were in the committee, so we will kick off with you. What is your view on the impacts on viability, particularly for smaller local authorities, and the economies of scale that other local authorities, such as South Lanarkshire, would have?

Paul Manning: You are right—I mentioned that point the last time I was here.

Again, I make an assumption about how this will work. I am assuming that there will be, as is referenced in the documents that you all have today, a transfer of 75,000 people to a national care service. From the local authority side of things, there will be an exodus of workforce and activity, and of the support structure for them. That is about a third of what a local authority does.

Colleagues who were before you earlier said that these things are happening, these costs are incurred and these people exist. That presupposes that the folk who do the support and administrative tasks for health and social care partnerships are discrete and do that work only for the partnerships. That is not the case; things do not work in silos like that—you would be aghast if they did. There are flexibilities and expertise that stretch beyond health and social care; people support other things as well and those crossovers exist particularly in smaller local authorities. These people leaving will have an impact on the critical mass of what is left.

Again, this is not a plea to preserve local authorities as they are or to leave things the way they are. However, we need to acknowledge that that point is implicit in what is being put to you and in the financial memorandum, but it is not adequately recognised in the financial memorandum. There is a cost and a risk in saying to local authorities, “We’re going to take that proportion of what you do away from you. You’re going to lose a critical mass.”

My local authority is the fifth largest in Scotland. Aspects of what we do will strain because of that transfer. I do not get how smaller authorities will be able to come through this and provide services in the way they did previously. However, the FM does not recognise that point, and that concerns me.

Sarah Watters: As well as financial viability, we need to think about the issue in the context of local democracy. What this will do to the scope of local decision making is significant. Before Covid, we went through the local governance review looking at fiscal, functional and community empowerment, and some pretty radical proposals came from some council areas, along with our partners, about things such as single public authority models. That was looking very much at fiscal and functional empowerment. There is a danger that this approach closes some of those options down.

I heard what the previous speakers said about the situation looking different in different areas, but there is still something about the interaction between local models that makes sense—for example, in island communities. I do not think that it is any secret that Western Isles and Orkney put forward single public authority models.

The Scottish Government has kicked that review somewhat into the long grass. We are trying to get it back on board, but things such as the national care service will impact on what will be left of local democracy.

The Convener: I am a big fan of single public authorities. We will now expand the discussion around the table to include Douglas Lumsden, to be followed by Michelle Thomson.

Douglas Lumsden: Following on from your mention of the local governance review, has there been any more work on that? You are right that, if social care is no longer under local government’s responsibility, there would be a huge impact on that review.

Sarah Watters: We are getting back into discussions with civil servants on that, but we recognise that the context is extremely different. A team in the Scottish Government is engaging with COSLA on the issue.

Douglas Lumsden: The national care service should go hand in hand with that review, should it not?

Sarah Watters: On the convener’s point about single public authorities, that was only one example; other examples came forward about doing things differently. In Highland, there is a lead agency model, so it is not as if there are not other options out there. The local governance review will be challenged by the current form of the national care service solution.

Douglas Lumsden: I asked the bill team about that earlier. There is a political will for a national care service to happen, so it will happen in some form, but we do not yet know what that will be. What is local government's preference? Would it be to transfer the 75,000 jobs and all assets to the Scottish Government, or to be providers to the national care service, so that you maintain the assets and most of the staff but the statutory duty as the provider of last resort has gone to the Scottish Government? Some people might think that that is a good thing. What is your preference for how that would shape up?

Paul Manning: I can answer that to start off with, Mr Lumsden. There is an element of this that is personal preference; other powers could be taken into the health and social partnership structure, which Sharon Wearing mentioned earlier. That envelope could be pushed within the existing legislation. That structure is maturing and developing, and has had a period of time to embed, but it is not that long since that change was made, and in the midst of that, those organisations were at the fulcrum of a pandemic. Does that system need to be reinvented in order to deliver improvement? That is the question I would start with.

Reference was made earlier to a desire to improve consistency and quality—that is paramount. Could the role of a national care service be to sit within the existing structure with a remit of looking at quality and consistency and delivering on that, as opposed to, to go back to a point that you made a second ago, the consolidation of 75,000 people into something new that needs to be set up, administered and run, and a system that needs to be changed over the short to medium term? Is that the best way to make progress at this time? If there was an alternative, personally, that would be mine.

Douglas Lumsden: Therefore, you would, potentially, still have the boards that the Government seems intent on having, and those would commission services—perhaps from the IJBs or other places—and still set the quality and consistency that you talk about as well.

11:30

Paul Manning: With regard to the picture that I was trying to present, if there was a national care service within the existing structure, I probably would not advocate a change from the current system of health and social care partnerships. However, if a new body was inserted into that structure, with a mandate to look at quality and consistency, specifically within the existing structure, in tandem with other agencies and existing regulators, might that be a way ahead?

Douglas Lumsden: Therefore the statutory duty would remain with local authorities.

Paul Manning: That would be my preference. That is what I was trying to express. With the structure as it stands, you could, potentially, push out the boundaries for health and social care partnerships—take them to the limit, if that is what is wanted and required and if that is what is asked for at the national and local levels—but is there space for something else that could ensure quality and, where appropriate, consistency? There must be—and there is within the current system—room for local decision making and room to make decisions that suit local circumstances. That is a strength.

Sharon Wearing: When strategic and operational responsibilities sit together, that works really well for health and social care partnerships on the ground. There are local arrangements because we do not all have consistent services just now. If we did, that would be a definite improvement. Going forward, as I said earlier, we would look for a hybrid model. A lot of the work that is being done in IJBs is really good, but we can make improvements. As Paul Manning said, that overarching role to drive forward quality and consistency would definitely help. Again, having quality and consistency of services in scope would help, but do not separate the strategic and operational aspects, because that is the one thing that makes the biggest improvement to service delivery.

Again, we would like a hybrid model that builds on what we already have—rather than starting again—and for the money to be put into front-line social work services and service provision. That would be a better way to spend the money.

Douglas Lumsden: It was interesting to hear from the bill team that there will still be inconsistencies, between rural and urban settings. It was not going to be uniform across Scotland anyway, so my thinking is that it would be a case of changing from 32 different set-ups to perhaps five or six—I do not know how many boards there will be. We will see as we go forward.

Michelle Thomson: Good morning. I read all your submissions with great interest, and I share your concerns about some of the issues that have already been touched on around VAT, pensions, assets, governance and so on. In the previous evidence session, I added in some of my own concerns. However, in the interests of giving every panel an equally hard time, I want to ask you some questions.

Any change that removes or is perceived to remove responsibilities is always resisted by the affected body. To what extent are you simply

resistant to change and protecting your own turf, if you like?

Sarah Watters smiled, so she can go first.

Sarah Watters: That is a very interesting question. We were not here for the previous evidence session, and, obviously, I would be interested in the responses to that question from those witnesses.

On resistance to change, local government has had to deal with a lot of change over the past 10 to 15 years, and I think that we have shown that, when the context is set right for that change, we can work really constructively on getting an answer that is right for each area. Through the joint statement of intent, we have shown that we know that there are areas in which we want to see change and improvement. I do not think that there is resistance to change, but we want to see change implemented in a careful, incremental and considered way.

There are areas in which we absolutely want to see change—in workforce planning, for example, as it is impossible for each health and social care partnership to grapple with that individually. There would be no resistance to change—certainly within local government—in some of the areas that Paul Manning spoke about, such as workforce planning, training, terms and conditions, the fair work agenda and ethical procurement, but we need the detail if there is to be wholesale structural change. A lot of the resistance results from the lack of detail in the financial memorandum.

Michelle Thomson: To build on that, we talked earlier about economies of scale. I think that Paul Manning mentioned the loss of economies of scale to local government. However, a corollary of that is the benefit of economies of scale to the Scottish Government. I want to ask about that because, all the way through this session, we have commented on public sector funding and our being in a precarious position, and we do that continually.

What specific economies of scale can you see with at least some of the proposals for the Scottish Government and therefore the public purse? It strikes me—I have put this on the record before—that having 32 local authorities with duplicate functions across the board is not necessarily the most efficient way of working. I am interested in your thoughts about where the economies of scale are for the Scottish Government rather than the disbenefit of economies of scale for you.

Paul Manning: I will come back in on that.

To go back to the financial memorandum, there is a significant cost in there in respect of local and national boards, and the extent of the costs leaves me wondering where the economies of scale are.

Michelle Thomson: The financial memorandum does not mention economies of scale.

Paul Manning: No, it does not. That is my perspective on it. It mentions £25 million to £40 million. That is assumed to be the current cost of supporting and running the services, but there is no background to where that comes from.

One of the shortcomings of the financial memorandum is in identifying whether there would be savings in moving from a series of health and social care partnerships to a system with a national organisation and local boards, regardless of how many of those there are. That is an issue that I have with the financial memorandum.

Michelle Thomson: Does Sharon Wearing want to answer either of my questions?

Sharon Wearing: Yes. We have been at the forefront of the change. We are not resistant to change, and we are keen to see health and social care partnerships develop further. That is not our issue.

The obvious way to create economies of scale, which has not been pulled out, is by reducing 32 partnerships to a smaller number, but there is no commitment to what that number would be. That is the obvious way to bring about economies of scale and make savings.

The opposite challenge is in the size and scale of the partnerships and the connection back to local communities, because that is what we build our services on. There is a challenge in getting the right balance between economies of scale and creating local, community connections. That is what the services need to be built on.

Michelle Thomson: My last question is on the process and the production of the financial memorandum. It has to be produced alongside the bill—that is a matter of process in the Parliament. However, it strikes me that we are talking about a very large bill. Somebody referred to colleges earlier; I imagine that there were similar issues with them. The issue is absolutely huge, and I cannot see how a financial memorandum can be produced at this point in time with any degree of accuracy whatsoever, when there are still huge questions about the requirements and the enactment.

During the earlier panel session, I asked how we as a committee will ensure that there is adequate financial scrutiny. That is our primary purpose. I got back the assurance that the resultant business cases, which would contain risk assessments, would be brought forward to us. My question to you, from the other side, is whether that will be adequate. I think that we all agree that there are significant gaps in the financial memorandum as it stands. From a financial

scrutiny perspective, will the process in the financial memorandum work for something of that scale?

Paul Manning: I do not think that it will. A summary at the end of the SPICe briefing lays out the risks for the committee. It reflects on the work that has been done in the financial memorandum and acknowledges that it is what it is—there is a best estimate at this point. It goes on to list a number of omissions and shortcomings, and it makes the point that decisions that are implemented through secondary legislation—I am not a lawyer or an expert in parliamentary law, and you will know far better than I do where the distinctions lie—are not usually the subject of a financial memorandum. Therefore, I do not think that the system that is laid out in the financial memorandum would propel that back in front of the committee. The short, honest answer from me is no, I do not think that that is going to work.

Michelle Thomson: Do Sarah Watters or Sharon Wearing want to add to that?

Sharon Wearing: I think that there are significant areas in which more detailed information is required to establish that it is a robust financial memorandum. We have highlighted questions around the legal status of the boards, the VAT implications, and what they will mean. Those could add significant costs. If a more detailed business case had been done as part of the process to start with, I think that we would have had more sound and secure costings.

Sarah Watters: Because there would be such a residual impact for councils financially, we need to see a process for how that will be monitored. How are the audit, scrutiny and inspection bodies that deal with local government going to assure Government ministers during the process about the way in which money is being accounted for? That will be really complicated because of that interrelationship. We need to see a plan for that, as well.

The Convener: I am looking for a one-word answer to get absolute clarification on that. Should the financial memorandum be revisited?

Sarah Watters: I believe that it should be, given where we are—

The Convener: It is a one-word answer.

Sarah Watters: Sorry. Yes.

Paul Manning: Yes.

Sharon Wearing: Yes.

The Convener: Thank you.

John Mason: The words “best value” have been used. It appears that £500 million to £1,000 million over the next five years will go into the

structure of the new organisation. Is your argument that, if we have that kind of money sitting around, it is not best value to set up a new structure and that it would be better to use that money to increase wages or to improve the existing system?

Sarah Watters: Capacity is a huge issue for social care. We know that because of the demand, winter pressures, residual Covid impacts, and the complexity of demand. Yes, we would invest in the things that need to be invested in, such as capacity and fair work. Some of the social care estate will require significant work to get to net zero. Even the practices in social care and the vehicles that carers are driving around in require investment if we are to deliver better care.

John Mason: I will let you all come in in due course.

One argument for the new system has been that it would bring more consistency. It has also been suggested that the system would become more like the NHS, which is a national organisation. However, it strikes me that the NHS can be quite inconsistent. All the health boards do things differently, every general practitioner practice seems to do things differently, and so does every dentist and optician, as they are all private. There is quite a mixture in the NHS. If we move to a national care service, will it be more consistent than what we have now, or will there simply be a different kind of inconsistency?

11:45

Paul Manning: That issue came up in the earlier session. There are a number of variables and a lot of unanswered questions. A theme in the Government’s response has been to say either, “We’ll cross that bridge when we come to it,” or, “That’s a decision that can be taken locally.” That does not take us towards consistency.

I listened to a conversation in the previous session about assets and how that process would work. For example, would the assets be rented by the care board or would they become the care board’s property? What would happen? The response was, “Well, we’ll see—that decision could be taken on an asset-by-asset basis.” Pitching in responses like that, amid all the other variables, does not guarantee consistency.

To go back to what I said earlier, I think that the proposal is well intentioned, but it does not give us any certainty that we are going to get to something that will deliver consistent care services across Scotland.

John Mason: I was going to come on to assets and things like that, so let us explore that a wee bit further. Can Ms Wearing or anyone else give us

an idea of the situation? If we take care homes, for example, or other care assets, is there a variety of models? Are they mainly owned or leased, or are private finance initiatives in there somewhere? How does the borrowing work? Does it relate to a particular care home? Can you give us a bit more background or detail?

Sharon Wearing: I will start on that one.

Some of the local authorities have their own care home provision. Currently, I work in Glasgow, where we have our own local authority residential care homes. There has been investment in the estate, which has been newly built over the past 10 or 15 years. Some local authorities—some of the smaller council areas in particular—do not have their own care homes, and they rely on the private and independent sector to provide the care home estate. Those homes are funded through a range of mechanisms. Some of them are funded through PFI or through their own financial arrangements. The voluntary sector has bought assets in the past, and it maintains those assets. There is, therefore, already a diverse range of financial arrangements across the care home sector.

John Mason: As it happens, one of the Glasgow care homes is in Dalmarnock, which is in my constituency.

Sharon Wearing: Yes, it is.

John Mason: Without being too specific, can you say whether Glasgow would, in general, use a prudential framework or whatever to borrow for such developments?

Sharon Wearing: There was prudential borrowing for the care homes in Glasgow. A lot of the local authorities use that arrangement or put in their own capital. A mixture of funding goes into those developments.

John Mason: Some councils, if their care homes were built a while ago, will have paid off the debt, so the asset would not have any debt linked to it.

Paul Manning: I will come in on that one.

I go back to Sharon Wearing's point that there is a mixture of funding. There may be situations like the one that you describe. I would imagine that, in the majority of cases of owned care home or care facility stock, there will be a degree of debt attached. What the financial memorandum does not consider is how that is going to be dealt with. For example, if ownership were to be passed to a national care service, there would need to be some form of arrangement behind that to support the transfer of the debt from the local authority to the national care service, but that has not been factored in. That is just one of a number of

uncertainties that lead to us having misgivings about what is mapped out in the proposal.

Another aspect concerns what an asset will cost to maintain and modernise. We are faced with duties around a move to carbon reduction standards and net zero standards over the next 15 years. Those costs would be picked up by a national care service in this scenario. Just now, they are not included in local authority budgets and, on our side of the table, we are—to be frank—tearing our hair out in trying to figure out how we are going to get the money together in order to meet those costs. That would be implicit in moving those assets across to a national care service or to the care boards. That issue is really complicated, but it is treated very lightly in the financial memorandum.

John Mason: Is your understanding that the local council would decide whether it wanted to transfer a particular care home or other asset to the national care service, or would that be a decision for the national care service? How would that be decided?

Paul Manning: Frankly, I do not know. That is one of the aspects that is open ended. If the goal of consistency of standards across Scotland rests on an approach that relies on whether individual local authorities are prepared to continue to run individual assets or whether they transfer them to the national care service, that is not a solid foundation.

John Mason: Do we know how many care homes there are in Scotland? I assume that there must be hundreds.

Sharon Wearing: There will be hundreds, but we would need to get you the figure. It is a significant number.

John Mason: That is okay. My point is that, if we are looking at every individual care home for every council, the third sector and private sector, that will be a lot of work for somebody.

Paul Manning: Yes.

John Mason: I will move on. VAT has been mentioned. I do not know whether any of our finance experts can give us the background on that. Earlier, I tried to press the officials on whether they could work round the VAT or whether we are dependent on HMRC and Westminster to make decisions about it. I think that we ended up paying money in relation to the police and fire services, which we did not really want to do. Do you have an angle on VAT? Are you concerned about it?

Paul Manning: We are absolutely concerned about it. I come back to the point that the VAT issue, along with the issues of assets and pensions, are left hanging by the financial

memorandum. They are acknowledged as important issues that will be returned to—in the case of VAT, with some expert advice on the position. The financial memorandum acknowledges that, if care boards are unable to reclaim VAT, there would be a significant financial impact. That should worry us all from the off.

It is possible to get exemption from VAT. It was mentioned earlier that, under the Value Added Tax Act 1994, local authorities are exempt from VAT. However, it would take time to get there. There is a proposal to change UK Government legislation so that all public bodies could fully reclaim VAT. However, I am led to believe that that will not be legislated on until the middle of the decade.

It is not an insurmountable problem, but nobody really knows how we get to the other side, and the issue is left hanging in the financial memorandum. As Sharon Wearing indicated, and as you have pointed out, we could end up in the position in which Police Scotland ended up, facing VAT bills of around £25 million per annum, purely as a result of structural change. Police Scotland moved from one camp to another and found that it was liable for a VAT bill. Unless the work is done—we do not know how it will be done or by whom—we will continue to be on the wrong end of that risk.

John Mason: Ms Wearing, is that issue tied up with the type of legal bodies that we will end up with? You mentioned that in your submission.

Sharon Wearing: It is partly tied up with that. At present, IJBs are section 106 public bodies, so we are tied to local authorities and can therefore reclaim VAT. As Paul Manning mentioned, work is under way nationally to consider VAT, but the issue is the timescales around that. If the VAT issue cannot be resolved, the number could be significant.

John Mason: Is there a wide variety of legal set-ups that we could have for the care boards?

Sharon Wearing: I assume that there will be a range of options, but I am not a legal expert. A lawyer would need to look at the options, but I understand that there are a number of them.

John Mason: The final area on which I will touch is what happens if the staff transfer. There was a suggestion in, I think, the CIPFA submission that some staff might not be able to transfer under TUPE.

Sharon Wearing: I think that we mentioned that. A number of us are in joint posts and have responsibility for health functions as well as social work ones, and our concern is that there is a threshold for how much of a person's role is transferring if they are to be transferred under TUPE. We think that some of the posts will not

reach that threshold, which is why we are asking about it.

John Mason: If somebody has a role that is partly health and partly social care, would it depend on how the role was split? If a person moved into the new body, might they not transfer under TUPE if only part of their role was affected?

Sharon Wearing: TUPE has a threshold whereby, say, 80 per cent of the role has to be transferable for it to apply. The question is whether it would apply to all those posts. That work needs to be done.

John Mason: I presume that the 32 councils will have slightly different terms and conditions for all the staff concerned, so there would be a lot of work to do if we were going to make them consistent.

Is the concern that those staff might not be able to stay in the local government pension scheme linked to the point about TUPE?

Paul Manning: Under TUPE, pension arrangements are not guaranteed in the same way as other employee rights. With a TUPE transfer, the pensions are usually carved out. The point is that the body to which the employees transfer does not have to replicate the pension arrangements of the body from which they were transferred. I am trying to say in a really long-winded way that, under TUPE, there is a limited guarantee of pension arrangements for people.

We have a wider set of concerns about pension arrangements. It comes back to the figure of 75,000 people leaving local government, in effect. Where are they going? Will there be a new pension arrangement for them? I have outlined some of the limitations around TUPE but, if those 75,000 people left those pension schemes, what would be the impact on the pension bodies across Scotland?

John Mason: Would it not be neutral for the pension schemes?

Paul Manning: I do not know. That bit is left unconsidered in the financial memorandum. We have not done an analysis of who would be leaving, what the liabilities would be, what the element representing them in the fund would be and what the potential impact would be. However, from the data that is available, we can see that it is a mass loss of people from the pension funds, so that will have an impact that needs to be considered and worked through.

Sarah Watters: Recruitment and retention in the care sector are difficult. We try to promote some of the terms and conditions and the pension arrangements in local government. If a new organisation was going to create different pension arrangements, it would have to ensure that they

were attractive because, if recruitment and retention are difficult enough with a good sound pension scheme, they would be even more challenging if there was a lot of uncertainty.

All the submissions have pointed out the uncertainty that the change will create in a really challenging area. Last night, we saw news about the hospitality sector wanting to recruit 30,000 people in the next couple of years. That will be in direct competition with recruitment to health and social care.

The Convener: I have just been advised that there are 1,044 care homes in Scotland.

Michelle Thomson: I have a quick supplementary on the pension schemes. Perhaps I do not understand the situation correctly, but I think that the existing schemes are defined benefit schemes rather than defined contribution schemes. Is that right?

Paul Manning: Yes, that is right.

Michelle Thomson: Therefore, would the change not be a benefit to those defined benefit schemes, given that the liability lies with the provider? We have massive inflation, and I imagine that a lot of pension schemes are feeling somewhat nervous. To my mind, losing a lot of people would be a benefit from a local council perspective, albeit that I accept that it is a problem for the TUPE scheme. Am I misunderstanding something?

12:00

Paul Manning: I would make two points about that. The local government pension schemes in Scotland have funds. They are not what are described as pay-as-you-go schemes, which, by and large, the Government schemes are, whereby today's pensioners' pensions are paid by today's people.

Michelle Thomson: I used to work in a pensions company, so I am with you.

Paul Manning: I apologise. The local government schemes have funds. I am making the point that the issue is left hanging by the financial memorandum.

Michelle Thomson: I fully accept that.

Paul Manning: We have not sat down with the pension funds and asked them, "If we did this, what would it mean?" That is still to happen. That is the point that I am making. I am not arguing that there will be a benefit or a disbenefit; I am saying that there will be an impact.

Michelle Thomson: Correct. I absolutely agree with you. My point is that, in getting to the detail around the financial memorandum, given that we

are talking about defined benefit pensions, the liability for which will lie with whoever takes them on, getting those costed up would be a pretty big consideration. That liability consideration is a worry for every defined benefit pension scheme, so the transfer of that liability might be quite beneficial, but that is a minor point.

Liz Smith: Ms Wearing, you made an interesting point about IJBs in response to an earlier question from Michelle Thomson. You said that you felt that there was scope for improvement. What did you mean by that, given the role that IJBs have in the context of care? Would that have any financial implications?

Sharon Wearing: I was referring to the legislation that was brought in to set up integration joint boards and the fact that a lot of the powers in it have been reserved and have not been introduced. I think that the scope exists in the current legislation to further develop the IJBs. For example, there are opportunities for there to be more consistency in relation to the services that are delegated to IJBs, because that varies across Scotland. The IJB that I am party to has adult social care and children and family services, as well as criminal justice services, as part of its scope, but a lot of other IJBs have only adult social services in their scope.

The legislation that I am referring to includes a lot of reserved powers that have not been used. I think that there is an opportunity to explore the use of those powers, rather than starting again.

Liz Smith: Given the concerns that you rightly have about the proposed changes, do you think that there are changes that could be made to the IJB system that would help us to achieve the aims and objectives that everyone wants to achieve, but without having to go through the major overhaul that is proposed in the bill?

Sharon Wearing: There are changes that could be made. Earlier, mention was made of people having the ability to take their care packages with them when they move area. The ordinary residence guidance covers that, but there is scope to revise that guidance in such a way as to enable people to passport their care packages more easily. There is scope to sort out such issues without having to go through a series of new legislative measures and set up new bodies. There are things that could be done right now.

Liz Smith: That was helpful.

Douglas Lumsden: Three councils use ALEOs to provide care: Glasgow City Council, Aberdeen City Council and Scottish Borders Council. Has any work been done on the impact on those ALEOs? If local authorities no longer had a statutory duty to provide care, could they still have

an ALEO that provided that service? What would be the impact?

Sharon Wearing: Glasgow City Council no longer has an ALEO to provide care—that is now all done in-house by the health and social care partnership. Bringing care services under the operational umbrella of the health and social care partnership has brought benefits.

Douglas Lumsden: That leaves Aberdeen City Council and Scottish Borders Council as the only two authorities that use an ALEO to provide care services. Could that model continue or would it have to be changed?

Sharon Wearing: That would need to be looked into. Again, we come back to the issue of whether providers of care should sit outwith the councils and how much of that provision should transfer to the care boards. The issue relates more to that decision than to the set-up of the ALEOs.

Sarah Watters: In the case of Scottish Borders Council, the care service is actually back with the council.

Douglas Lumsden: So there is only one left.

Sarah Watters: Yes, there is only one. However, I was just talking to Paul Manning about this and I wrote down his comment that it just compounds the upheaval. It adds to the complexity at a local level, which our colleagues in the previous session said would have to be revisited. I think that we have all been struck by it, on an asset by asset, local authority by local authority basis. That gets you right back into the nuts and bolts of building a national care service from the bottom up. If you are talking about economies of scale and the management of that, it is really complex.

The Convener: That concludes questions from colleagues. I just have three more questions—one for each of you—which I hope will not take too long.

The first question is for Sarah Watters. It is about paragraph 67 of the financial memorandum, which says that

“it will take approximately ten years to reach the steady state number of carers with plans and statements”.

It continues:

“This assumes the right to personalised short breaks support under the Carers Act, established by the Bill, is implemented from April 2025”,

although that date is still to be decided.

Given your comments about demography and rising demand, generally speaking, without including that right, is it a realistic timescale to deliver that by 2035?

Sarah Watters: Gosh, that is a big question.

Against the context of all the other changes, it could be really challenging. I note from looking at the table that the upper and lower estimates for the costs of easy-access breaks flatline from 2029-30. That is not realistic in any context—costs increase, pay increases and demand increases. There are so many moving parts in this, so it could be really challenging.

The Convener: The reason I asked is that we have not had any previous discussion on that, so I wanted to touch on it.

Sharon, my question for you is about an issue that you raise in your written submission. You say that there is

“Concern that the recommendation to increase Free Personal and Nursing Care for self-funders will not necessarily deliver a reduction to the amount paid by self-funders.”

Can you expand a wee bit on what your concerns are?

Sharon Wearing: Our concern is that the care home providers will put up their rates and that people will not then see the benefit of the increase. As you will no doubt be aware, the rates for privately funded service users are significantly higher than the rates for the local authority contracts. Previously, with the introduction of free nursing and personal care, the rates for privately funded clients went up. None of those go through the local authority contracts, so we are not able to provide a level of protection to those service users.

The Convener: That is very important.

Paul, in your written submission, you said:

“If a new National Care Service cannot be fully funded, then the Scottish Government should agree to the last recommendation in the Independent Review of Adult Social Care, to consider and consult on options for raising new revenues to increase investment in social care.”

What kind of new revenues and options would we be talking about, potentially?

Paul Manning: We are talking about the broader picture in terms of the tax and revenue-raising situation in Scotland. The root of many of the issues that people have with the care system is funding. That is a theme in the submissions. I think that Mr Mason asked earlier whether, if that volume of money could be put into the system, it could be put to better use than for structural change. If there was money to properly address demographic change and inflation and to make investments in the system, there is no doubt that we would get a better system of care.

The submission points to the need to be alive to every opportunity. I get that that is a phrase that is doing a lot of heavy lifting. It is about trying to generate funds for investment. That may well be

tax policy or things such as charging for services. However, in the move towards the national care service and the financial memorandum, there is a desire to look at charging for certain care services, with a view to moving the other way and reducing such charges. It is about that broader picture. It is about proper funding.

The Convener: I thank our witnesses for their contributions. We now move into private session.

12:10

Meeting continued in private until 12:14.

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