OFFICIAL REPORT
AITHISG OIFIGEIL

Health, Social Care and Sport Committee

Tuesday 20 December 2022

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 20 December 2022

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HEALTH, SOCIAL CARE AND SPORT COMMITTEE
38th Meeting 2022, Session 6

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

*Paul O'Kane (West Scotland) (Lab)

COMMITTEE MEMBERS

*Stephanie Callaghan (Uddingston and Bellshill) (SNP)
*Sandesh Gulhane (Glasgow) (Con)
*Emma Harper (South Scotland) (SNP)
*Gillian Mackay (Central Scotland) (Green)
*Carol Mochan (South Scotland) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*Evelyn Tweed (Stirling) (SNP)
*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kevin Stewart (Minister for Mental Wellbeing and Social Care)

CLERK TO THE COMMITTEE

Alex Bruce

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Health, Social Care and Sport Committee

Tuesday 20 December 2022

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Gillian Martin): Good morning and welcome to the 38th—and last—meeting in 2022 of the Health, Social Care and Sport Committee. I have not received any apologies.

The first item on our agenda is to decide whether to take item 3 in private. Do members agree to do so?

Members *indicated agreement.*

National Care Service (Scotland) Bill: Stage 1

09:00

The Convener: The next item on our agenda is the final oral evidence session in the committee's stage 1 scrutiny of the National Care Service (Scotland) Bill. We are taking evidence from the Minister for Mental Wellbeing and Social Care and supporting officials. I welcome to the committee the Minister for Mental Wellbeing and Social Care, Kevin Stewart and, from the Scottish Government, Fiona Bennett, who is the interim deputy director for the national health service, integration and social care finance, and Anna Kynaston, who is deputy director of national care service programme design, engagement and legislation. Good morning to you all. I invite the minister to make a brief opening statement.

The Minister for Mental Wellbeing and Social Care (Kevin Stewart): Thank you very much, convener, and good morning to the committee. Thank you for having me along today to give evidence.

You will be aware that I have given evidence on the bill to several committees already, so it is good to come to the lead committee, although I have another two to come. It is fair to say that the national care service is one of the most ambitious reforms of public services. It will end the postcode lottery of care provision in Scotland and it will ensure that people who need it have access to consistent and high-quality care and support to enable them to live a full life, wherever they are.

The NCS bill sets out a framework for the changes that we want to make and allows scope for further decisions to be made. That flexibility will enable the national care service to develop and adapt, and to respond to specific circumstances over time.

I will take time this morning to reflect on why a change of such scale is necessary. Scotland's community health and social care system has seen significant incremental change over the past 20 years. Despite that, people with experience of receiving care support and of providing it have been clear that some significant issues remain.

We are not changing just to address the challenges of today; we must ensure that we build a public service that is fit for tomorrow. Today, about one in 25 people receives social care, social work and occupational health support in Scotland, and demand is forecast to grow. The NCS must be developed to take account of our future needs, so we will build a system that is sustainable and

future proofed to take account of the changing needs of our population.

The principles of the new system will be person centred, with human rights being at the very 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 who are accessing care support, and those of their carers.

Improved carer support is one of the core objectives of establishing the NCS. As part of the human rights based and outcomes-focused approach, carers and people with care needs will be able to access support that is preventative and is consistent across Scotland.

Nationally and locally, the NCS will work with specialist charity and third sector providers of social care as well as other third sector organisations in the field of social care to meet people's needs.

The NCS will bring changes that will benefit the workforce, too. The importance of staff in the social care sector has never been clearer, so we are fully committed to improving their experience through recognising and valuing the work that they do. The NCS will ensure enhanced pay and conditions for workers and will act as an exemplar in its approach to fair work. Our co-design process will ensure that the NCS is built with the people whom it serves and those who deliver the service. They have to be at the very heart of all this.

I have noticed that the committee has been out and about, hearing from people with lived experience of social care across Scotland. You have also heard from organisations that represent them. I was delighted to see that, because it is vital that we listen to those people as we establish the national care service. We are committed to working with people who have first-hand experience of accessing and delivering community health and social care to ensure that we have a person-centred national care service that best fits the needs of the people who will use and work in its services, with human rights being at the very centre.

Thank you very much, convener.

The Convener: Thank you, minister, and thank you for referencing the amount of outreach work that we have done. That gives me the opportunity to thank everyone whom we have met across Scotland in our outreach work and public engagement.

There are two common queries that people have put to us, which I will now put to you. They have come up quite a lot in the informal and formal sessions that we have had.

Over our weeks of evidence gathering, many people whom we have spoken to have said that there is already a lot of excellent legislation relating to care; that there are already excellent policies that they were very excited about when the policies were announced; and that there are lots of frameworks and strategies. However, there is a big implementation gap. How would the national care service close that implementation gap? Do we need a national care service to close that implementation gap, and why can that not be done now? That is the first query.

The second query is more of a comment. People have said that there is not enough detail in the bill for them to be able to ascertain what the national care service will be.

I put those to you in a oner. They are big questions, but they come up a lot.

Kevin Stewart: They are big questions and they are questions that have been asked of me over the piece, particularly in relation to the implementation gap.

I said in my initial statement that we have been on a 20-year journey of integration and that things have improved. However, you have—quite rightly—heard from people about implementation gaps. I have, too.

You have heard about legislation that is—let us be honest—in many cases very good legislation, but the spirit of that legislation has not been put into practice and loopholes have been found to avoid implementing it in the way that was envisaged.

Why is the national care service needed and why will it make the difference? First, national high-quality standards will come into play to end the postcode lottery. An example of good legislation in relation to which there have been implementation gaps is the Social Care (Self-directed Support) (Scotland) Act 2013. Some folk around this table—Ms Harper, in particular—have seen that at first hand with me. In the case of that legislation, members of the Scottish Parliament came together to come up with what I think is excellent legislation.

However, in many parts of Scotland, the 2013 act has not been implemented as it should have been. Over the course of the summer, I spent quite a lot of time speaking to folk about SDS, including in Dumfries with Ms Harper, and there are stark differences in relation to whether folk can access all four SDS options and in the amounts of money that is given to folk for their self-directed support. There are vast differences in the flexibilities that are, or are not, allowed. That is really frustrating, particularly for folks who know people in other parts of the country who get more from services than they do.

Those are the things that we need to change. That does not all have to wait for a national care service and the national high-quality standards. Many of you will know that, at my insistence, we recently updated the self-directed support guidance, in order that we can do better. To truly end the postcode lottery in care provision, we need to go one step further by having national high-quality standards.

The national care service will oversee the delivery of care, improve the standards, seek enhanced pay and conditions for workers—as I said earlier—and provide better support for unpaid carers. One key element of all that is that the national care service will support ethical commissioning of care. Our approach to fair work will be an exemplar.

You asked a question about detail. I, too, have had folk asking me for more detail. Some people think that I am dodging the question when they ask me for detail about a particular thing. We have said that we will co-design, with the voices of lived experience, what we do as we move forward. The voices of those who currently receive care and support, their carers and front-line staff will help us to fill implementation gaps. The service will be shaped from the bottom up, to work for all.

The Convener: I will hand over to my colleagues. Emma Harper has a question.

Emma Harper (South Scotland) (SNP): I will pick up on self-directed support. You came to Dumfries and we spent some time together. I appreciated that because it allowed me to see that some people were really happy with the self-directed support that they had been offered, while other folk had not been offered it or had never even heard of it.

Would a national approach to training ensure that people know that self-directed support exists, what it means and what options there are, and would that support be delivered in a more standardised way by the 32 local authorities?

Kevin Stewart: Support has to be delivered in a way that suits everyone. Time and again, I have heard folk say that they have never been offered self-directed support, that they have been denied that support in certain parts of the country or that the offer that has been made to them has been very limited. That is not how self-directed support was supposed to work: folks were supposed to have the opportunity, and the right, to decide on their own care, and to have the flexibility and independence to do that.

I am not saying that everything out there is bad, because it is not. We know that there is some very good practice and that some authorities are going above and beyond the call of duty to build in flexibilities and to get support right for individuals and families. I want to see that thinking being done everywhere in Scotland. That is why the national high-quality standards are so important.

We also need to look at where things do not go right so that we can see what the complaint is and what redress there can be for the individual and their family. That is why we have committed to establishing, for the national care service, a complaints and redress service that will provide a fair, effective and consistent approach to complaints and redress. We will identify opportunities to improve how complaints are handled. The issue is not just that folk are not getting access but that, when they complain, they feel that they are not listened to. We need to change that.

09:15

Emma Harper: We have had some interesting evidence sessions with people who assume that the national care service will do things such as taking away local authorities' assets. Electric vehicles, for example, were mentioned way back at the beginning of the evidence taking. It might help us if you tell us what the national care service is and is not. The issue of transfer of staff and assets that belong to local authorities, for instance, has been brought up. The point about electric cars was interesting to me because I had asked a question about it. How can we dispel some of the myths that have already been created about the national care service?

Kevin Stewart: I have no desire to take folks' electric cars off them, to be honest with you.

There are some myths about assets and staff transfer. The bill gives the Scottish ministers powers to transfer staff from local authorities to care boards or the Government as part of the NCS, but there is no desire for wholesale transfers of staff. Many local authorities are delivering good social care services and we see local authorities as being essential delivery partners, as we move forward. However, because care boards will be the providers of last resort, the bill has to include the ability to transfer staff if a care board becomes that provider of last resort.

It is by no means a foregone conclusion that local authority staff will have to transfer their employment. The Scottish Government's position remains that the new local care boards will work collaboratively and in partnership with local authorities, NHS boards and the third and independent sectors locally and nationally. Our intention is that local staffing decisions will be taken by local care boards as they are established.

That is where we are. I have heard rumours about 74,000 staff being transferred. That is not on our agenda.

The Convener: You can ask another short question, Emma, then we will go to Tess White.

Emma Harper: I will ask a short question, after which I am happy to move on, but I am sure that I will pick up on stuff later.

People have given us evidence that we should fix the situation now. They have said that we should not pursue the national care service at this point because we need to act to fix the system now. They have asked why we would waste so much money—£1.5 billion—on massive structural reform for a national care service, rather than fixing the current situation. How do you respond to that, minister?

Kevin Stewart: Whatever we invest in the national care service is for the good of people, but we know that there is work to do in the here and now. It is not all about the formulation of the national care service. That is why we are also acting in the here and now, which will also be for the good of the establishment of the NCS.

I am very pleased that the Convention of Scottish Local Authorities has now agreed, through our joint statement of intent, to support additional actions that we will jointly take over the next 12 to 18 months to bring about improvements in delivery of social care.

We have heard repeatedly from people with lived experience that the current adult social care system must change in order to drive up standards to a consistent level across our country. We need to tackle the postcode lottery of care, so a different approach is needed. We must have a system in which high-quality community health and social care support helps to create thriving communities across Scotland. That is why we have introduced the National Care Service (Scotland) Bill, which is a framework bill to support collaborative design and address the historical implementation gap that has been mentioned. The implementation gap between policy, legislative intent and service delivery must be closed. That is top of the agenda for people.

The NCS is important, but the work that is being done here and now is absolutely important, too. That is why we will work with the Convention of Scottish Local Authorities to ensure that we cover the additional actions in our newly published statement of intent.

Tess White (North East Scotland) (Con): I ask this question wearing three hats: as a member of the committee; as a representative of a largely rural area; and as a fellow of the Chartered Institute of Personnel and Development with experience of legislation such as the Transfer of Undertakings (Protection of Employment) Regulations—TUPE.

Have you considered the cost of harmonising the terms and conditions? I accept your saying that not all the 74,000 employees will transition under TUPE, but a large chunk of them could. Even increasing mileage rates from 45p a mile to 65p a mile—that figure was given to us by some witnesses—will cost millions of pounds, not to mention harmonising sickness and pension benefits, which will go into the billions. Are you really serious about wanting to transition to a central service—referring to what you said in your opening remarks—or are the proposals a power grab, plain and simple, to centralise services with a view to taking budgets away from local councils?

Kevin Stewart: No, this is not a power grab. We are responding to what we have heard from people right across the country. They want to see ministerial responsibility for social care. It has come as a shock to many people that while, as a minister, I can help to legislate and bring about policy, I have no direct influence over service delivery. It comes as a shock to many members of the Parliament, who write to me all the time, asking me to intervene in situations, which I cannot do, because I am not responsible for the delivery of community health and social care. As I say, we are responding to people who believe that ministers should have accountability for the delivery of social care. We are also responding to people's view that that accountability should be enhanced at a local level—which I agree with. This is not a power grab; it is a response to people.

On the work that we have done around staff transfers and pensions, the bill only gives ministers powers to transfer staff from local authorities to care boards. However, as I said earlier in response to Ms Harper, it is by no means a foregone conclusion that there will be wholesale transfer of staff.

The Government is, as always, well aware of the repercussions of transfers. That is why we have worked on all of that to ensure that we get it right—and will continue to do so. If there are transfers, we will engage and consult with trade unions on that transfer of staff.

If it is agreed that any staff will transfer to the national care service, following discussions with local authorities, TUPE regulations would apply, as set out in section 31(4) of the bill. The Government would engage with the recognised trade unions in line with TUPE regulations and the Cabinet Office statement of practice. TUPE and COSOP place requirements on both sides to consult with trade unions in good time. We would ensure that such consultation takes place. We

would intend to avoid any detriment to staff, including in relation to pensions.

However, I reiterate the point that I made to Ms Harper: there is no intention to make a wholesale transfer of staff.

Tess White: I want to press you on that point, minister. We have heard that one of the current staffing issues is that social carers cannot be recruited, partly because of the 45p mileage rate. Carers are looking for mileage rates equivalent to 65p. The difference between 45p and 65p might seem small to you, minister, but to many carers that could make the difference between surviving in a job and not surviving. Harmonising the mileage rates would cost millions of pounds. You might say, "We are not going to do it and we are not going to think about it" and talk about TUPE legislation and all that sort of thing, but just thinking in terms of fairness, if someone is working and doing the same job as someone else and they are on 45p per mile and the other person is on 65p per mile, that could lead to employee relations issues and industrial unrest. Do you have any comment on that?

Kevin Stewart: I have a lot of comments on that. I know that some folk out there are not even getting 45p a mile. I declare an interest, convener, because I have two nieces who work in social care, one of whom works in rural Aberdeenshire, so I know how hard those mileage costs have hit.

That is why I have written to the UK Government, not once but on several occasions, to ask it to change the rates that it sets in order that we can do better for folk out there. I have also urged the UK Government to find additional resource to deal with increased fuel costs; the UK Government is taking in much more money in fuel duty and VAT because of the increased prices, so let us use some of that money to pay better mileage rates to social care and other vital workers across the UK. Unfortunately, I have yet to hear from the UK Government on that issue. I wish that it would take cognisance of the elements that I have laid out, for the good of social care workers and other vital workers, not only here in Scotland, but right across our islands.

Ethical procurement and fair pay and conditions are at the heart of the bill. Do we aspire to do better in all of that? Absolutely, we do. We need to do this for the simple reason that if we do not, we will be unable to grow the social care profession, which has taken a huge hit in recent times. We have lost lots of people because of Brexit, and we need to replenish that staffing core. In order to attract young people to the social care profession, we will have to do much better with regard to pay and conditions and in providing career pathways, so that they see the profession as being the right one for them. That is the only way that we will make the workforce sustainable for the future.

09:30

Paul O'Kane (West Scotland) (Lab): Good morning. I will return to the point about the potential transfer of staff and the figure of 74,000, which I think that you described as "rumours", minister. I think that trade unions, local authorities and front-line staff would contend that the concern about the possibility of 74,000 staff being transferred is legitimately held; however, I appreciate that you said that your view is that wholesale transfer is not envisaged, and you gave the example of a care board being the provider of last resort.

My understanding is that, currently, a council would be a provider of last resort anyway—it currently fulfils that function. If we are in the business of trying to clear up and dispel rumours, are there any other reasons why staff might transfer to a care board?

Kevin Stewart: There might be other reasons why staff transfer to a care board. For example, it might well be that a care board puts in some specialist provision in relation to the flexibilities that it is allowed in its area, and it might want to transfer staff to fill those positions. Of course, that would still have to come with the agreement of all in that regard.

I come back to the question of why we would transfer huge swathes of staff if the current employer is a good one and is delivering good high-quality social care. I have made no bones about that point during the course of these discussions. There are folk out there who continue to say that I want to grab and transfer 74,000 people to the national care service as part of a bit of empire building. That is not the case. I hope that local authorities across the country will continue to be good prime delivery partners that serve people in their communities. That is the ambition.

Paul O'Kane: If we take as read what you have just said—if we take you at your word—why have you not spelled out in the bill that your intention is that the care boards will be providers of last resort, or that they might put in place specialist provision, which you referred to? Will you expand on that? I presume that you perhaps mean specialist learning disability services or something like that.

Why have you not spelled out in the bill what you have just said, in order to give confidence to people who are clearly very anxious? In evidence, we heard from trade unions, local authorities and front-line staff that there is anxiety, not least about the potential implications of TUPE for pensions and so on. I appreciate that you have written to the committee in that regard, but if we are dispelling

people's anxiety, do you want to take the opportunity to clear up some of those issues?

Kevin Stewart: As I have said at other committees, alongside the draft bill, there is a suite of documents, which includes the policy memorandum. Paragraph 48 of the policy memorandum spells all of that out. I direct the committee to that paragraph and suggest that it looks at it in depth. I also ask others to look not only at the draft bill but at the policy memorandum and the rest of the suite of documents that we have published.

Beyond that, in respect of all of those issues, I continue to, and will always, listen to what folks have to say. I want to allay fears and concerns. I want to ensure that people are enthused by what we are trying to achieve here. The key thing for me—I declare an interest as a trade unionist and a member of Unison—is that I want to ensure that we have a workforce that is bolstered by fair work and that has ethical procurement guarding its back in terms of fair work and pay and conditions.

Paul O'Kane: I want to turn to some of the financial implications and the financial memorandum. Last week, we heard from Cathie Russell from Care Home Relatives Scotland and the social covenant steering group, who said:

"What worries me, to some extent, is that we hear figures such as the £500 million cost of the new structure—Audit Scotland thinks that it could be more than £1 billion—but we will not get one extra hour of care for that. None of that will be spent on the front line."—[*Official Report*, *Health, Social Care and Sport Committee*, 13 December 2022; c 38.]

Can the minister explain why existing Government commitments on the reform of social care as listed in the financial memorandum were not included in the bill? Can you give an update on any progress that there has been on fulfilling those commitments?

Kevin Stewart: No financial commitments are being directly made through the financial memorandum. The process of co-design will continue, and detailed work on the preferred options will be done through our business case process before spend is committed to.

Again, a number of things have been said about the financial memorandum that are not quite correct. For example, it is clear in the financial memorandum that more than 40 per cent of the projected costs relate to improved pay and terms and conditions for front-line social care workers, and not to bureaucracy costs. The estimated costs in the financial memorandum largely represent investments in service improvements and terms and conditions for front-line staff. Any suggestions that the figures relate exclusively to administration or bureaucracy costs are totally false.

Additionally, investment in areas such as support services will directly improve areas such as data analysis, planning and reporting, which will allow us to better understand outcomes and tailor future investment in order to have the biggest impact on our citizens.

The Scottish Government has said that we will increase social care spend by 25 per cent—some £840 million—by the end of this parliamentary session. That is in our manifesto, and we shall do it.

However, I recognise that there have been criticisms of the financial memorandum, which was produced before the current financial and economic crisis. We will consider what has been put to us and come back with an enhanced financial memorandum. However, not all social care spend that is going on now and will continue to go on is covered by the financial memorandum, which covers bill aspects only.

Paul O'Kane: I appreciate what you have just said. I think that everyone would welcome an enhanced financial memorandum. That would be important, not least because of the significant concerns that have been raised by colleagues on the Finance and Public Administration Committee. Will that enhanced financial memorandum include consideration of the VAT liabilities that are involved in this process?

Kevin Stewart: The financial memorandum will cover all aspects that pertain to the bill. As the committee knows, we are working at this moment to ensure that we cover all bases when it comes to any liabilities, including VAT. The best option would be for the Treasury to rule that there would be no VAT liabilities. We will continue to push and prod the Treasury on that front.

Gillian Mackay (Central Scotland) (Green): Thank you, convener. I will pop both my questions into one to save some time.

Good morning, minister. We have heard from witnesses different opinions about what the bill could achieve in the medium term. Could you provide practical examples of the impact that the bill could have on issues that are facing social care? The bill represents a large structural reform. Many of the issues that we are, quite rightly, covering today are very technical. Although they might be difficult for many people in the general public to digest and follow, they could have a large impact on how they or a loved one receive care. What differences do you hope that workers and people who receive care will see as a result of the legislation?

Kevin Stewart: We have had a fair amount of discussion already this morning about implementation gaps and the postcode lottery, as well as about the fact that folk often feel that their

complaints and concerns are not properly addressed. There are three things to take from that. We want to ensure that the implementation gaps are plugged and that we end postcode lotteries. It is galling for some folks to see people who live not far from them getting better services for their condition. The national high-quality standards will be important in ensuring that we end the postcode lottery. We also need to garner knowledge from people to help us to fill implementation gaps.

Preventative approaches must be at the heart of all that we do. We talk a lot about person-centred care; lots of folk get person-centred care, but we need it to apply to everyone. That is why getting it right for everyone is also at the heart of all this. Crisis costs a lot of money, so it would be much better for the public purse, and in terms of the human cost when we get it wrong, to move to there being more prevention, rather than dealing with crises.

Ethical procurement and fair work are important to delivery. We need to ensure that we improve recruitment and retention, which we know are problems. More than that, as I said in an earlier answer, we need to attract new folk to the profession; we need to attract young people into this vital work. To do that, we must show folks that they are valued—not just in terms of pay and conditions, but in terms of career progression. At the moment, we have 1,200 employers; it is often difficult to deal with that many. However, ethical procurement and fair work being at the heart of every single contract will mean that we can do much better.

The Convener: A number of members want to pick up on things that the minister has said on this theme. We will hear them individually and I ask them to ask just one question because we need to move on to talk about co-design and implementation in detail. Sandesh Gulhane is first on my list.

Sandesh Gulhane (Glasgow) (Con): You said in your response that you have made a joint statement of intent with COSLA on making improvements now. How many meetings have you and your officials had with COSLA since the statement was made? Can you name one change that you will make?

Kevin Stewart: We published the new statement of intent yesterday. There are constant meetings between officials and COSLA officials. As you can imagine, I see Paul Kelly, the COSLA health and social care spokesperson, regularly because he is involved in many of the relevant groups, including the ministerial advisory group, which he co-chairs with the Cabinet Secretary for Health and Social Care, to deal with the here and now.

09:45

I will give one example of where I want to see improvement, and to see it quickly. As I am sure COSLA officials would agree, I believe that it is scandalous that many women who are working in social care at the moment have no maternity-pay entitlement. That is absolutely scandalous in the 21st century, and it is one of the first things on my list for improvement. I think that the statement of intent will help us to move forward on that front and to get rid of some of the antiquated employment situations that exist.

Evelyn Tweed (Stirling) (SNP): Good morning, minister. We heard from Derek Feeley in evidence that he feels that the national care service needs to be progressed at pace. However, we have also heard in evidence from many other people that they want a pause. What would you say to that?

Kevin Stewart: We cannot afford to pause—we need to change the system. We have to do it carefully and incrementally, and we have to ensure that, as we move forward, we get everything right. That is the dilemma for me. I know that many folks including Derek Feeley want things to move at pace; many folk want change to have happened yesterday. Let us be honest: activists have been campaigning for social care change for decades. They have seen some changes, which we have spoken about, but that does not go far enough for them.

We have a job to do in getting this right: we have to take people with us and we have to have people at the heart of co-design of the service. That will take a bit of time. We also have a situation in which Parliament rightly wants to scrutinise what we are doing. That, too, will take a bit of time. We have to build the confidence of everyone as we move forward, and sometimes that takes a bit of time.

I very much understand why Derek Feeley wants change to happen at pace, and I understand the activists who want change to have happened yesterday, but I, the Government, the committee and the Parliament have to recognise that there is work to be done, and that that work will take a little time.

Basically, I am saying that there is a fine balance to be struck.

The Convener: We will have a question from Carol Mochan, before we start to talk about co-design in more detail.

Carol Mochan (South Scotland) (Lab): I start by saying that pausing the bill would not mean pausing some of the urgent changes that are needed in social care. We have plenty of evidence and quotes from professional organisations, trade

unions and third sector organisations that say that we can do a lot now.

My question is on sectoral collective bargaining. Has the Government considered that or had any advice on it, and will you commit to talking to the trade unions now about it? Throughout the evidence sessions—you mentioned it yourself, minister—we have heard that we can sort out the pay, terms and conditions of social work staff, and that that would make the biggest possible difference to provision of the care and support that individuals need in their day-to-day lives.

Kevin Stewart: At the moment, national sectoral bargaining is nigh on impossible, because of the current set-up. As I said, dealing with 1,200 disparate employers is difficult.

As the committee knows, in the past year the Government has increased pay twice for adult social care workers, but it has not been easy to get that money into the pockets and purses of folks on the front line. Through the national care service, we want to make improvements to terms and conditions, as I have stated many times this morning. That will include improvements through national sectoral bargaining.

Our work on introducing sectoral bargaining is progressing ahead of the national care service, in line with the recommendations of the fair work convention. In August, Government officials held, with key members of the fair work in social care implementation group, a session to start the initial exploratory work on sectoral bargaining. That meeting was, of course, also attended by COSLA and by trade union and provider representatives. Regular meetings with those key stakeholders are now taking place to move that work forward and to establish a set of recommendations.

It would be fair to say that I have spoken with and listened to a number of trade union colleagues over the piece; I will continue to do so. I have had a number of meetings with the GMB. The last big meeting that I had with trade unions was in the company of the First Minister and Mr Lochhead to talk about trade union issues across the piece. Obviously, the national care service played a major part in those discussions. We will continue to listen to trade unionists as we move forward, and we will continue to try to make improvements in the here and now through our fair work in social care implementation group.

The Convener: Thank you. I want to put something on the record. Paul O'Kane mentioned the letter that we received from the minister yesterday; I just want to let everyone know that it is on our committee's section of the Scottish Parliament website, for anyone to look at. I know that members have read it. We wrote to the minister about terms and conditions, pensions, the workforce and the inclusion of fair work in the bill, so it is quite a comprehensive letter and it is publicly available now.

We will move on to talk about co-design, timing, implementation and evaluation. Emma Harper has questions.

Emma Harper: We have heard people talk about co-design and co-production. They are often used interchangeably, but we know that co-design is actually different from co-production. What is co-design, in terms of shaping the national care service bill?

Kevin Stewart: That is a very good question. Sometimes there is confusion. Co-design means working with people in an equal and reciprocal partnership on design of services, policies, frameworks and interventions. Involvement starts from understanding the present to decide what the future should look like and how we will all get there.

There are three clear phases to the national care service collaborative design. The first is understanding; that is, building on the shared understanding of the current challenges that I mentioned. The second phase is sense making—what we can deliver and how in order to make the improvements that we all want. The third phase is agreement. Do the proposed changes address the issues that have been raised by people?

The initial co-design themes were launched at the national care service forum in October, and they focus specifically on the information that will be needed to develop policy that is directly associated with the passage of the bill. They are:

"information sharing to improve health and social care support",

which includes measures such as data sharing;

"realising rights and recognising responsibilities",

which is the human rights work and the charter development;

"keeping health and social care support local",

which will consider care boards, geography and board representation, for example;

"making ... my voice ... heard",

which will consider advocacy and complaints; and

"valuing the workforce",

which will consider issues such as ethical commissioning.

I hope that that helps Ms Harper and the committee.

Emma Harper: How will the Government ensure that, as part of the co-design process, national accountability allows for local

implementation and flexibility? There is a big difference between developing care to be delivered in the city of Glasgow and doing it for rural Dumfries and Galloway, for instance. I assume that co-design will be on-going rather than having an end point for design of the whole service.

Kevin Stewart: Absolutely. Although we need everyone to adhere to the national high-quality delivery standards, we must also have the ability and flexibility to create the right services for places. That will also allow for innovation.

I will give an example. I have had discussions with folk from our island communities; it might be the case that we need to do things differently there. We will listen and we will act and react accordingly. Ms Harper is right that delivery might be somewhat different in rural Galloway from what it is in Glasgow. We have to allow for flexibilities.

I will give an example of what I see as an opportunity. During the Covid period, many community organisations stepped up to the plate and provided help, care and support for some of our most vulnerable folk, when others were unable to do so. That work has continued in some places. Ethical procurement provides an opportunity for community wealth building. It might be that some rural communities—and some urban ones—choose to deliver care in their own locales. Often, the current procurement practices have been a barrier to such approaches, but ethical procurement can open the door. Therefore, others might come forward to provide care and support in rural Galloway, Orkney or maybe even Glasgow and be able to do so through ethical procurement methods.

Emma Harper: How will we monitor and evaluate the implementation and success—assuming that it is a success—of this framework bill?

Kevin Stewart: It is not just about the bill; the key issue is implementation. We need to ensure that the implementation gaps that we have talked about often today are plugged.

I have been honest about this previously and will be honest again. It is often very difficult for us to gather data on what is going on. That is one of the reasons why data will be so important, as we move forward. There has been a lot of to-ing and fro-ing around certain aspects of social care delivery, costs and so on, and it very difficult for me, as minister, to gather some of that information. We need to change that.

10:00

We also need to consider outcomes a lot more—what is working for people and what is not. Although we have a fair amount of information, it is still not enough. As we move forward, we must become more adept at garnering data in order that we are able to monitor the situation properly. Beyond that, we need to continue to listen to the voices of lived experience, as we continue on the journey.

I have not talked much about the make-up of local care boards, but I am adamant that the voices of lived experience should be at the table at local care boards, and that they should have voting rights. When it comes to monitoring what is going on and plugging the implementation gaps, they are the experts.

The Convener: Before I move on to Paul O'Kane, I want to raise an issue. Given that the minister has mentioned outcomes, now seems a good time at which to make this point.

We have heard, particularly from people who work in social care, that the time-and-task model does not focus on outcomes. How will we have systems in place that prioritise outcomes for people, rather than systems dictating the amount of time that a home carer comes in and spends with someone, when they might need more than 15 minutes? You know the scenarios—they have been mentioned to us. This is about people's outcomes, rather than having a system dictating what care people get.

Kevin Stewart: That is an extremely important question, which comes to the crunch around prevention, rather than crisis—which I talked about earlier with Ms Mackay. In some areas, freedom and autonomy are already being given to front-line staff, who are the folk who recognise whether Mrs Smith is becoming frailer or is improving.

In my home city of Aberdeen, the front-line staff at the Granite Care Consortium have the ability to step up and step down care. Obviously, that must be done in consultation with the person receiving care and support and their family, and there is of course more stepping up of care than stepping down, but the ability of the staff to do that puts the person front and centre.

Beyond that, the best way to stop delayed discharge, for instance, is to prevent folk from going in the front door of a hospital in the first place. By stepping up Mrs Smith's care, are we saving a journey to accident and emergency and perhaps a lengthy stay in hospital? I reckon that we are doing that in a lot of cases.

We need to change that situation with autonomy, freedom and independence for front-line staff, which largely do not exist in many places, because of contracts. We are trying to change that in the here and now. I do not want to wait for the NCS if we can get some flexibility in that regard in the here and now, which would be

brilliant. That would be good not only for health and social care partnerships and local authorities; it would be very good for people.

We will continue to try to persuade and give comfort to local authorities and health and social care partnerships on the matter of trying to change contracts at this point. That is clearly working in Aberdeen. Changes have been implemented in Fife, too, which I think are benefiting people there. We need to see more of that, and I want to see more of it before the NCS, although the NCS gives us that complete opportunity with ethical procurement.

Paul O'Kane: What was your rationale for giving a promise of co-design after the bill is passed rather than doing that during the preparation of the bill? Is it your view that co-design after the fact is better than co-design before legislation, and who decided that the bill should proceed in that manner?

Kevin Stewart: We have to have a framework before we can move to co-design. We had to show the people who we want to help us co-design the bill with us that there is a framework to blanket that co-design around.

We came to that decision because that is the logical way to do it, and because we looked at what has happened previously. I remind the committee that the formation of the national health service was based on a framework bill, and I think that the national health service has been a wee bit of a success, has it not?

Paul O'Kane: Okay. That might be comparing apples to oranges.

I will move on slightly, and quote some of the evidence that we have heard. The minister said that he feels that he has adopted a logical process, but we heard the following:

"at the moment, it feels as though it is a one-size-fits-all system, and I do not think that that will work".—[*Official Report*, *Health, Social Care and Sport Committee*, 25 October 2022; c 38.]

We heard that

"So much is left to secondary legislation and co-design that we do not feel that we have the detail ... to be able to comment",

and that

"We are talking about a substantial bill on a national care service that has been introduced without clear detail".—[*Official Report*, *Health, Social Care and Sport Committee*, 1 November 2022; c 2, 23.]

We heard that

"this bill does not deliver the changes that are required",

and, finally, that

"It is like buying a house without ever having seen it or knowing know how many rooms it has or where it is located."—[*Official Report*, *Health, Social Care and Sport Committee*, 15 November 2022; c 35, 39].

That was a cross-section of the evidence that we heard from legal experts, Common Weal, care providers, local authorities and trade unions. Those are very serious concerns about the way that this has been done. Would the minister like to comment on some of those quotes?

Kevin Stewart: I could also provide quotes from people with lived experience who want to be at the heart of shaping the national care service, which is, after all, delivering for them. I recognise that some people are worried about the change; I get that. Change is often of concern, but I have said, and I will continue to say, that we will continue to be open and transparent on this journey and to listen to people and allow the opportunity for scrutiny.

I will use the example of secondary legislation. Many people out there, and in here, always feel that everything has to be in primary legislation, but that does not allow for the flexibility that we often need for change.

Self-directed support, which I mentioned earlier, is mostly in primary legislation, and we know that people are using the loopholes in that to avoid the spirit of that act. To close loopholes such as those, we have to go back to primary legislation, but it would be so much easier if things were in secondary legislation because, if we found loopholes or an implementation gap, we would have the ability to change that pretty quickly to get it right for people. I recognise that some folk do not like that, and if we were to make change we would, of course, consult people and listen to them. However, using secondary legislation is a major way to ensure that we have the flexibility to get all this right in the future.

Paul O'Kane: Convener, I wonder whether I can put another quote to the minister. In its report on the financial memorandum, the Finance and Public Administration Committee said:

"The significant gaps highlighted throughout our report in combination with the Scottish Government's approach to introducing the primary legislation prior to completion of the co-design process has frustrated the parliamentary scrutiny process."

Given everything that I said in my previous question and the concerns of other parliamentary committees, does the minister recognise that there is an opportunity here to pause, get back round the table, listen to those concerns and try to address them before we move to the next stage of legislation?

Kevin Stewart: I said at the finance committee that there also would have been detractors if we had done it the other way round. The approach that we are taking allows for the scrutiny of the

principles of the bill before the co-design starts, which provides reassurance for people in the co-design process that their contributions matter.

Gillian Mackay: I raised the issue of sustainability of co-design with Derek Feeley. Given the number of workstreams that are under way and the length of time that co-design could take, what work is being done to ensure that people who are contributing, particularly those with lived experience, can continue to do so in a way that is not unduly taxing?

Kevin Stewart: That is a good question. I will not dodge Ms Mackay's question, but I will start off with something that I should perhaps have said in my response to Ms Harper. Some folks have asked what co-design is. One key element is that we have a job of work to do on the introduction to co-design sessions, many of which are now complete. Those sessions demystify the process for people, and more than 200 folk have taken part in them so far. That has given them a fair grounding in the task that they are going to embark on.

Ms Mackay is right that we want to ensure that we have all the voices that we can possibly have at the co-design table, and we have gone out of our way to attract folk with various conditions from various parts of the country. We also have to take cognisance of the fact that some folks require help and support, which may mean financial support, in order to take part in the process. We will continue to listen to people and provide what support we can.

We have to ensure that we continue that listening process along the way and continue to encourage people to come forward. We also have to look at the activities around co-design, which will vary. A number of activities will be suitable to meet the needs of individuals, including one-to-one sessions, surveys and group sessions. Recruitment for the lived experience panels, for which we now have more than 400 folk, will continue throughout the development of the national care service. I said "more than 400 folk", but I should probably say 450, because that is the latest number.

Gillian Mackay: Through co-design and evidence gathering, you will likely, as we have heard, see examples of good practice in different parts of the country. How are those being incorporated into the plans for the bill and the implementation afterwards? We talked earlier about the implementation gap. How does current work on the bill ensure that that will not happen with this piece of reform?

Kevin Stewart: On picking the best that is out there, as I have said to the committee in previous appearances, I make no bones about the fact that it is absolutely vital that we pluck out the best work and export it across the board. In informing the national high quality standards, we must look for the best of the best. That is our aspiration.

However, as we continue on our journey, we will not wait for the NCS for some of that. We are already trying to ensure that we export best practice across the board. At the moment, we do not have the power in relation to national high quality standards to ensure that that becomes a given across the board.

10:15

On plugging the implementation gaps, the reason why we should have more confidence on this occasion than on other parts of our integration journey is because we will be listening to the voices of lived experience—they know where the gaps are, where the difficulties lie and the barriers that are preventing them from getting the care and support that they need. They will be key in plugging those implementation gaps.

In the future, once the care service is up and running, if we find that there are gaps and there is practice that is not working out for everyone, we will have the ability to change the standards in order to ensure that those issues are fixed.

Sandesh Gulhane: Many witnesses have raised concerns about the co-design processes. Colin Poolman of the Royal College of Nursing said:

> "I think that I have been quite clear in saying that the problem is that we do not know; it is absolutely not clear how the co-design process will work. That has led to anxiety in the workforce."—[*Official Report*, *Health, Social Care and Sport Committee*, 15 November 2022; c 10.]

How can you guarantee that all relevant parties will be adequately consulted?

Kevin Stewart: We continue to speak to and, more importantly, to listen to everyone. This morning, I have given Ms Harper an outline of how the collaborative design will work. I realise that that was a fairly lengthy comment, so I will not repeat it.

We will send the committee a letter on all of that, so that you know exactly what was said this morning. I will also outline the on-going work that my officials and I, alongside others, are doing in that area. I am more than happy to write to the committee to outline who we have been speaking to, who we will be listening to, the meetings that we have had, and who has applied to join the stakeholder groups. I am willing to share all that information and to be open and transparent about it. I will set out all that in writing if that is what the committee wishes.

The Convener: That would be helpful. We understand that you cannot outline the whole list just now, but it would be good for us to have that information.

Sandesh, do you have a follow-up question before we move on to questions from Tess White?

Sandesh Gulhane: Yes. In the letter that you write to us, minister, will you set out exactly how the co-design process will work, including but not limited to, how the voices that you hear are weighted, how you will resolve conflicting views, who will make the decisions and where they will be made, and what transparency there will be about those decisions?

Kevin Stewart: For transparency, in the letter that I write to the committee, I will give full details of everything that I have outlined already, and I will also outline how we are running public workshops on co-design—information on that is available on the Scottish Government website. There are two registers promoting this heavily, as I have outlined already. All registrants will have detailed training around co-design.

I am more than willing to be as open and transparent as possible. I know that co-design is new for many folk. Some folk see it as being very brave; I see it as being necessary in terms of our getting it right. In our letter to the committee, we will outline all that we are doing.

The Convener: When we receive that, we will put it up on the website.

Sandesh Gulhane: Could I ask a follow-up question?

The Convener: If you are quick. We are almost 90 minutes into the meeting and we are not even halfway through our questions.

Sandesh Gulhane: My question was focused on what happens when that information has been received. Once you have got the information from the public consultation process, what happens to it? That is what I am asking you to set out.

Kevin Stewart: We will set out all of that in a letter to the committee. Obviously, as part of the co-design, there will be discussion about the end product, too.

The Convener: Tess White also has a quick follow-up question.

Tess White: Minister, I welcome the fact that you have said that you are being open and transparent. The adult social care independent review that was published yesterday does not mention your desire to improve maternity benefits for social care staff. If it is so important to you, why has it not been mentioned, and why has it not been costed? Is it on top of the £1.3 billion estimate for the NCS?

Kevin Stewart: The figure of £1.4 billion relates to what is in the bill. The issue that Tess White raises is not in the bill; it is action that we are taking now. That statement of intent covers a huge number of things, including pay and conditions—maternity pay being a condition. Not all of those things are spelled out individually in the statement of intent. Off the top of my head, I picked one that is extremely important to me.

Again, off the top of my head—I will correct this in writing if I am wrong—I believe that the cost of the policy is around £4 million.

The Convener: Tess, I remind you that, as part of our budget scrutiny, we have a couple of evidence sessions with the Cabinet Secretary for Health and Social Care in the new year. You might want to pick up that issue then.

The cabinet secretary has been sitting here for nearly 90 minutes, so we will have a break in about 10 minutes' time. We will deal with one more theme before we do that, because we still have a lot to discuss.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): I have three questions. Minister, you have touched already on monitoring, evaluation and outcomes. The bones of it seem to be that we are good at asking people what they want, but we are perhaps not so good at asking, "How was it for you?", even though that is what matters to people.

It has been suggested that we could adapt the Northern Ireland, England and Wales national survey of bereaved carers. Could you tell us quite precisely how successful we have been with regard to measurement and evaluation, and could you perhaps define what you mean when you talk about consistency and quality?

Kevin Stewart: That is a big question.

Stephanie Callaghan: I have another two, so do not take too long.

Kevin Stewart: I think that we have a long way to go on data. I will have a look at the English, Welsh and Northern Irish situations. There is some data that I would like to get my hands on that is not easy to obtain, and we have to do better on that front. We must also do better in terms of individuals' data. That is why the national health and care record is important. Depending on the data sharing agreements that are associated with that, we will be able to get much more accurate data about what is going on.

I get your point about the consistency and quality of data. You will know, having seen it at this committee, that, often, data is caveated, sometimes quite heavily, so it does not necessarily give us the true picture. Mr O'Kane talked about comparing apples to oranges; I often feel that that

is what we are doing, when we look at comparative data. We absolutely need to get better at that. The national health and care record will go a long way in helping us on that front. Again, even before the NCS, we must continue to refine what data we collect, how we collect it and the impacts of that on people.

Stephanie Callaghan: Thank you. I appreciate your committing to looking at that.

I am also interested in your vision for community health services. Will you provide some clarity? In evidence, we have heard that people have concerns around those services. They are central. Will you provide some clarity on where they will sit? People have felt that they are missing from the bill. Clearly, that issue is vital, if social care is to be viewed as an investment rather than a cost.

Kevin Stewart: Community health is a foundation of the national care service that we need to get right. Through early engagement with stakeholders, we have learned that it is imperative that we continue to engage people who have experience in that.

As things currently stand, community health—those services that are based in the community and provide the first point of contact, diagnosis and treatment—comprises more than 90 per cent of all interactions in health, and many problems are identified, managed or resolved within the community. That makes it one of the largest and most crucial areas of healthcare.

Community health, community social work and social care services are the front line. They are accessed in a variety of ways: through many of our health and care sites; in people's homes; or remotely, supported by technology. Again, we need to look at best practice in that when it comes to getting it right for the NCS.

For clarity, community health staff will remain in the NHS. The commissioning and planning of community health will be the responsibility of the national care service. That will build on the current integration arrangements that are in place under integration joint boards.

Stephanie Callaghan: On that, the concern seems to be that there is not really any mention of community health services in the bill. Does that need further consideration? Where exactly are you with that?

Kevin Stewart: It does not necessarily need to be mentioned in the bill, but we all have to be cognisant of the need to make sure that, in the co-design, we get everything, including integration, absolutely right.

It has been strange to me that many folk have said that various things should not be in the bill—for example, that criminal justice and children's services should not be in the NCS. There are numerous arguments about that. The Government has not yet taken any decisions about whether those two areas should be in or out of the national care service.

However, at the Local Government, Housing and Planning Committee the other week, there was a suggestion from a member that housing and homelessness services should be in the bill and in the NCS. Of course, that is not going to be the case. However, we have to ensure that the national care service, no matter what is in or out of it, has linkages with other services across the board, including housing and homelessness services. There are areas that are perhaps not being seen by you folks to be discussed as much as they should be, but those conversations are being had right across the board.

10:30

Carol Mochan: My question is quite specific and is on an issue that was raised by Alison Kerr of the Royal College of Occupational Therapists, Fanchea Kelly of Blackwood Homes and Care, and Henry Simmons from Alzheimer Scotland. It is about the rights of people to have rehabilitation as part of the national care service. Those experienced people indicated that they thought that that should be in the bill. Will the minister commit to considering that?

Kevin Stewart: I will consider anything, but I again come back to the point that, if we put too much into primary legislation, we might end up in a situation in which it is difficult to change what is there. I do not really like the term "reablement", so I am glad that you used the term "rehabilitation". In that regard, we are seeing advances as we move forward. We do not want to set everything in stone, so secondary legislation is probably the right place for that.

Obviously, I want those very good folks, some of whom I know well—including Fanchea Kelly, whom I know from my previous role in housing—to be at the table helping us to shape what is required as we move forward. Blackwood Homes has made immense advances in the technology that it has put in play so that folk can live free and independent lives. Those include a washing machine that irons, which was something that took my eye—Ah hinna got een yet, but I certainly have been considering that over the piece.

We need those folks to be at the heart of the process. I will consider what they have to say. I do not think that that issue necessarily has to be in primary legislation, but their voices have to be heard, and we have to get that right as we move forward.

The Convener: Carol, do you have a follow-up question?

Carol Mochan: No—that is perfect. Thank you.

The Convener: I will come back to Stephanie Callaghan, who has a follow-up.

Kevin Stewart: Convener, Ms Kynaston has just pointed something out to me, and if I do not say it, she will give me trouble. Again, I refer the committee to the policy memorandum, where paragraph 38 has a commitment to

"Improve outcomes through prevention and early intervention".

I think that that fits in here, and the issue is also referred to in part 1 of the bill.

The Convener: Stephanie Callaghan will have the last question before we take a break.

Stephanie Callaghan: I am grateful to you for allowing me to come back in, convener.

Minister, last week, we had Mark Hazelwood from the Scottish Partnership for Palliative Care, who talked about the fact that not everybody will recover and that one in three hospital beds is used by someone who is in their last year of life. The partnership would like two specific things to be included in the bill. It wants to have something in the bill about people with irreversible health conditions through illness or old age and who are approaching the end of life. Secondly, the partnership wants something about interventions that are about preventing or delaying the development of care needs and reducing care needs and support for those with irreversible health conditions. It feels like end-of-life issues are not included in the bill, even though that is something that we will all face at some point, and the issue is becoming larger proportionately as the demographics change.

Will you consider changes to the principles of the bill to include end-of-life issues?

Kevin Stewart: I will look at what Mr Hazelwood said. He has engaged with us a fair amount. If I remember rightly, he was at the co-design process for the charter of rights and responsibilities the other week. Again, I come back to the point that not everything has to be in primary legislation. Although it is absolutely vital to get end-of-life care right, if we put too much into primary legislation, that does not allow us the flexibility to change.

I rule nothing in or out, but probably the best way of getting this right is by doing it in secondary legislation so that there is flexibility to change in the future as care in the area changes, as it has done to a huge degree in recent years.

However, on the points that Mr Hazelwood has made and others have made elsewhere, we have to do all that we can to try to meet the needs of folks at the end of life. I myself have had loved ones and friends who have passed at home and who had much better experiences because of that. We recognise that there is work to be done, but the issue is whether that needs to be in primary or secondary legislation.

The Convener: I know that I said that that was the last question before we give you a break, but I have one more point. In effect, you are saying that, if the bill is too prescriptive, people who are involved in the co-design process possibly will not have the agency that they otherwise would have in relation to what they want the national care service to do.

Kevin Stewart: I revert back to my point about the SDS legislation. We all thought that that was a fantastic piece of legislation, but some folk have found loopholes that have not been challenged and have not been easy to change. I have tried to change some of that through guidance. As you know, vehicles for primary legislation sometimes do not come along very often. If we find a flaw or loophole, or if something changes in the way that we deal with an illness or condition, we can change secondary legislation quite easily, or more easily. That does not mean that we do not have folk scrutinising and that we are not open and transparent on that. If and when secondary legislation requires to be changed, I expect that we will continue to have the voices of lived experience guiding us on that.

The Convener: We are going to give everyone a break for 10 minutes and then come back.

10:37

Meeting suspended.

10:47

On resuming—

The Convener: Welcome back. We continue with our questions to the minister on the national care service bill. David Torrance has questions on the charter of rights and responsibilities, complaints and independent advocacy.

David Torrance (Kirkcaldy) (SNP): The committee has heard evidence that there is wide support for a charter, a complaints process and access to independent advocacy, but—there is always a "but", minister—previous briefings have said that the model for the charter is not clear. Will the charter of rights and responsibilities provide a clear understanding of what people can expect from the national care service in terms of their rights? Will the reference to rights be explicit, will they be enforced and, if so, how?

Kevin Stewart: That is a big question—a big set of questions. I should probably start at the very beginning, because the national care service consultation demonstrated without a doubt that there is strong support for a national care service charter of rights and responsibilities, so that people know what to expect. Therefore, we have commenced the work of developing that charter.

The design and development of the charter will set out the rights and responsibilities of people accessing national care service support, information on the national care service complaints and redress system, which will provide recourse if the charter rights are breached, and information about how to access further information, advice and advocacy services.

The charter will support people who are accessing NCS services to better hold the system to account and to receive the services that they need in order to thrive, rather than just survive.

One thing that has been at the fore of discussions that I have had with folk with lived experience is the many people who have had poor service—who have not been cared for in the right way—and who have then found it very difficult to get that sorted.

I often hear the same tale and have said that, if I had £1 for every time that I heard it, I could probably go on a round-the-world cruise, although that is not something that I really want to do in a pandemic. I have heard folk say that they complained about something and were told by the health and social care partnership that it was not its responsibility but that of the local authority or the health board. It goes on and on. That is not good enough. In the work that we have done, we have also come across numerous situations in which there were arguments between the health and social care partnership, the local authority and the health board about who pays for something and the person did not get the care for a long time, which leads to some real difficulties.

We have to get the rights and responsibilities right. I want people to be empowered and, as I hinted earlier, I was at one of the first co-design sessions on the charter of rights and responsibilities to hear what folk had to say. There are some polarised views that we will have to work our way through, but we have to get it right for people.

David Torrance: We have heard that the co-design is limited to the development of the charter, the complaints process and independent advocacy. Is that correct? If so, will you expand on how you have engaged?

Kevin Stewart: That is not the case. I do not know what has been said, so if I could get any quotations on that, we will have a look at them and respond accordingly.

David Torrance: Thank you, minister. What is the timescale for the development of the charter, the independent advocacy and the complaints process? Will the complaints process be independent of ministers as well as commissioners and care service providers?

Kevin Stewart: On the last point in your question—the independence of this one, that one and the other—we will have to work some of those questions through. It has to be part of the co-design process. We have to consider the accountability aspects, too.

Some of that will be worked through in the co-design but we hope that we will have a skeleton—a draft—of it all by next summer. That is ambitious but I am sure that, with the co-operation of the folk who are helping us to develop the service, it is achievable.

The Convener: I am just looking at our papers in regard to the question that the minister was asked. We were asking whether the co-design is limited to the development of the charter, the complaints process and independent advocacy or whether it will cover more aspects of the bill? Will it be expanded beyond those three things?

Kevin Stewart: I outlined some of the main areas that we need to consider in the co-design. I will repeat some of them, although I will not go into all the detail that I did earlier.

The Convener: I was asking for clarity. You went through some of the co-design themes.

Kevin Stewart: Number 2 on my list was

"realising rights and recognising responsibilities",

which includes the charter development. The others were: information sharing to improve health and social care support, which we have touched on already; keeping health and social care support local; making sure that voices are heard; and valuing the workforce. As I said, we will write to you on all of those.

The Convener: Okay. I wanted to give you clarity as to what David Torrance was getting at.

Kevin Stewart: I am sorry that I did not quite get it.

The Convener: I was looking at the papers and thinking about where you were coming from. It is now on the record.

We now want to talk about care boards. I hand over to Paul O'Kane.

Paul O'Kane: I begin by asking more broadly about structures. I hear what the minister says about the need for national standards, and there is

a large degree of consensus around that. However, whatever way we look at it, the national care service involves big structural change. Does the minister feel that there is a risk of that structural change becoming an end in itself rather than being a means to a greater end?

Kevin Stewart: Structural change is important but it is not the be-all and end-all of what we aim to achieve here. We have to make sure that we have a service that works for people. There are quite a few arguments about structural change out there, but the focus of all that we do here has to be on people.

The committee will have heard some of the comments that I have made to the other committees that I have appeared in front of about the purpose of care boards, some of which I will go over again. I think that I spoke about some of that in an earlier answer to Emma Harper.

The national care service will balance the need for local flexibility by having the care boards plan and commission care while providing national consistency through ministers being ultimately accountable. Although local boards will have their own budgets and staff, they will be directly accountable to Scottish ministers. That will ensure that the standards that we have talked about are maintained across the country so that high quality services are in place that reflect local circumstances as they are delivered.

I have had lots of questions, and I am sure that Mr O'Kane will follow up on some on them, about the number and composition of care boards, and so on, so I will go through some of that just now.

Care board membership will be examined in detail as part of the co-design process, as will the number of care boards. Based on consultation responses, we are looking at how membership will include people with lived experience. The one point that I am adamant about, as I said earlier, is that lived experience is at the very heart of decision-making. For some folk, that has been controversial. Some people have suggested to me that folks with lived experience on care boards will have vested interests so they should not be there. The same argument is often used for local authority members and various other things, and we declare interests and sometimes leave if we have an interest. I do not see that as a problem.

Through the co-design, we will also consider how we might include carers, other professionals and service providers, and local authority elected members in local care boards. We are committed to ensuring that all who are on care boards will have full voting rights.

The other aspect might be the number of care boards. That is another matter for co-design. However, we need to be honest here. I have heard it suggested that there should be 250 local care boards. I do not think that that is possible, and we have to be honest about some of the parameters in the co-design.

Paul O'Kane: I want to go back so that I understand the point about ministerial control as opposed to local control. The minister said that people have told him that they want ministerial control and accountability, and I appreciate that in previous answers he has said that he will communicate to the committee where that evidence came from.

Kevin Stewart: Folk in the consultation said that they wanted Scottish ministers to have control and accountability over this.

11:00

Paul O'Kane: Okay, but, as the minister knows, people have raised issues around the consultation and how consulted they felt. I am happy to go through the detail of that; I speak to people who have lived experience as well, and some people have raised concerns.

However, I want to get to the heart of this issue. What interests will local authorities have in the delivery of social care if they are not accountable for it? If local authorities do not hold a statutory responsibility for it, then what is their role?

Kevin Stewart: Mr O'Kane has been an elected member in a local authority, as I have. Local authorities do not carry out just the functions that they are statutorily obliged to; they do other things that are for the good of the people of the area that they represent.

As I said earlier, we want to ensure that local authorities remain prime partners for the delivery of high-quality social care in their communities. That is for the good of the people who they represent. Whether or not they are accountable for it by a law, I am sure that the altruists who serve on local authorities will see the huge advantage of ensuring that their people are cared for properly, appropriately and to the highest standard of quality. Beyond that, as I have pointed out, local authority members will play a part in local care boards, as they do with IJBs at this time.

Paul O'Kane: Does the minister not recognise that there is a principle here around decisions being taken as close to people as possible and the role of local government in doing that? He is right to say that he and I have both served on local authorities as councillors, as have other colleagues on the committee. I am keen to understand why he feels that there will be more accountability by virtue of 129 MSPs and the minister having that control as opposed to local councillors having it. Does he feel that local

councillors are not accountable enough now and do not represent their constituents on these issues?

Kevin Stewart: I refer to the policy memorandum again. At the end of the day, the national care service will be there to

"Provide leadership, oversight, and accountability for community health and social care, including by providing strategic direction and planning at the national and regional levels, and performance management and monitoring of the care boards to ensure national standards and expectations are achieved, albeit in a way that suits local circumstances".

However, I have pointed out again and again this morning that local accountability needs to be strengthened, too. That is a purpose of the bill. That is what we have heard from people.

None of what the care service will do stops local decision making. None of it stops local flexibility and innovation. None of it stops flexibilities around delivery of services in particular areas. However, those national high-quality standards must be met. That will end the postcode lottery of care, which, again, folk want to see, but it does not stop flexibility.

The Convener: Sandesh, you had some questions on this subject. [*Interruption*.]

Sandesh Gulhane: Are you okay, minister?

Kevin Stewart: I am fine.

Sandesh Gulhane: Over the past weeks, you have stated to various committees, including this one, that local authority functions and staff might not be transferred to care boards at all and that care boards will merely act as a provider of last resort to ensure continuity and quality of service. In what circumstances would you deem transfer to be necessary?

Kevin Stewart: That would be the case if there was service failure. Let me give you an example of a provider of last resort scenario.

It might well be that a care home in a particular place collapses because the company goes out of business. In some circumstances, the local authority might, as the provider of last resort, move in and take the home over to ensure continuity of care for people. Unfortunately, such things happen fairly regularly—not only with care homes, but with care-at-home provision and so on.

Sandesh Gulhane: There is a feeling that the centralising agenda of the national care service will negatively and disproportionately affect rural and island communities. For example, Nick Morris of the NHS chairs group in Scotland said:

"The logical conclusion that is suggested by the NCS proposals at the moment is that the island communities would have less control of the NHS elements of care, because it would all go to a care board." —[*Official Report, Health, Social Care and Sport Committee,* 8 November 2022; c 29.]

Do you agree with Mr Morris's interpretation? How are you going to mitigate the effect of powers being taken away from local providers?

Kevin Stewart: I do not see this as centralisation, at all. Some folk around the table will already be aware of this, but I will just point out to the committee that I was the first minister to island proof a bill—the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill—before the Islands (Scotland) Bill had been passed. In all the work that we are doing, we are taking cognisance of the different airts and pairts of our country and of how we need to get this right for everyone.

As a result, we have a separate workstream that is looking at islands and what can be done there, and we are looking at some of the suggestions that authorities have made about how they can deliver on the bill in a different way. A few months back, I was in Shetland to listen to people's views, and I am due to go to Orkney at the beginning of the year. There have been suggestions from some island leaders—although not all, I hasten to add for the record—with regard to single-island authorities. The Government will look at that.

As for our more rural areas, particularly our remote rural areas, there is, as I have said, an opportunity to use ethical procurement to change the way in which we do things, and I hope that that opportunity will be grasped. We have to look at how we deliver across the board. I will do so, and my officials know what needs to be done in that regard.

Again, I note that we have, so that we can get this right for everyone, gone out of our way to find voices of lived experience from our remote rural and island areas, given that the difficulties that they face are often very different to those that are faced by folks in my community in Aberdeen, for example.

Stephanie Callaghan: We know that integration joint boards are sometimes not delivering and that some voices are not being heard on them. Clearly there is some consensus that, when we talk about care boards, it sounds as though we might be recreating a system and just moving people around and, if you like, just sitting them in a different seat.

Can you give us an example of anything that is working like a care board just now? I am thinking, for example, of Granite Care Consortium. It has brought in the health and social care partnership, voices of lived experience and providers with different expertise. Everyone sits down at the same table to collaborate and everyone has a voice. Is that the vision that you have in mind?

Secondly, we have heard from different people the suggestion of a national care board that would play an overarching role with regard to local care boards. Do you have any views or comments on that?

Kevin Stewart: Ms Callaghan is, I think, enticing me to be naughty, which I am not going to be. I am not going to name things that are necessarily good or things that are necessarily bad.

It is clear that areas where there is increased delegation to IJBs and to health and social care partnerships, and where there are budget flexibilities, tend to perform better.

However, there are other aspects to consider, such as the scrutiny agenda. I do not know how many members around the table are as anorakish as I am, but at times I have gone out of my way to dig a little bit deeper, which I am always prone to doing. When I look at some IJB agendas and minutes, I can see quite clearly that they are taking their scrutiny responsibilities very seriously and are making key decisions.

Frustratingly, however, the other side of the coin is that in some IJBs, often agenda items that are pretty serious are for noting only, and it disna look like there is the level of scrutiny or decision making that there should be. Members do not need to take my word for that—they can go and look at the documents themselves. We need to get to a position in which local care boards are scrutinising and taking decisions, and being accountable to the populace as a whole for those decisions.

I have heard the suggestion about a national care board, but I am not entirely convinced. It might just become another bureaucratic layer, and I am not one for bureaucracy, as the committee well knows. Nevertheless, my ears are still open on that one.

Emma Harper: I have a couple of questions on the establishment of care boards. There are sections in the bill on

"Establishment and abolition of care boards",

on

"Directions to care boards"

and on

"Removal of care board members".

I am interested to hear how we will move forward on developing care boards, who will be on them and whether they will be commissioning or delivery bodies or a bit of both.

Kevin Stewart: That is a huge question, which might take a long time to answer. I will be as brief as I can, and I will fill in some of the other detail in writing to the committee.

With regard to the care boards themselves and the design work regarding who is around the table and all the rest, that is, as I have already said this morning, part of the co-design process.

It has been thrown at me that the bill itself means that I or my successors could appoint and discard care board members at will. That is not the case—many of the powers that we are talking about in the bill are for NHS boards, and such powers are used extremely sparingly indeed.

However, I probably need to tease out even more detail on that area for the committee, so if the convener agrees, I will follow up on that in writing. I will also provide the committee with some of the comparisons that I have made with other bodies, if that would suit you.

The Convener: Thank you. Does Emma Harper have a follow-up?

Emma Harper: I have a wee quick question. In evidence to the committee, Karen Hedge of Scottish Care expressed concerns that

"care boards ... might just be recreating a system that"—[*Official Report, Health, Social Care and Sport Committee,* 29 November 2022; c 8.]

already exists. We have also heard folk talking about moving the deck chairs around.

I seek clarity that the bill is about establishing a care system that will benefit personally the people on the ground who have been asking for better care and support for themselves.

Kevin Stewart: Absolutely. This is not about moving the deck chairs—I am not into that kind of game. We need to take cognisance of the views that we have heard from those who are in receipt of care and support, from their carers and from front-line staff about the improvements that are required.

I return to a point that I made in my opening statement: we canna just tinker about at the edges, here. We have a changing demography in Scotland and we need to expand the social care workforce, as I also said earlier. We need to make a real change and, of course, people have to be at the very heart of our doing that.

11:15

The Convener: A number of members want to ask questions about commissioning and procurement. We will start with Carol Mochan.

Carol Mochan: I am particularly interested in fair work. We have heard clearly in evidence from people who have come to the committee that so much could be done now. Will you commit to

looking at what has been achieved so far and push forward with that without having to rely on the bill?

Kevin Stewart: I have already given an assurance this morning that we are moving on many of those fronts. That is why we have the statement of intent with COSLA. There are things that I want to have been done yesterday. We will continue to try to advance on all those things. I say to Ms Mochan and others on the committee that, sometimes, such things are not so easy. I would, for example, like to see national sectoral bargaining, as is envisioned in our NCS proposals.

Carol Mochan: What is the key barrier to that? All the evidence that we heard from the trade unions, professional organisations and some of the third sector is that that should be happening. I am unclear what the key barrier is that the Government is finding.

Kevin Stewart: One of the key barriers is that, as I said, there are 1,200 disparate employers that are working to contracts that the Government has no control over.

I say again that the two wage rises, which I and everybody here wanted in order to put money into people's pockets and purses as quickly as possible, were not the easiest things to achieve. We do our level best here, but there are things that we rely on others doing, which often makes things not as easy as they might seem.

Gillian Mackay: It has been suggested that reinforced provisions on commissioning and procurement would be an important way of giving practical effect to embedding fair work principles in the social care sector. I appreciate that there are complexities to that, and that you have said that work is on-going on it. However, what provisions would you like to see in the bill? Will you work with me and others ahead of stage 2 on amendments to embed some of those principles?

Kevin Stewart: As always, I am more than happy to work with anyone to ensure that we get things right, as we move forward. That is not to say—let us be honest—that I will support every amendment. However, if we can work in partnership to get the most out of all this, I am more than happy to do so. I think that Ms Mackay knows that ethical procurement is one of the top things on my agenda. I want to make sure that we do our level best to get all this right and to embed fair work principles as much as we can.

However, I highlight to the committee that, as you are all well aware, this Parliament does not hold powers over employment law, so we will have to do that, as always, with great care. It has been achieved previously in other bills—including in relation to forestry, if I remember rightly—and we need to do that again. If that means co-operating and collaborating with members to get it right, I will be more than happy to do so.

Gillian Mackay: The policy memorandum talks about a new national social work agency that will be a department of Government. However, some witnesses have requested that the agency be independent. What is your view on that, and what do you say to those who believe that the agency should be independent of Government?

Kevin Stewart: The independent review of adult social care recommended the establishment of a national organisation for training, development, recruitment and retention of adult social care support, including that specific social work agency for the oversight of professional development. Again, the policy memorandum outlines the intention to establish the agency.

A number of folk have come to me with comments about the social work aspect of the bill, and we will continue to listen to what folk are suggesting. We feel from our perspective that it should be part of a national care service but, as we have gone along, we have listened to people, and we will flex, if need be, on that front. If someone can convince me of the advantages of the agency being entirely separate from Government, I will listen to them. However, we have to remember the huge linkages between community health, social work and social care, and we do not want to create any further fragmentation in that respect.

As the committee will imagine, I have had a fair amount of meetings over the piece with various social work bodies—at this point, I should apologise for missing one such meeting last week, because I was unwell—but we will continue to do that and listen to people's voices as we move forward. As I have said, though, I have to be cognisant of the linkages and whether a different approach will cause fragmentation—and, if so, what that will mean for service delivery to people, which, after all, is the number 1 issue.

Evelyn Tweed: Concerns have been raised that, without a cultural shift, reform would just replicate the same problems in a new setting, and some have highlighted the need for retraining to ensure consistency. How can the Government ensure that cultural shift, and how can such issues be dealt with?

Kevin Stewart: That is the big question. We talk about legislative and regulatory changes as well as planning changes, but often such talk does not lead to real change. However, as we have been discussing this morning, if we can replicate what is happening in certain parts of Scotland elsewhere through ethical procurement and fair work, we will get that cultural change. I know that we keep picking on the situation in Aberdeen, but the

committee has been there, as have I, so it is one that we all know. If we can give staff that sort of freedom, flexibility and independence on the front line, cultures can change dramatically.

That is the case not just for social care but for social work, too. Indeed, I am due to visit Fife; in a couple of areas, social workers have basically been given a clean sheet about what they can do, and some very positive outcomes already seem to be emerging. That freedom for social workers was embedded in the Social Work (Scotland) Act 1968, but we have moved away from it, and many of the social workers to whom I have talked feel that they are not empowered to take the right decisions at the right time for people, because they feel that the eligibility criteria and the budgets get in the way.

We have to move away from that. Again, that will mean a massive culture shift, which can be achieved. Legislation and regulation are fine, but in order to get that culture shift, we have to empower the front line again, and we can do that through ethical procurement and fair work. We need to be trusting of a workforce that should be trusted.

Tess White: The convener of the Finance and Public Administration Committee, Kenneth Gibson, said that, with the bill, it seems that the Government is

"using a sledgehammer to crack a nut".—[*Official Report*, *Finance and Public Administration Committee*, 25 October 2022, c 24.]

With members of your party and the finance committee raising concerns about the spending in relation to the bill, how can you possibly justify the costs? I thought that it was £1.3 billion, but you actually said this morning that it is £1.4 billion, and that is not including terms and conditions of employment and benefits. Some even say that the bill is an open cheque book.

Kevin Stewart: I do not think that Ms White has necessarily been listening to some aspects of what I have said this morning about the financial memorandum and the fact that it covers a fair amount of costs in terms of staffing and terms and conditions.

What I would say is that we need to change. Folk recognise that change is required. We cannot continue with the same system. Derek Feeley highlighted that in the independent review of adult social care. We need to plan and invest for the future so that those of us who will require care and support in the future—that is probably the bulk of us—have the right care and support in the future.

As for the analogy of using a sledgehammer to crack a nut, there are many folks out there with lived experience who would have used sledgehammers long before now. I would be very naughty if I were to repeat what someone from the social covenant steering group said but, for many folk, the sledgehammer has not come out quickly enough.

Sandesh Gulhane: Social workers have been described as the general practitioners of social care. David Grimm has contacted me about a letter that was sent to you in October by Lauren McNamara of Student Awards Agency Scotland and that was signed by 316 social work students and 20 lecturers. They are asking for a student social work bursary. Is that something that you are actively considering as part of your joint statement with COSLA, or is it something that the national care service might be able to provide?

Kevin Stewart: I cannot remember seeing the letter from Lauren McNamara. We will have a look at that and respond accordingly.

The Convener: We will move on to talk about continuity of the transition to community health. A number of members want to ask questions. Members, if you have a follow-up question, I ask that you make it brief. We are getting to the point where we will start eating into other business if we take too much more time.

Gillian Mackay: Minister, how do you envision that the bill will engage with people who are experiencing homelessness, particularly in relation to community health? How do you envisage the bill improving the lives of people who are experiencing homelessness and other things that might cause chaotic periods in people's lives?

Kevin Stewart: That subject is very close to my heart, because of my previous job—just because you change jobs, you do not forget about things. The greatest breakthroughs that we have made in recent times in tackling rough sleeping and the issues of the most vulnerable folks have come through the work that we have done on the housing first approach. That policy brings housing, care, health and other services together in order to create the right environment for a person to thrive in their own home.

That has been immensely successful—more successful than any of us could have hoped to imagine. In the most recent figures that I saw, which might be out of date, there was 90 per cent tenancy sustainment. We need to ensure that, no matter what services are, they are wrapped around the individual in order to get them right for people. Some of our changes in homelessness legislation will put duties on folk to do that.

11:30

The national care service has a big role to play in that. I talked earlier about the linkages that we need to create to ensure that we get it right. That

is why I have met, and will continue to meet, folk from the housing and homelessness sector. It is also why Shona Robison and I have met officials fairly regularly—to get it absolutely right.

Gillian Mackay: There might be many people who transition through different tenures of housing during their social care journey, whether they be disabled people or people who are approaching the end of life and who might move from, for example, a family home into supported accommodation—sheltered housing, for example—palliative care or a care home. How can we ensure that, through the national care service and co-design, we take on board some of the experience that people have had through those journeys, whether it is good or bad, and that we make those journeys and transitions as smooth as possible for people?

Kevin Stewart: Ms Mackay is taking me back to my old job.

It is often immensely frustrating when housing causes difficulty for somebody to live a fulfilled and independent life. There has been a substantial amount of investment over the past number of years in trying to get that right. If you look at where we are in Scotland, particularly with our social sector but also some of the mid-market builds, you will see that housing for varying needs has been at the heart of that. Again, my figures are out of date so I will not quote them, but the vast bulk of the social housing that we have delivered was delivered to the housing for varying needs standard so that, if folks' circumstances change, they can still live in the same home.

However, we recognised that the housing for varying needs standard was a bit old and a review has been undertaken. I am not exactly sure where we are in that review but I will get back to the committee after liaising with Ms Robison about that. It is important to recognise that there are changing circumstances, such as people living longer, so the design guide for varying needs had to change. We are also considering changes to building standards to underpin a Scottish accessible homes standard, which all new homes must achieve.

There has also been a lot of discussion about aids and adaptations. Sometimes, a wee change in a house can make it liveable but, if it is not done, it means that somebody is unable to stay at home. There is a lot of work and discussion between areas of Government on aids and adaptations.

Stephanie Callaghan: I want to pick up on that. Housing first was a revelation—we could see it really changing people's lives with wraparound care and seamless joined-up services. The bigger picture is that public health approach at a population level. There are housing and homelessness services, but there are all those other local services that are closely related to social care, such as those relating to mental health, drugs, alcohol issues and so on. Given that, why is the NCS the way forward in order to get that seamless joined-up care that people are looking for and that really matters to them?

Kevin Stewart: Let me take the example that Ms Callaghan gave in relation to drugs and mental health. At points, it seems as though Angela Constance and I are joined at the hip in respect of getting it right for folks who have more than one difficulty. I have to be honest and say that services in many parts of the country are not what they should be when it comes to dual diagnosis. That is why we are already changing standards and there are several pilot projects aimed at getting that right. Those things should become the norm. That is why we need national high quality standards in order to get it right for everyone. We cannot have a situation where we are pushing folk from pillar to post. That is one of many reasons why we need to have a completely joined-up approach.

Where folk have substance use and mental health difficulties, on many occasions, we have managed to overcome those barriers for those folks through housing first. We should—and need to—do that right across the board for everyone who has that kind of situation in their lives.

Stephanie Callaghan: One of the barriers to that seems to be the idea of incorporating community health primary care services and taking that kind of public health approach. If we are saying that no health staff will be transferred into the national care service, can that really be achieved?

Kevin Stewart: It can be achieved. We are seeing changes in certain areas now in the way in which we are dealing with folk, so it can be done.

Paul O'Kane: What will happen to health and social care partnerships, given the process of integration that has happened in various local authorities?

Kevin Stewart: What do you mean?

Paul O'Kane: What will the status of health and social care partnerships be in the new approach? Do you envisage them no longer existing in their current form and being redeveloped through the national care service process?

Kevin Stewart: As I have said, we intend to establish local care boards and the co-design and delivery of those care boards will be worked on with the voices of lived experience, front-line staff and stakeholders in order to get it right.

There is a huge amount of learning to be garnered from what has happened in health and social care partnerships. Mr O'Kane represented East Renfrewshire Council on the health and social care partnership that achieved a great deal. I come back to the point that I made earlier about

areas where more services have been devolved as seeming to work better. I want to ensure that the learning and good practice from health and social care partnerships, such as the one in East Renfrewshire, are captured in delivery of our future services. I also want to look at those places where that is not working so well and learn lessons from that, too.

Paul O'Kane: The minister will hear no complaints from me if he is singing the praises of East Renfrewshire. He makes a fair point about the length of time for which integration has been part of the fabric of certain communities and the importance of trying to learn from that.

I turn briefly to the social work element of that, and the further consultation that the minister intends to undertake on children's services and criminal justice social work. What are the minister's intended timescales for that?

Kevin Stewart: Because of the work that we had done on adult social care, we were well aware that we had a huge amount of information. A huge amount of consultation has been carried out. We have undertaken to do similarly for children's services and criminal justice social work. Work is on-going in looking at all of that. We will continue to consult and to listen to people on those fronts.

I reiterate that the Government has taken no decision on transferring children's services or criminal justice social work to the national care service.

The Convener: Carol Mochan, did you have a question on this?

Carol Mochan: It has been answered.

The Convener: We move on to Anne's law, which is our final theme.

Evelyn Tweed: Many of those who gave evidence were worried that Anne's law was ambiguous and that it did not contain enough of an assurance that visits would still be permitted in the event of another public health crisis. Can you offer reassurance, minister?

Kevin Stewart: The National Care Service (Scotland) Bill will allow the Scottish ministers to exercise powers, under section 78 of the Public Services Reform (Scotland) Act 2010, to require care home service providers to comply with any directions that are issued by ministers.

The key issues that you have talked about as having been raised by stakeholders are that our proposed approach to delivering Anne's law through such directions does not go far enough and that Anne's law should be extended beyond adult care homes to cover additional settings. We have talked to others about that, and there is dubiety about it.

Stakeholders have also talked about the importance that is placed on local decision making and, understandably, the importance of human rights and a person-centred approach. In the recent parliamentary consultation, some respondents indicated concern about whether our approach of using directions is the right one. It is absolutely the right approach.

The most challenging issue has been in how to balance the use of the directions with the views of some—in the main, Public Health Scotland—who endorse the occasional need for restrictions on health grounds. Although the directions envisage continuous visiting during outbreaks, we expect that formal advice from Public Health Scotland will highlight that that is a risk to outbreak management. At the moment, therefore, a piece of additional work is looking at every aspect of that. However, as a minister, I want to ensure that people have access to their loved ones. There will have to be a balance, but that is my expectation.

Rightly, people will always be concerned. At the back of their minds, they will be thinking about what went on during that Covid period. We do not want that to happen again. That is why we are doing all the work that we can to ensure that we get this right for relatives, families and loved ones.

Evelyn Tweed: In evidence, people welcomed the legislation providing for breaks, but carers said that, even if they were to get a break, they would find it difficult to relax. Can you offer reassurance that a high level of replacement care will be available and that that will be something that carers can trust?

11:45

Kevin Stewart: That is a key aspect. In recent weeks, the carers parliament has held events here and near here. Some folk are worried about leaving their loved ones and there are cases where some folk just canna leave their loved ones. How do we flex all this to ensure that we are putting some support in place?

The bill includes the right to have breaks from caring. However, the other week, one body argued with me that, although that right might be in place, a carer might not get that break because their loved one needs them all the time. It wanted to know what else we can put in place to enable somebody to have downtime. We have to work our way through that.

Some really good stuff has gone on in certain places to help folk who have been unable to go for short-term breaks. I am sweirt to give a specific example, as I might identify people, so I will just mention that other things have been put in place that are beneficial to them and to their loved ones. Those things might not be as good as a break, but they allow for some relaxation and downtime.

I should probably also say that we are setting up a stakeholder working group, which will include

carers, statutory services and carer centres, to look at the issues that need to be addressed in that regard. Again, we will continue to listen to what folk have to say. Even in the past couple of weeks, I have heard some stories that are new to me.

The Convener: I will pick up your answer to Evelyn Tweed on Anne's law. Last week, we had in front of us a number of people who told us that they still lacked access to their loved ones. That could be for understandable reasons, such as measures being put in place that relate to Covid or infection control. However, those people feel that the measures go too far, because they do not allow them access to their loved ones. What can be done now to ensure that that does not happen?

Kevin Stewart: I keep a very close eye on the issue, and I have already used powers of direction, as folk are aware. I get regular updates from the Care Inspectorate on any complaints that it receives to do with someone being denied access. The number of such complaints has decreased dramatically—there are very few now. I would not want to put a figure on that now, but we can provide you with that.

I also get—fortnightly, I think—a list of where there are outbreaks and information on what is going on in those places. It is rare to see a home closed for admission and it is rare for there to be no visits.

I can provide you with much more detailed information on that. However, I assure the committee that I keep a very close eye on the matter and that Scottish Government officials will challenge if they think that there is anything that is not working right for people.

The Convener: People who find themselves in that situation should go to the Care Inspectorate.

Kevin Stewart: Absolutely. The Care Inspectorate should be their first port of call. Actually, the care home should be their first port of call. They should ask why a change to access has been made and why they are being denied access. If they do not get the right answer or they do not get access, they should go to the Care Inspectorate. The number of complaints has gone down dramatically, but we will provide you with information for your reassurance.

The Convener: You will be pleased to hear that these are the final questions from Emma Harper. I do not mean that in a pejorative way, although that might be how it sounded coming out of my mouth. I just mean that Emma will ask the final questions of the session.

Emma Harper: I have a quick question on breaks for carers. In last week's evidence, it was mentioned that what is sufficient for one person might differ from what is sufficient for another, so I am interested in following up on that. The bill talks about defining "sufficient breaks". It says:

"Regulations under subsection (2) may in particular make provision about—

(a) the meaning of any reference to sufficient breaks in this Act,

(b) standards or criteria in relation to the sufficiency of such breaks (including the nature, frequency or duration of breaks)".

At last week's cross-party group on health inequalities, Richard Meade gave a presentation and we talked a bit about breaks. Susan Chambers, from Pasda, which is an East Lothian support group for people with autism, also spoke at the meeting.

What are your thoughts on the issue of sufficient breaks? I am not sure that further detail is needed in the bill if the matter can be dealt with through regulations.

Kevin Stewart: As you have just done, we recognise that caring roles vary in nature and intensity. We also recognise that some folk feel more able to access certain things than others do.

One of the key aspects, which comes up time and again, is the eligibility criteria. In removing some of the eligibility criteria for those unable to access sufficient breaks, the bill aims to shift the balance to enable more carers to access preventative short-break support. That might need to be different from what is currently on offer in particular places.

The key aspect is to understand better what a sufficient break is and to recognise what the differences are in terms of the nature and intensity of the care. The stakeholder group has been established to work our way through that, including on reaching a definition of "sufficient breaks".

The Convener: I thank the minister and all his officials for the extra time that they have given to answer our questions.

As no member has indicated that they have further questions to ask, I will wind up our session now.

That was our final meeting of 2022. At our first meeting in the new year, we will be taking evidence on the Scottish budget for 2023-24 from the Cabinet Secretary for Health and Social Care.

I take this opportunity to wish everyone a happy and restful festive period. I reiterate my thanks to everyone in Scottish society who has helped us with our work during this year.

That concludes the public part of our meeting today.

11:53

Meeting continued in private until 12:07.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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