OFFICIAL REPORT
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Health, Social Care and Sport Committee

Tuesday 1 October 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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HEALTH, SOCIAL CARE AND SPORT COMMITTEE
26th Meeting 2024, Session 6

CONVENER

*Clare Haughey (Rutherglen) (SNP)

DEPUTY CONVENER

*Paul Sweeney (Glasgow) (Lab)

COMMITTEE MEMBERS

*Joe FitzPatrick (Dundee City West) (SNP)
*Sandesh Gulhane (Glasgow) (Con)
*Emma Harper (South Scotland) (SNP)
*Gillian Mackay (Central Scotland) (Green)
Ruth Maguire (Cunninghame South) (SNP)
*Carol Mochan (South Scotland) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rosemary Agnew (Scottish Public Services Ombudsman)
Maree Allison (Scottish Social Services Council)
Isla Davie KC (Faculty of Advocates)
Fiona Davies (NHS Board Chief Executives Group)
Gordon MacDonald (Edinburgh Pentlands) (SNP) (Committee Substitute)
Edith Macintosh (Care Inspectorate)
Julie Murray (Health and Social Care Scotland)
Jennifer Paton (Law Society of Scotland)
Robbie Pearson (Healthcare Improvement Scotland)
Karen Reid (NHS Board Chief Executives Group)
Jan Savage (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Alex Bruce

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Health, Social Care and Sport Committee

Tuesday 1 October 2024

[The Convener opened the meeting at 08:45]

Interests

The Convener (Clare Haughey): Good morning, and welcome to the 26th meeting in 2024 of the Health, Social Care and Sport Committee. I have received apologies from Ruth Maguire, and Gordon MacDonald is attending as her substitute. As such, agenda item 1 is to ask Gordon MacDonald to declare any interests relevant to the committee's remit.

Gordon MacDonald (Edinburgh Pentlands) (SNP): The only interest that I have to declare is that my wife is a district nurse with NHS Lothian.

The Convener: Thank you.

Decision on Taking Business in Private

The Convener: Agenda item 2 is a decision on taking business in private. Do members agree to take item 6 in private?

Members *indicated agreement.*

National Care Service (Scotland) Bill: Stage 2

08:45

The Convener: Agenda item 3 is our next evidence-taking sessions as part of our scrutiny of the Scottish Government's proposed stage 2 amendments to the National Care Service (Scotland) Bill.

I welcome to the committee Fiona Davies, who is chief executive of NHS Highland, and Karen Reid, who is chief executive of NHS Education for Scotland. Both witnesses are also board chief executive leads of the national health service board chief executives group and are representing that group today. We are also joined online by Julie Murray, who is the chief officer of East Renfrewshire health and social care partnership, who is representing Health and Social Care Scotland.

We will move straight to questions, starting with Sandesh Gulhane.

Sandesh Gulhane (Glasgow) (Con): I refer members to my entry in the register of members' interests, which records that I am a practising national health service general practitioner.

At last week's meeting, we heard from the unions, who said that they felt that this bill was "unique" in uniting most of civic Scotland against it. How do you respond to those comments? Do you agree with them?

Karen Reid (NHS Board Chief Executives Group): Thank you for the question. Instead of responding directly to the trade unions, I will say that your question provides an opportunity for us, as representatives of the board chief executives group, to make it clear that when the independent review of adult social care—the Feeley report, as it was called—was published, the board chief execs were unanimous in their support of necessary change in, improvement of and, indeed, investment in adult social care.

We recognise some of the comments that the trade unions made in committee. It is not for chief execs to be for or against what is proposed in the bill, but I hope that during the course of this discussion, we will have the opportunity to set out where we are very much supportive of elements of the bill and those areas where we have concerns.

Sandesh Gulhane: Would anyone else like to respond?

Julie Murray (Health and Social Care Scotland): First, I apologise for not being with you in person.

I want to start by stressing that chief officers have been absolutely committed to using our quite unique experience of managing integrated health and social care services over a number of years to try to shape and influence the development of the national care service. As chief officers, we were probably the most enthusiastic supporters of the independent review of social care and the subsequent proposals to develop the service. We now have a once-in-a-lifetime opportunity to reform health and social care in order to create a well-resourced and consistent arrangement for supporting services across Scotland.

That said, we feel that we have moved a bit further away from the aspirations of the Feeley report and that the amendments are probably unlikely to achieve the consistency that he promoted. As you might remember, Feeley promoted a coherent and consistent social care model that would remove the current postcode lottery. The NCS was also intended to address some of the challenges with regard to ambiguity, complexity and bureaucracy in the current system, but we think that there is a risk that the proposed amendments will increase complexity.

We feel that there is probably a bit too much emphasis on governance structures and scrutiny, and probably not enough on the importance of well-funded and well-managed integrated front-line services that will help deliver good outcomes for the people who need support. I think that that would be my response to your question.

Sandesh Gulhane: The Convention of Scottish Local Authorities has decided that it is no longer in favour of the bill. Given the lack of support from one of the most important partners, it seems to me that the bill is dead in the water. COSLA has not come before the committee yet, but, if we are to believe that it has withdrawn its support for the bill and does not agree to it, do you, as chief executives and chief officers, believe that the bill can deliver what is intended, or do you agree that it is dead in the water?

Fiona Davies (NHS Board Chief Executives Group): The chief executives and board chairs remain committed to working with our partners in Government and local government to come up with the best solutions for the future of health and social care in Scotland. As my colleagues Julie Murray and Karen Reid said, we have been committed all the way through the process through dialogue and the tripartite and shared accountability arrangements. Again, it is not for us to comment on the position of another organisation. We remain committed to taking forward the reforms. As Julie said, it is a once-in-a-lifetime opportunity—that is a great phrase—and we really embrace that opportunity.

It is between the Scottish Government and COSLA to work through whether a compromise can be found to establish a collective way forward and bring people back into the tripartite arrangement. The NHS remains a key partner in that and is committed to the process of reform, whatever form that takes through negotiation.

Sandesh Gulhane: This will be my last question as I am aware that we are desperately tight for time. Fiona Davies spoke about this being a once-in-a-lifetime opportunity, but we also heard from Julie Murray that the bill will not achieve some of its stated aims and objectives and that it is not quite achieving what the Feeley report wanted it to. Therefore, is the bill, as it has been set out for a second time, going to deliver for social care exactly what was intended and what you would like it to deliver?

Karen Reid: As it stands, the bill has a strong focus on governance. We have not reached the stage of amendments that would set out how the bill will meet the aspirations of the Feeley report. Board chief executives are very supportive of the three key principles of Feeley, which are shifting the paradigms, strengthening the foundations and redesigning the system. It is difficult to say anything further than the fact that the bill's focus on governance—which is perhaps understandable, because we all know that we need good, robust governance structures—has taken away the conversation about how we improve outcomes for people in our communities right here, right now, which is important because people require social care right here right now.

We need to shift back to the dialogue about how we improve outcomes for people who are living in our communities who require social care and not necessarily become embroiled in conversations about governance and structures.

Emma Harper (South Scotland) (SNP): Good morning. I am thinking about the aims of the national care service, including improving the prevention of admissions to hospital, supporting reablement to improve delayed discharge and so on, and I am thinking about how integration is supposed to work. For example, East Ayrshire Council, South Ayrshire Council and North Ayrshire Council are all under one health board but they are three different local authorities. One of them—East Ayrshire Council—is absolutely amazing at reducing the level of delayed discharge, but the others are not so good at that. Would the aims of the bill help us to look at, for example, how East Ayrshire is doing really well and the others are not doing so well or could do better, so that we can learn from other areas? Is that part of the intention behind the bill?

Karen Reid: The intent behind the bill is a matter for policy colleagues. However, from a chief executive perspective, we would say that there is scope to look at how we see improvement across the country. You gave the example of the Ayrshires and, yes, if something is working well in one area, we can ask why it is not working well in another area. That is certainly within the scope of the bill.

There is a question about what we need to change that was not already established by the Public Bodies (Joint Working) (Scotland) Act 2014 and is not enabling those changes and improvements to happen across the country.

I note your point about delayed discharge. We all know that about 2,000 people are waiting to be discharged from hospital, but more than 6,000 people in the community are waiting for an assessment. Unless we look at both parts of the system—those who are in hospital and those who are in the community—we will not be able to change fundamentally the position around delayed discharge.

Tess White (North East Scotland) (Con): My first question is for Karen Reid. Karen, what do you understand as being the purpose of the proposed national care service board, and to what extent would it support the shared accountability arrangements?

Karen Reid: My understanding is that it will be a national oversight board that will be able to hold local care boards to account for their performance and improvement, and to support local care boards with that improvement. I hope that that answers your question.

Tess White: I put the same question to Fiona Davies. Would you like me to read it again?

Fiona Davies: No. I would add only that my understanding is that the national board will set strategy for social care in Scotland, so my understanding is very similar to that of my colleague, but with that addition.

Tess White: Karen Reid, I note that your submission says:

> "NHS Board Chairs and Chief Executives have substantial concerns about the focus on the creation of a new structural entity."

Could you elaborate on that?

Karen Reid: In my introductory remarks, I set out how much support there is for a national care service, so I want to restate that. I will just go through our concerns, if I may. They are all in our submission, which is the chief executive board chairs' submission, not my submission, just to be absolutely clear.

We recognise the responsibilities of the national board as they are set out. We have some concerns about how to ensure that 22

independently legally-constituted boards have representation on the national care service board. We would also like to see more information about the removal of members of the national care service board, given that, from an NHS perspective, board members are appointed through the public appointments process.

On the national care service board's role in oversight and improvement, we would welcome clarity between the current escalation framework for NHS boards and the support and improvement framework that is proposed for local care boards, so that there is no duplication across the system.

Those are our key points on the national care service board. There will be other things to say, and I am sure that we will touch on them this morning.

Tess White: Fiona Davies, do you have any concerns about the creation of a new structural entity?

Fiona Davies: As my colleague says, the submission is shared across all board chairs and chief executives. That is the nature of our submission, and I think that Karen Reid has laid out its position clearly.

Tess White: My next question is a follow-up. At the weekend, the health secretary Neil Gray said that NCS is about ensuring there are "consistent standards across the country". Does the national care service board, as it is proposed, achieve that?

Fiona Davies: It is hard to answer that in a straightforward way. Your colleague was just talking about the challenges and using the Ayrshires as an example, and one of the variables that could affect why one area is doing well and another area is not is the quality of delivery and leadership of the service in that area. However, in my experience, that is certainly not the only variable. In areas such as mine, which covers Highland and Argyll and Bute, workforce availability has a significant impact on our ability to offer consistent services. To have influence on that, the national board would need to set itself strategy and policy that addressed the attractiveness of a career in social care and a way of appealing to young people in remote and rural areas to take on social care careers.

Whether the board can ensure consistency across the country depends, therefore, on how it sets itself up, what it focuses on and how it prioritises the nature of the strategy. That is all still to come. A national board does not preclude that but, equally, without a lot of thought and added content, it will not necessarily by itself create it.

09:00

Tess White: My final question is to Karen Reid. The written submission highlights uncertainty over the impact of the national care service on primary and community care. Will you expand on those concerns?

Karen Reid: In the policy memorandum, it is clearly laid out—in paragraph 54, from memory—that primary care and community health remain the responsibility of NHS boards, with whom accountability therefore remains. We would welcome further clarity on the definition of "community health" and on which services will sit under the auspices of the national care service board and the local care boards.

At this time, as you will be aware, there is variability across the country. Clearly, therefore, there is an opportunity for us to gather evidence about what is working well in primary care and community health, and about where we can support improvement across the country, to address the issue of consistency and variability. That is where our concerns come from. We just need the clarity.

Gillian Mackay (Central Scotland) (Green): Good morning. The Law Society of Scotland and other stakeholders have expressed concerns that the charter that is in the bill lacks legal status and overlaps with existing documents such as the national care standards. How could the charter be strengthened to provide meaningful legal protections and ensure that it serves as a clear and enforceable pathway for service users to uphold their care and human rights?

Karen Reid: Il will make a couple of points. Neither Fiona Davies nor I are lawyers, so we cannot comment on the Law Society's position; however, we recognise that there is scope to refresh the health and social care standards. It has been quite a few years since the first set of health and social care standards was developed; in a previous role, I was involved in that. There is certainly an opportunity for the standards to be refreshed and for those to underpin the charter—in effect, to put the charter into practice.

On upholding the charter and therefore the standards, there is an opportunity for us to look at the scrutiny of how health and social care enact those standards in practice. To refer again to my previous life, I think that there is an opportunity for the standards and the charter to be underpinned as part of the scrutiny and therefore the self-assessment regime across health and care services in Scotland.

Gillian Mackay: The reference to the charter in the bill remains that it is to be a

"charter ... of rights and responsibilities"—

as in the Patient Rights (Scotland) Act 2011. In witnesses' opinion, for whom or what bodies should responsibilities be made explicit in the bill? I go back to Karen Reid.

Karen Reid: Clearly, those who commission and provide services have a key role in making sure that the rights of individuals and of the workforce are taken into account as part of that process. Health boards do not commission social care services, but local authorities certainly do, so it will involve local authorities and will involve health boards when it comes to rights in association with our remit of healthcare—primary care and community healthcare. There are a few things in that for us. However, equally, those who deliver services through commissioning have to uphold the rights of individuals and indeed their workforce as part and parcel of service delivery. A whole-system approach is needed.

The Convener: If no one else wants to comment on that, I will go to Emma Harper.

Emma Harper: I have a couple of questions on the creation of a national social work agency and a chief social work adviser. What do you think the purpose of a national social work agency would be?

Fiona Davies: In simple terms, it would promote social work as a profession and champion the key role that it plays in the broader health and social care system. It would ensure that we have the right capacity and the right people with the right skills, through training, support and oversight of the profession, to undertake all the functions that the sector will require for years to come.

Karen Reid: I will add to that from the perspective of a board chief executive. We are supportive of the establishment of a national social work agency. However, we would like there to be parity of esteem for the 139,000 people who are employed in adult social care, so that there would be the same level of investment in fair work and in education and training. That would support them to provide good quality care for people across Scotland.

Julie Murray: The chief officers group is supportive of the proposed national social work agency. I think that it would bring the profession much-needed parity of esteem with professions in the NHS. We strongly suggest that there should be consideration of the wider social care workforce, without which the social work sector cannot deliver, so that there is a national approach to workforce planning and development opportunities for people in the health and social care workforce.

There needs to be significant investment in social work and social care in order to bring about the change that is needed. At the moment, health and social care partnerships are having to make saving after saving in social care to balance our budgets. At this rate, we are not sure how much will be left as we move into a national care service. We absolutely support the development of a national social work agency as a critical entity. Whatever happens in the future, it will be important to develop that for us all.

Emma Harper: The "Standards in Social Work Education in Scotland" document talks about the principles of innovation, co-production, taking a person-centred approach and empowering people. There are standards for ethical principles such as partnership and participation, and for

"promoting the full involvement ... of people receiving the services".

Would the creation of a national social work agency with an adviser in the lead role enable the creation of a Scotland-wide standard for education, which would create parity of esteem and provide support, as Julie Murray said?

Karen Reid: It would certainly create those standards. We would like there to be the same level of investment in education and training for social care as there is in social work—they are different professions. We are very supportive of having a chief social work adviser as part and parcel of the national social work agency, but we recognise that we also need to look at other roles such as the chief medical officer, the chief nursing officer, the executive directors of nursing and allied health professionals, who have a responsibility for nursing in care homes, and the directors of allied health professionals, who also have an important role in providing social care and social work investment.

Emma Harper: Would you like a social work agency to help to support allied health professionals, and would you like those services to work together?

Karen Reid: We would certainly welcome more collaborative working across the key professions. Much of that is happening; we would like it to continue and to be strengthened.

Julie Murray: At the moment, certain elements of the social work workforce, such as mental health officers, are very scarce. There are real opportunities for there to be proper workforce planning and perhaps for there to be some alignment of salaries across the country, so that people do not move across different partnerships and local authorities for higher rates of pay.

It would really strengthen the training aspect if we had a national training approach; indeed, it would support the work of our chief social work officers, who have quite lonely roles in councils

and HSCPs. That would be a really important development.

Emma Harper: I forgot to say that I am a former clinical nurse educator for NHS Dumfries and Galloway, so I am interested in the standards of education that would be delivered across the whole of Scotland.

Fiona Davies: As I think that you will recognise, at the heart of integrated practice lie multidisciplinary teams, which, in my opinion, work best when they have confident individuals in each discipline within the team. In other words, each practitioner is confident in their own standards and their own contribution, and then they are all brought together. Having that leadership across social work, our allied health professionals, nursing and our medical workforce is what is most likely to bring about effective, integrated, multidisciplinary working at the coalface with clients and patients. That, to me, is what lies at the heart of making integration work.

The Convener: Thank you. I thought that Tess White wanted to ask a supplementary, but that is not the case. I therefore call Paul Sweeney.

Paul Sweeney (Glasgow) (Lab): What is your overall impression of the proposed stage 2 amendments on the monitoring and improvement of the national care service? Given that a number of organisations and bodies represented on the panel already play a part in these areas, how do you think that the proposed amendments might change existing practice in monitoring and improvement?

Karen Reid: As I think that I outlined earlier, the chief execs would welcome further clarity on the monitoring and improvement process. We remain concerned that we might end up with a process in which there might be escalation by NHS boards through the NHS escalation framework as well as duplication with local care boards in respect of the support and improvement framework. I am sure that there is a way forward that will give clarity, but we have not got to the point of working out exactly how the monitoring of performance and oversight are going to work.

Similarly, I have on behalf of the chief execs outlined my concerns about the national board's oversight role. We all recognise that the focus at the moment is very much on governance and structures and that that is necessary to underpin whatever legislative body comes into play, should that be agreed by Parliament as part of the bill process. Nevertheless, we are being distracted from the real challenges and difficulties in both social care and health, and we would welcome a move back towards a focus on outcomes, as outlined in the Feeley report recommendations.

Paul Sweeney: Ms Murray, do you have any points to make on this?

Julie Murray: I would reinforce Karen Reid's point. If monitoring and improvement lead to better outcomes for people who need support and their families, we will support such an approach. However, we feel that the relationships with the national improvement bodies such as the Care Inspectorate and Healthcare Improvement Scotland need to be defined to ensure that there is clarity and no duplication or confusion of roles.

We are also interested in finding out what actions the NCS board will take if a service has been deemed to fail through inadequate funding, and with whom those actions will be taken. There are lots of questions around the issue at the moment, and not a lot of clarity, but certainly if such a move were to lead to better outcomes for people, we would be supportive of it.

Paul Sweeney: Just to be clear, the marked-up version of the bill suggests that monitoring and improvement responsibilities would lie with the NCS board. Do you agree with that proposed structure?

Karen Reid: I think that we would like to have more information about what that actually means in practice—

Julie Murray: I suppose that I am— [*Interruption*.] Oh, sorry. Were you talking to me?

Paul Sweeney: If you would just wait a moment, Ms Murray.

Karen Reid: We would like more detail about what that would actually mean in practice, and where the lines of accountability would lie. The accountable officers in each of the 22 health boards would want to understand better what they were actually accountable for, if the national care service board itself were to have that oversight and accountability. We need clarity on where responsibilities lie to ensure that we do not have the duplication that Julie Murray mentioned just a few moments ago.

Paul Sweeney: Thank you. Do you have any comments on that point, Ms Murray?

Julie Murray: Just to amplify, HSCPs are already accountable to integration joint boards and their sub-committees, health boards and their sub-committees, and councils and their sub-committees. Therefore, unless there was significant streamlining of the process, it would simply add to an already very complicated set of reporting and accountability arrangements.

09:15

Paul Sweeney: Okay, fair enough.

We have been made aware that independent funding for social care research in Scotland is scarce, and that a tender to estimate levels of met and unmet need was not awarded by the Government.

What would the implications of that be, particularly in relation to strategic prioritisation for a national care service, workforce planning and establishing an improvement framework?

Karen Reid: I cannot comment directly on the levels of investment in research. What I can say is that we have an opportunity in relation to the fact that we need to align population health needs across the country at locality level to workforce planning.

Let me give the committee an example. Different areas across Scotland will have different needs depending on demographics. There may be one area where there are lots of people over the age of 75 and, in the same local authority, another area where there are a number of people—perhaps migrant workers—under the age of 40. Those would present different issues that require a different workforce.

If we had more effective strategic planning, linked to population health data, it would help us to plan our workforce more effectively and address some of the health inequalities that we know pervade our society.

Paul Sweeney: How is that currently supported? On strategic planning and ethical commissioning, to what extent does the bill offer an opportunity to enhance and build on current support and learning mechanisms? Will you give us an insight into how that currently operates?

Karen Reid: You might be better referring that question to Julie, given that she lives with strategic planning every day.

Paul Sweeney: I will do that, if you do not mind, Julie.

Julie Murray: It is interesting that the section that talked about commissioning was really about procurement. Commissioning is, in fact, something quite different.

As Karen Reid said, it is about needs assessment and market shaping. It could also be about economic development, rather than just procurement.

As Fiona Davies said earlier, there are real challenges in remote and rural areas around workforce and care home capacity, for example. There is real potential to use all the data, intelligence and demographics to do national commissioning in its widest sense and to do something about the very real challenges that prevent some areas from discharging people.

I did not quite hear the first bit of your question, so I am not sure whether I have answered it.

Paul Sweeney: It was more about current support. We are talking about the idea of a study on unmet and met need, but how is the current research in that area supported?

Julie Murray: We can always do with more research and data. We are working as a group of chief officers with colleagues across COSLA, the Society of Local Authority Chief Executives and Senior Managers and the Scottish Government on improving our data on unmet need. We gather all the data that we can.

The danger at the moment is that it is easy to find data around delayed discharge but less easy to find data on unmet need in the community. We are all working to build our data and intelligence, because that will lead to better commissioning.

Karen Reid: There is a key point here. I am perhaps straying into the economics of it, but we need to shift our thinking from spending on social care being a burden to spending on social care being an investment—in both our society and our economy.

I will give the committee some statistics. A 2020 report from the Women's Budget Group on a care-led recovery from Covid found that

"investment in care in the UK would produce 2.7 times as many jobs as an equivalent investment in construction: 6.3 times as many jobs for women and 10% more for men."

I also highlight a point on the evidence base from the Feeley report:

"The contribution of adult social care to the Scottish economy extends beyond the care sector. For every £1 spent on social care, more than £2 is generated in other sectors."

My final point is that it is not only about the investment in social care; that investment also generates social value, which we know contributes to the combined influence of emotional wellbeing, health maintenance and sustaining natural support and prevention. The point is that social care has a direct, indirect and extended impact across our society.

Paul Sweeney: That is very helpful.

I also wanted to ask about ethical commissioning. The bill as amended would remove the explicit reference to that. Could that undermine efforts to centre ethical commissioning as part of the national care service?

Fiona Davies: I am a former chief officer, so I have some experience of undertaking the role that Julie Murray has been describing. As Julie just outlined, the process of commissioning requires an understanding of our context through data and research—a theoretical understanding or a

modelling of our area—combined with what we know through listening to people: to partners who provide services alongside us in the third sector, to our independent sector partners in Scottish Care and directly to people who use our services. Many integration joint boards and health and social care partnerships already adopt that approach. Utilising relational aspects alongside theoretical and modelled understandings of what is going on in any given area, reinforces and maximises capacity.

An improved definition of ethical commissioning would be welcome. I do not think that anybody comes into health and social care to work outside a framework that we would consider to be ethical.

Karen Reid: Just to add to what Fiona Davies said, and speaking from a board chief exec's perspective, I would welcome more focus on ethical commissioning and its definition. Ethical commissioning should be focused on sustainable and realistic funding models, and on collaboration, person-centred care and enabling, rather than on continuing the cycle of competition for third sector organisations.

Paul Sweeney: Do you concur with that, Julie?

Julie Murray: Absolutely. We were quite concerned that there was no real reference to ethical commissioning in the bill, because it was a real feature of the Feeley report. We would of course be keen to work with our colleagues in other sectors to develop that further, as it is really important. It is even more difficult to develop a collaborative approach with providers when funding is tight. We need really good relationships, and we need to be very honest. Things are quite challenging at the moment.

There is much more that we can do in our collaborative commissioning work. As Karen Reid said, we have to be realistic about the financial envelope, but I would like to develop that area a lot further with colleagues in the third sector.

Carol Mochan (South Scotland) (Lab): I have a couple of separate questions. The question of where we are with Anne's law has been raised by other panels of witnesses. There is an indication from other groups that we could move forward with that quickly—and it is so important. What are your views on that?

Karen Reid: Going back to the question that I was asked earlier about rights, I would say from a board chief exec perspective that we firmly support Anne's law, because it is about the rights of individuals. I do not think that any of us would want to be restricted from seeing our loved ones or our friends or family. We fully support the implementation of Anne's law at the earliest opportunity.

From an NHS perspective, we would also welcome consideration of parity in hospital visiting.

Carol Mochan: That was the subject of my next question. Would NHS directors welcome that across the board?

Fiona Davies: Yes—across all boards. That is part of our submission.

Carol Mochan: That is great—thank you.

There is another thing that you have already touched on. I am interested to know about children's and justice services. Do you wish to say anything in addition to your written submission about where we go with that if the bill progresses?

Karen Reid: Speaking from a board chief exec perspective, I would say that we recognise the concerns that have been raised by our colleagues in local government. As you know, the arrangements for children's services are variable across the country.

I go back to the question about research. CELCIS undertook evidence gathering, and my understanding is that that was inconclusive on the question of whether there should be a whole-scale shift of children's social work and justice social work services to the national care service. From a chief executive perspective, we would welcome more evidence to help us to make that decision.

On child health, I go back to my earlier point about defining community health in delegation terms. Clearly, there is variation across the country. We would be concerned that, in some board areas, delegating child health would lead to fragmentation of other services. Quite often, that service sits in women, children and families services, but I also know that that is not the case across every board. There is variability, and it comes back to the consistency question, too.

Carol Mochan: Fiona Davies, do you have anything to add?

Fiona Davies: No, thank you.

Carol Mochan: I have one last question, which is possibly for Julie Murray, who I see wants to come in anyway. I will ask my question and that will give you a chance to respond to it.

Some of the evidence that we have taken so far is about how much could be done now. Even if we progress the bill to the next stage, is there an urgency to some of the work that we should be doing?

Julie Murray: If you do not mind, I will respond to the question on children's services first. As chief officers, we are a fairly broad church. We have some different views, but the majority of us support maximum delegation.

I come from a partnership in which children's social work and criminal justice services have been integrated with the rest of our community health and social care services since 2006, and there are advantages to that approach. However, chief officers are nothing if not flexible and creative, and they will work across any structure to make things happen.

There is an urgency to the work. Health and social care are in a bit of a crisis just now. We are having to reduce care packages for vulnerable people, and we are having to look at eligibility criteria. In my area, we have never really had to use that before. It is quite a broken system, and we need to devote our energies to trying to fix it urgently. I add that any resourcing that is available should be devoted to front-line health and social care staff at this point. We are in deep water at the moment.

The Convener: Before I ask my question, I put on record my entry in the register of members' interests: I hold a bank nurse contract with NHS Greater Glasgow and Clyde.

I suppose that this follows on a bit from what Carol Mochan asked. Are there any particular amendments or broad areas of focus that you would like the Scottish Government to prioritise as the bill progresses?

Karen Reid: I mentioned earlier that it would be helpful to look at what is getting in the way of our making significant progress now under existing legislation—it would be good to get a piece of work on that.

We would really like to see a few things, and we have touched on those throughout the evidence session this morning. We absolutely need to strengthen our focus on prevention, getting it right for everyone or getting it right for every child in Scotland, and improving population health and reducing inequalities. We would also like to see a strengthening of work across broader public services, for example working with colleagues from housing on poverty issues, drugs and alcohol, and mental health.

Those are all within our gift. In every submission that we have provided on the national care service, we have outlined clearly that we welcome the opportunity for reform, but it has to be reform that leads to improvement in outcomes for people across Scotland.

We can do some things now, and I know that we are working on that. It is not the case that we are waiting for the legislation. As I said earlier, people require health and social care right here, right now. They cannot wait for years until we have an act in place that makes changes. We are all the architects of the system, and we need to create what that system looks like, not continue to be admirals of the existing one.

The Convener: Fiona Davies, do you want to add anything?

Fiona Davies: How do I follow that? I suppose that, given my context, I would say that the focus should be on the workforce—that is the priority.

As colleagues might be aware, we have lost more than 200 care home beds in Highland over the past two years, predominantly due to the availability of workforce and the cost of supplementary or agency staff making it not viable for care in those homes to be delivered in the same way. As Julie Murray has said, we in health and social care are flexible, and we find solutions, but losing services in such an unplanned and unstrategic way, because of access to workforce and the attractiveness of social care as a career, puts us under strain and is highly problematic.

09:30

There is something else that I would highlight. When we talk about social care, the phrase "delayed discharge" is often mentioned in close proximity, but we have younger adults with disabilities who need to thrive and the impact on them of not having the workforce available now might well be lifelong. If we limit the contribution of those individuals to our economy through employment and the ability for them to live their lives to their full social value—I go back to the phrase that Karen Reid used earlier—the impact will be significant.

For me, the issue of workforce availability is not just about the challenge facing a particular client group—that is, predominantly older people on delayed discharge—but about the impact on all the different client groups at all ages and life stages, who access social care to support their independence, to prevent further ill health or complications and to maximise their contribution to society and their own rights as citizens. Ensuring that access to an available workforce—and, indeed, ensuring that social care is seen as a career—is a very urgent issue.

Karen Reid: Picking up Fiona Davies's point about workforce, I said earlier that we welcome parity of esteem for the 139,000 people who are employed in adult social care, but I do want to point out that NHS Education for Scotland works very closely with the Scottish Social Services Council on how we educate and train the social care workforce, and we know that a third of that 139,000 currently have conditions on their registration and less time now to meet those conditions and what it will take to get the necessary qualifications. I think—and this builds on Fiona's point—that that is a significant risk for

the adult social care sector here and now, not in the future.

The Convener: I want to just finish up with a specific question for Fiona Davies. You work in NHS Highland, which is the only health board to operate a lead agency model instead of the model that is used in the rest of the country. Is that model an advantage or a disadvantage with regard to a health and social care workforce being able to fulfil all the functions that need to be fulfilled? Given that what we are looking at in the bill seeks to equalise the country, as it were, what challenges would it bring for Highland?

Fiona Davies: NHS Highland also provided a submission as part of the consultation process, and we had broad dialogue across our board and our executive team in formulating that submission. The view that we came to was that, on balance, we are in favour of moving to a single model of integration in Scotland. It is a complex picture, but perhaps the main factor in our taking that view is that not having peers impedes the process of improvement and learning that we have been talking about throughout the session. We have no other body whose homework we can look at to see how it has gone about things or how it has utilised the structures in the lead agency model to maximise benefit and outcomes for people. On balance, then, we are supportive of moving to a single model of integration as NHS Highland, although it will come with significant challenges.

I should also note that, within NHS Highland, there are two integration schemes: Highland has the lead agency model, while Argyll and Bute operates an IJB model. Just to make sure that people have some context, I should point out that I was chief officer in Argyll and Bute, and I can tell you that it takes a maximum delegation approach. Therefore, we have taken models at opposite extremes into one health board. Moreover, in relation to the outcomes that our population experience, I would say that, using delayed discharge as a simplistic metric, we are not seeing the scale of challenge in Argyll and Bute that we are in Highland. That, too, would also be a factor in the board, on balance, being supportive of moving to a single model of integration in the future.

The Convener: Thank you. I thank the witnesses for attending today. Your evidence has been very helpful to the committee's scrutiny of these stage 2 amendments.

I suspend briefly for a changeover of panels.

09:34

Meeting suspended.

09:41

On resuming—

The Convener: We continue our scrutiny of the Scottish Government's proposed stage 2 amendments to the National Care Service (Scotland) Bill with a second panel of witnesses. I welcome to the committee Rosemary Agnew, the Scottish Public Services Ombudsman, Maree Allison, who is the chief executive of the Scottish Social Services Council, Edith Macintosh, who is the deputy chief executive and executive director for strategy and improvement at the Care Inspectorate, and Robbie Pearson, who is the chief executive of Healthcare Improvement Scotland. We will move straight to questions.

Sandesh Gulhane: I refer to my entry in the register of members' interests as a practicing NHS GP. I thank the witnesses for coming today. I have a number of questions surrounding how you feel the bill could improve the working lives of the people who work in care. I will start with Edith Macintosh: in relation to your inspections, what material change do you think there will be after the bill passes, if it does indeed pass?

Edith Macintosh (Care Inspectorate): Good morning, everybody, and thank you to the committee for the opportunity to come and give evidence.

The Care Inspectorate, as you will know, focuses on outcomes for people, and when we are inspecting or carrying out joint inspections with other organisations, such as Healthcare Improvement Scotland, our focus is very much on what matters to people and how they are enabled to live life to the full. The social care sector workforce does an incredible job of supporting people who are experiencing care, and it is important that the social care workforce is valued for the care that it provides.

The intention of the bill is that co-ordinated, great-quality services will be provided and that people are able to experience the care that they should experience and get the outcomes that they hope to get. Therefore, the intention of the bill is that the workforce should be supported to provide that care, and we hope to see that.

Sandesh Gulhane: From your reading of the bill as it stands, Edith, are you confident that it will improve the working lives of the people who work on the front line of care?

Edith Macintosh: I think that there is an intention for the bill to do that. We would hope—

Sandesh Gulhane: Forgive me, but I asked about your reading of the bill. As it is written right now, is that what you think will happen?

Edith Macintosh: I repeat that the intention of the bill is to do that. It certainly would be important for the workforce to be supported and to be recognised for the valuable work that they do.

09:45

Sandesh Gulhane: That is a very non-committal answer, and that does not seem to suggest that you have confidence in the bill—correct me if I am wrong. Do you have confidence in this bill to deliver exactly what you have just said?

Edith Macintosh: I have confidence in the intention of the bill.

Sandesh Gulhane: The stated intention of a bill and what is actually written in the bill could potentially be two different things, but I will move on, in the interests of time, as I am not getting an answer on that.

I have a question for the other panel members. At last week's meeting, we were told that the bill is unique in that it unites most of civic Scotland against it. We are also seeing reports that COSLA no longer supports the bill. Given those two important factors relating to key partners, do you think that the bill, as it stands, is dead in the water?

Maree Allison (Scottish Social Services Council): The Scottish Government will no doubt be having conversations with COSLA and thinking about how to deal with some of the challenges that have arisen. The SSSC, as the professional regulator of the workforce, has been asked to consider the bill as it stands, focusing on elements that we think would be beneficial to the workforce and elements that could be improved.

Sandesh Gulhane: I am sorry, but that did not answer my question in any way.

Maree Allison: I do not think that it is for me in my role here today to say whether I think that the bill is dead in the water. We are at stage 2, and there is further work to do, so I think that that is a matter for others to make a decision on.

Sandesh Gulhane: Would anyone else like to comment?

Robbie Pearson (Healthcare Improvement Scotland): We have to acknowledge that the bill is going through a process of parliamentary scrutiny.

On your broader point about the effectiveness of the bill, all the evidence suggests that integration is not a structural response and that it is in fact about relationships and improving outcomes through building and strengthening collaboration between a range of agencies.

As chief executive of Healthcare Improvement Scotland, my caution would be in relation to the structural elements of the bill and the extent to which driving better outcomes will depend on how you design the system and how different agencies collaborate. That is our principal note of caution, which we set out in our submission.

Rosemary Agnew (Scottish Public Services Ombudsman): I echo my colleagues' words—we are commenting on this bill, and our comments will enable others to make decisions about what happens to the bill.

As Robbie Pearson said, there are some concerns about what is in the bill at the moment. My locus concerns the complaints element of the bill. Part of the issue that we face is that it does not contain a huge amount of detail. It is described as a framework bill, but there are already existing statutory frameworks for complaint handling. Without a better understanding of the detail, notwithstanding some of my concerns about what the bill says about complaints, there will be questions around the structural issues with regard to how we work better together. I am not sure that the bill as it stands strengthens the collaborative working that is already going on. That creates a risk of the complaints process becoming more complex for those who are trying to navigate the system. That is a concern that I have.

Sandesh Gulhane: Thank you. I will move on to my last question, given that we are desperately tight for time, as always. Our last witnesses gave some evidence about some of the changes that are required here and now. What changes could we make here and now so that things become better? What changes can we not make now for the betterment of people who receive or deliver care, such that the bill is the only way to do it?

Maree Allison: From our perspective, one key challenge is that there is no clear definition in the bill of "the workforce" of the NCS that is referred to. Obviously, the SSSC is the professional regulator of the social work, social care and children's and young people's workforce, but it is not clear to us how and to what extent the workforce that we regulate will be encompassed within what is proposed in the bill.

It is important that such clarity be there in elements of the bill. In the principles, there is reference to the employers of the workforce ensuring that they have an approach to fair work. It is important to have clarity about who the employers of the workforce are.

There is reference to the national care board having a potential role in training and in funding

training for the workforce. Clarity around such elements would be really helpful.

Edith Macintosh: I echo what Maree Allison said. We put a number of points in our written submission about the clarity that would be helpful—particularly in the principles of the bill. We recognise from our engagement with the bill team some of the changes that are being made to the principles through the proposed amendments. However, further clarity is required.

As I have said, the Care Inspectorate focuses on outcomes for people, and our quality improvement frameworks are aligned to the health and social care standards. We still feel that the principles could be more outcome focused, and we have some concerns about being able to carry out our role—being able to make an assessment of the quality of care—if the principles are not more focused on outcomes.

Clarity is also needed on the role of the board when it comes to improvement and the assessment of quality, and how that might impact on the Care Inspectorate's work, to avoid duplication or any potential gaps.

Those are a number of areas that we put into our submission, and they are important to note.

Robbie Pearson: Back in 2019, the ministerial strategic group made a range of recommendations on how to accelerate integration, including collaborative leadership, how we share information, meaningful and sustained engagement, and effective strategic planning for improvement. Those were key recommendations by the then cabinet secretary Jeane Freeman. In paragraph 80 of the memorandum that supports the bill at stage 2, there is a list of very similar duties on the new national care service board. The question is how we advance today the things that were proposed in 2019—particularly in the context of improvement and collaborative leadership, which are fundamental to ultimately driving the better integration and better outcomes that I touched on earlier.

Rosemary Agnew: I will focus specifically on complaints. There could be improvements in three areas. The first is around who is responsible for handling complaints about delegated services. Long before this, we have been concerned about the complex structure for complaints that relate to delegated services, and a lack of clarity about the relationship between local authorities, health boards and health and social care partnerships. When the HSCP structure was created, we asked for that to be made clear through secondary legislation. Where services were delegated through integration joint boards, we asked that complaint handling should also be delegated, because that would have made things clearer for those who receive a service and those who have to respond. That did not happen, and this would be a good opportunity to address the issue.

Fundamentally, especially for delegated services, it needs to be clearer who is responsible for responding in the first instance, and we need to ensure that those members of that partnership or bodies can share information between themselves. That point about information sharing also holds true at the next level—the regulatory and oversight level. We cannot always share the information that we think it would be helpful to share.

We have overlaid on that multiple elements of governance structures. One of my concerns is that it is not clear what oversight delegating organisations have of the complaints that are dealt with when the services are delegated. That is important because it is fundamental to learn from complaints, to make services better, to ensure that people get a good service, and as a feedback route, so it would be helpful to do something around that.

I also have a concern about complaint-handling principles, because they are approved by the Scottish Parliament and we were the first United Kingdom jurisdiction to do that. Parliament has had an active interest in complaint handling and has had a commitment to improving it by improving complaint-handling principles—more latterly, specifically in relation to child-friendly complaints processes—

The Convener: We will come on to the issue of complaints as a specific topic a bit further on, so that might be an opportunity for you to elaborate a little bit more on that. I do not want to pre-empt some of the members' questions.

Rosemary Agnew: Okay. I will stop at that point.

The Convener: Emma Harper has a supplementary.

Emma Harper: Good morning to you all. Do you think that using language such as "dead in the water" is helpful? Is this not about co-design? The bill is a framework bill and it is about what the people with lived experience want. They want what Derek Feeley recommended, which is reform of social care. Is this not about having all the regulatory bodies, the people and the folk like yourself come to the table to get this right? We know that bills get amended after stage 1, through stage 2 and even stage 3 amendments. Is this not about everybody working together and not using language that is not helpful?

Edith Macintosh: I want to make the point that my colleagues have already made. Structural and legislative change alone will not create a social

care system that will be better than it is now, necessarily. Many factors have to be taken into consideration, such as changing the culture, relationships, finance, resourcing, leadership and leadership styles, and, as you have rightly said, hearing the voices of the people in the local communities and of people who are experiencing care.

Certainly, from our experience and the work that we have done, we have seen that across integration models, where the voice of the local community has not been heard and people have not felt involved. It is extremely important, and the Care Inspectorate certainly recognises that the reform that we are hoping for is not just about structural and legislative change.

Emma Harper: The issue is complex. Remote and rural care and urban care might be delivered differently, and there are issues around accepting and valuing what social workers and the multidisciplinary team that we heard about earlier do. It is complicated, and the bill is part of addressing that. It is looking at how care is delivered, to prevent folk from going into hospital in the first place, for instance, or to address delays in discharging folk from hospital. That is what I am saying. The whole system is complicated and the bill is part of the process of better supporting care in Scotland.

10:00

Robbie Pearson: I recognise the point that Emma Harper has made. If we look back to what Derek Feeley intended, we see that the important point is that, ultimately, social care is a springboard and not a safety net. We are aiming to move to a different way of thinking about social care whereby we set aside it being transactional and driven by crisis and it becomes something that supports individuals. If people are to feel involved in the redesign, we need to involve them in a different way and to consider the outcomes for them. That goes to the heart of Emma Harper's comments.

At the first meeting of Derek Feeley's review group, the first thing that it was tasked with was to look at the vast range of outcomes and the expectations on public bodies. We need to focus on what we are looking for and how we can deliver it consistently, as opposed to people facing a fight to get good social care. I think that we are all seeking that outcome.

Tess White: My question is also for Robbie Pearson from Healthcare Improvement Scotland. What do you understand is the key purpose of the proposed national care service board?

Robbie Pearson: The purpose of the national care service board is to provide oversight of the implementation of the objectives that are set out in the bill. It will have oversight of the principles and ensure that there is a plan and that it is executed well at a local level, through the establishment of the local boards, as per the amendments to the 2014 act.

As I touched on earlier, the range of objectives is set out in paragraph 80 of the memorandum on the policy intention of the Government's amendments at stage 2. They cover performance management and the setting of standards for development of the national care service. Ultimately, they will ensure that the principles are consistently applied.

Tess White: How will the board support shared accountability? Some people see that as a fudge.

Robbie Pearson: As I read it, the national care service board will be a public body that will bring its own further infrastructure, governance and accountability arrangements into the system. The tension in relation to the bill is between local decision making and local accountability, and how accountability will be discharged in relation to the national care service board without disturbing that local accountability, particularly for local government.

For Healthcare Improvement Scotland, the current system is not one in which we can compartmentalise things. For example, tackling delayed discharge depends on high-quality primary care and community care and on an effective hospital system. My concern with regard to the proposed national care service board is how it will discharge its responsibilities in relation to social care and community care in a way that still reflects the fact that we are talking about a whole system. As you can see in our submission, my concern is that there will be two channels in relation to governance—one for the national health service, principally hospitals, and one related to community healthcare, which is yet to be defined in the context of regulations.

My concern is that we will lose a bit of the whole-system endeavour if we have two parallel tracks. The risk is that—for example, in the context of tackling delayed discharge, which requires every bit of the system to lean in and support it—we will end up with something that is more fragmented than we would want.

Tess White: In your submission, you talk about a potential fracturing of national oversight of some aspects of the NHS. Will you say a bit more about that, given the tension that you mentioned between the national care service board and the NHS boards?

Robbie Pearson: Yes. We have 14 territorial health boards, and Healthcare Improvement Scotland inspects their work on a range of

services. We often do that in conjunction with the Care Inspectorate in relation to community health services and integration.

As for delayed discharges and the tension in that respect, we are doing everything possible to support effective discharge from hospital. We have a range of initiatives such as hospital at home that seek to keep people at home; we have initiatives to support frailty; and we have initiatives to support improvements in dementia care. All of those things are part and parcel of a whole-system response to supporting people with more holistic care. If we have two lines and channels of performance management—if that is the best way of describing it—one to the NHS in the form of the Scottish Government health and social care management board, and another to the national care service board, it will be difficult in moments of stress and strain in the system to reconcile the different tensions that might arise with regard to performance management.

Equally, how do we commission improvement? I go back to Derek Feeley, who asked, "How do we create a big and bold plan for improvement?" How do we reconcile these things? How do we come together to commission improvement in a holistic way between the NHS and the national care service board? I think, then, that it works both ways; it could have a positive impact and but, at moments of stress and strain in the system, it could be quite challenging to reconcile the two things.

Tess White: You talk about a fragmented system, with the NCS board and the NHS board, but it seems to me that the poor relative in all of this is primary healthcare. That sort of healthcare is at the front end of things and should have more investment, but the bill could mean that it gets left further behind.

Robbie Pearson: Given that 90 per cent of care happens outside the hospital, it is important that any response recognises that primary care is fundamental, and we want to ensure that it is factored into the approach with local boards and into the whole-system response. After all, this is not just about the integration of primary care with community health services and social care; this is about the pathways between primary and secondary care to support people with complex conditions or chronic disease management, and it is critical that it be given due regard to.

As I have said—and I want to emphasise this point—this genuinely is a whole-system response. As I know from a career of more than 30 years, everything demonstrates that the more that you integrate not just in the community but in hospital and community services, the better the outcomes that you get.

Tess White: But you are only as strong as your weakest link. In all of this, primary healthcare is that weakest link.

Robbie Pearson: Primary healthcare is absolutely a fundamental part of the system. It is the gateway; it has a direct relationship with individuals in communities and has that immediate impact on them and their healthcare needs.

Tess White: For the bill to work, would you say that primary healthcare needs further support, too?

Robbie Pearson: Primary healthcare has to have that support, and in that respect, Healthcare Improvement Scotland is supporting, for example, community treatment in various pilot areas as well as the roll-out of pharmacotherapy. Those are key things for general practice; they provide support at a more specialist end of care while allowing other members of the multidisciplinary team to play their part in supporting people to remain independent and stay at home.

Tess White: I have a question for Rosemary Agnew. Who, in your opinion, should be represented on the national care service board to ensure that it functions in a way that promotes integration and best serves those who use care and support services?

Rosemary Agnew: Gosh, that is a tricky question. I cannot give you a name of who—

Tess White: I am thinking about the types of roles that should be represented.

Rosemary Agnew: There should almost certainly be representatives from each of the areas that health and care would cover, because there has to be some element of understanding of how the other part of the system works.

More fundamentally, what is critical to a board is what people are trying to achieve through co-design, where the service user or those who support the voice of the service user come in. The appointments process in many boards already works in such a way that we get very good, able and capable people who are experts in governance or certain subject areas, but given the genesis of the bill, the co-design approach and the need to try to meet what service users are after, I would say that they should be part of that oversight, too.

Tess White: Do you think that similar roles should be represented on boards, to ensure that there is consistency?

Rosemary Agnew: I am not sure that that is how consistency is achieved. It is more to do with what the respective organisations are asked to do, because consistency can be achieved through the way in which a board is supported.

Tess White: I am sorry, but that does not answer the question. The key question is, what roles should be on the national care service board? Does any other panel member have a view on that?

Maree Allison: We welcome recognition that the voice of the workforce should be represented on the board, but that brings us back to the question about what the workforce is. The committee heard evidence last week about the perspectives that each element of the workforce would—

Tess White: Sorry—that does not answer the question. That is almost drilling down into saying that somebody from the workforce needs to be on the board, which I accept. Do any panel members have a view on what roles should be on the national care service board? If you have not got a view, that is also fine, but it needs to be addressed.

Rosemary Agnew: It might be helpful is to understand what you mean by "role", because I am not sure that I understand. It is quite a broad term.

Tess White: Do not worry. We will move on.

Gillian Mackay: Good morning. Quite a few of my questions will be for Rosemary Agnew, but if anybody else would like to come in, that would be brilliant.

The sections in the bill that relate to complaints have not really changed between the bill's introduction and the provision by the Scottish Government of its proposed stage 2 amendments. What would the implications be of establishing a new complaints process as part of the national care service? How should issues of duplication or other potential issues related to the creation of a new complaints process be addressed?

Rosemary Agnew: I will start by speaking about what a complaint is, because that is not a trivial question. In relation to care and health, that one word means a multitude of things.

Complaints about social services and local authority care are covered by the Scottish Public Services Ombudsman Act 2002, and they are subject to model complaints handling and to the principles approved by Parliament. Although I have oversight of, monitor and take complaints about healthcare, they are subject to the NHS complaints handling procedures under the Patient Rights (Scotland) Act 2011. Complaints about HSCPs can be covered by either or both. Complaints about registered care provision are for the Care Inspectorate. Complaints about the national care service, as an organisation, would be subject to model complaints handling.

With the exception of the last example, as the national care service does not exist, we already work relatively collaboratively and know where to signpost things. The issue is with the way in which section 14 of the bill is worded, because

"receiving complaints about ... services"

is not the same as responding to complaints, and although

"passing those complaints on to the appropriate person"

sounds great in principle, I am not sure that it would help people who make complaints for their complaints simply to be passed on. We already pass complaints on and we signpost, and that puts all the onus back on the service user. The fact that someone makes a complaint means that they are not getting the service that they require or they are almost certainly going through something stressful and difficult.

It is disappointing that there is not more emphasis on an advocacy role rather than a signposting role. That is my first big concern about what has not changed since the bill's introduction. That could be achieved now if there was better advocacy and better support for people who complain. Even in the current structures, there is still a level of integration at the point of delivery. It is hugely stressful to make a complaint, so if we had something that was more of an advocacy role—which I acknowledge would come with pound notes attached to it—that might sort things out without the need to put someone through the complaints process.

10:15

Even within our existing complaints framework, the order in which things are looked at is really important, and that will be the case with a more integrated model. It is easy to take a great big complaint that makes many points and to decide that one bit needs to go to the Care Inspectorate, another needs to go to the IJB and another should probably go to the local authority. It would be beneficial to help people with that.

Thank you for stopping me mentioning this earlier, convener, but section 15 also relates to complaints handling. I have real concerns about this issue, not only for me but for all parliamentary office-holders and for other agencies. The bill currently provides for the use of the affirmative process for changing primary legislation regarding office-holders, but every piece of similar legislation uses the super-affirmative process, which involves more parliamentary scrutiny, and must be proposed by the Scottish Parliamentary Corporate Body. We asked for that during stage 1 of the bill process, not only for us but for other office-holders and because of the potential impact on other agencies.

I am also concerned that good features of other legislation have not been included in the bill and that the bill does not preserve things that Parliament has already had the opportunity to scrutinise. I am worried about both ends. The bill as written means that the framework in which we operate might be changed without much parliamentary scrutiny. More fundamentally, a truly good complaints service is one that helps people to navigate, rather than simply signposting them.

Gillian Mackay: Thank you—that was useful.

I will return to the idea of advocacy, which is mentioned in the bill. In your opinion, should the part about complaints be changed in order to better integrate advocacy, or should the sections of the bill that deal with advocacy be changed to better reflect expectations about how people will be helped to navigate the process? We have heard from a lot of people that the provision of information is an important part of the advocacy role and that it gives people the tools that they need to navigate what is, as you have shown, a complicated system.

Rosemary Agnew: The answer to your question is either or both. A complaints service could in itself be complex. However a complaint is passed on, whether through advocacy or by signposting, that inevitably takes time. On the complaints side, there should be recognition that that should not lengthen the process. Complaints could be cross-referenced to the advocacy side. The example for health complaints would be the Patient Advice and Support Service Scotland, which works very well and is good at representing patients who make complaints. PASS is supportive and manages expectations.

We should adjust the focus and move away from considering how we handle complaints to considering how we facilitate and enable complaints to work. That is pretty much what the co-designers asked for.

Gillian Mackay: That was useful.

The complaints landscape is already quite cluttered, so adding a new complaints process will have practical implications. I have said all along that the devil will be in the bill's implementation. Do you think that having an extra complaints body would cause issues? Is it more a case of replicating the work that you mentioned about how different bodies work together to make sure that complaints are resolved and that people feel supported, or are we reaching a critical mass with regard to the number of bodies for people to complain to, whereby the process is becoming so complicated that it is impenetrable?

Rosemary Agnew: I will draw an analogy with what my colleague said about the workforce not being particularly well defined. The bill refers to a "complaints service", not a "complaints body", but it is assumed that it will be a new complaints body or a complaints service that will look at complaints. There needs to be more definition of what is envisaged. I think that what is envisaged is something that works with the current structures, but that is not really what the bill says.

Edith Macintosh: I will pick up on the issue of whether the complaints landscape is cluttered. The Care Inspectorate welcomes conversations about complaints through the expert legislative advisory group and the working group. As Rosemary Agnew stated, we are in a unique situation as a regulator in that we have a complaints service for regulated care services across the lifespan. At the moment, there are around 11,000 regulated care services in Scotland.

All through the bill's development, we have emphasised the importance of the Care Inspectorate retaining the complaints function that we have. In our view, it works well. The number of complaints that we receive has increased over the years. We currently receive around 6,000 complaints a year. That figure has increased since 2011, when we received around 2,800. There is now greater awareness of our complaints process, and people are more aware of their rights and what they should expect in terms of good-quality care. We believe that that might be why the number of complaints has increased.

Our complaints function is important in that it informs our scrutiny process and our priorities. We use a risk-based process to manage our inspections, and the information that we take from complaints is added to that, so that we can focus our finite resources more effectively and efficiently on high-risk services. It is incredibly important that we retain that function.

We would say that the landscape needs to be simpler. It needs to be simple and clear, and it needs to enable people to raise issues. We do not want to have something that prevents people from complaining or that makes them feel unable to do so because it is just too much for them to complain.

The point about advocacy on complaints is very important. If a person finds it challenging to describe what their issue is and someone can advocate for them, that allows a service such as the Care Inspectorate's complaints service to be clearer on what the issue is and to be able to address it in a more timely and better way.

Maree Allison: We have heard a strong articulation of the complexity of the complaints landscape. To add to that complexity, the role of the SSSC and other professional regulators is not to be complaints resolution bodies. We look at the

fitness to practise of those who are registered with us. When people who are using services or their family members come directly to us to raise an issue, it can be very difficult for them to understand our very specific role. As part of the workstream, we have been raising the point that, however this work unfolds, that must not happen in a way that leads to people being automatically signposted to us as the professional regulator, for example, because an element of the complaint is about an individual practitioner.

One of the strengths of the current system is that we work closely with the Care Inspectorate. Complaints about services come to the Care Inspectorate, and if there is an element that relates to the fitness to practise of a registered worker, the inspectorate will refer the complaint on to us. We want to ensure, therefore, that whatever comes out of the bill will avoid unnecessary referrals, not purely with regard to our workload but because it would not be helpful for a person who makes a complaint to be referred round a lot of different bodies that will not provide them with a resolution.

We also support the point about advocacy. In our experience, if people have proper support in navigating processes and understanding the remit of bodies, that is really helpful for them.

Rosemary Agnew: To come back to the co-design elements, the words “accessible” and “accessibility” frequently come up. We may think of complaints not being accessible, but actually, for each of our organisations, complaints are accessible—it is in the system that accessibility is an issue.

In addition, there are different interpretations of the word “accessible”. The SPSO is aware—as, I think, other bodies are—that there is sometimes a reluctance to complain about care, not just because people do not know whom to complain to, but because they might be worried that complaining could have an impact on the care that they are getting or that a loved one is getting. Advocacy is also about ensuring that people have support and confidence in the system.

We must not lose sight of another aspect that is fundamental to good complaints handling. Whatever system we have in place, we must make sure not only that it is the right route to the remedy and the redress, because the redress will look different depending on what the complaint is, but that we capture the learning from that. I hope that the bill will be a good opportunity for us, collectively, to capture that learning in a more holistic way.

Gillian Mackay: Absolutely—the culture aspect with regard to complaints is important. I suppose that there is only so much that the bill can do to get us to where we want to be on that. Other colleagues might want to cover that point.

The Convener: I call Emma Harper.

Emma Harper: I have a couple of questions about the establishment of a national social work agency and the role of chief social work adviser. I am interested in hearing your opinions on that. For instance, how should a national social work agency complement the work of current social work regulators? I see that Maree Allison has her hand up.

Maree Allison: We support the introduction of a national social work agency. The office of the chief social work adviser in the Scottish Government is our sponsor department, so we currently work closely with the adviser. Paragraph 154 of the updated policy memorandum to the bill sets out the intentions for the foundations of the agency with regard to equipping and resourcing the workforce to undertake its duties; looking at the implementation of national policy in a consistent way; and considering policy development across the profession.

We have had discussions about how a national social work agency would work with us in our role in setting standards for education and quality assuring the education programmes, and in setting out continuous professional learning for social workers. We are content that the agency’s role would complement the SSSC’s role as the professional regulator and would be an important focus for the profession, and that it would be part of the progress towards attaining parity for the profession of social work.

Emma Harper: We have heard that. That takes me back to my earlier question about the bill not being “dead in the water” and how we should not use that language. We have heard that the social work profession sees the creation of a new agency as critical to the survival of the profession. The witnesses in the previous session talked about the need for parity and for people to understand what social workers actually do. We also need to look at how we support standards in social work education.

There is lots of really good language in the documentation about empowerment, co-production, person-centred care and the values that we would like to be upheld for anybody who receives care in Scotland. I would be interested in any specific ideas that you might have about what the national social work agency could do in addition, which relates to another issue that has been brought up: the difference between an executive agency and a non-departmental public body that is completely separate from the Government. Do our witnesses have any thoughts on that?

10:30

Maree Allison: From our perspective, the mechanism by which the agency is delivered is a matter for Parliament to make a decision on, because it is in the bill. We would work with either of those vehicles in a supportive way to improve the profession.

Edith Macintosh: I support what Maree Allison has said about a national social work agency. The Care Inspectorate would certainly support the proposed intention and ambition of the draft legislation, and we believe that placing on a statutory footing the role of social work, social workers and social work managers recognises their uniqueness, and that that will help to promote social work and its value and importance across health and social care.

We would find it helpful to understand how the national social work agency would work alongside existing regulators such as the SSSC. It would be helpful and important to understand roles and responsibilities as the agency is developed.

Emma Harper: We heard last week that the multidisciplinary team approach to supporting people in the community is absolutely vital, and a national social work agency could help to engage and support the wider multidisciplinary team, as well as set standards for future social workers. Could such an agency be part of delivering a graduate apprenticeship model to bring social workers into the profession?

Maree Allison: It was announced last week at the Social Work Scotland conference that steps were being taken to bring in a graduate apprenticeship, so that is absolutely one of the areas in which we would work alongside a national social work agency on delivery.

We put a point in our submission about leadership for social care, and there is still a question about where that role sits, both in the bill and more widely.

I want to make the point that we set national occupational standards that underpin the professional qualifications of the social care workforce that we regulate, more than 100,000 of whom are required to obtain mandatory qualifications that are underpinned by national occupational standards to ensure consistency of practice among the workforce. Obviously, the bill will not change that; I just want to make the point that there are already foundations around the wider workforce and the professionalisation of that workforce.

Paul Sweeney: I thank the witnesses for their evidence so far. I turn to monitoring, improvement and commissioning. What is your overall impression of the proposed stage 2 amendments relating to monitoring and improvement of the national care service? How might the proposals change existing practice in monitoring and improvement, given that a number of the organisations and bodies that you represent already play a part in those areas?

Edith Macintosh: That is an interesting question. I suppose that the Care Inspectorate would seek some clarity on the monitoring and improvement aspect of the board's role. We previously sought reassurances from the Scottish Government, and we have had feedback on how that role might interact with, for example, the Scottish learning and improvement framework and with the Care Inspectorate's role, given that we have a duty on further improvement as well. We have a fairly strong track record of supporting improvement in the care sector.

We have designed, developed and delivered a number of national programmes of quality improvement to support the care sector, as well as local programmes.

We also work with other organisations, such as SSSC and Healthcare Improvement Scotland, to promote improvement and to run programmes of improvement in the care sector. In fact, we have just completed—over the past month or so—cohort 1 of a care home improvement programme, assisted by some of Maree Allison's colleagues. We are already seeing significant improvements in terms of our inspectors going out and inspecting because of the work that we have been able to do. We have focused on our scrutiny activity. Through the information that we have from scrutiny, we have been able to invite care homes to take part in that work and we are already seeing the difference that it has made.

There are a number of questions around how the bill would impact our role and remit. We would appreciate further conversations about that.

Paul Sweeney: The bill as drafted proposes that the national care service board would be responsible for monitoring improvement. Do you agree that that is the most appropriate place for that responsibility to lie?

Edith Macintosh: That is a difficult question to answer, because we do not have enough information about what that might look like and how it would impact on the role, remit and responsibilities of bodies such as the Care Inspectorate. We would need to understand that a bit better and would be keen to engage in that conversation.

Robbie Pearson: I will pick up on that point. Paragraph 80 of the memorandum accompanying the stage 2 amendments gives a role to the national care service board in relation to setting standards, but also in relation to performance

management and oversight. There is an element of the national care service board holding to account, which is different from quality assurance and external assurance of the local system, which is about driving improvement.

We have to be quite careful with our language in relation to "external assurance" of the system and "performance management" of the system. That can create some difficulties in relation to the balance of roles and responsibilities between the national care service board and, for instance, Healthcare Improvement Scotland and the Care Inspectorate.

Paul Sweeney: I turn to the role of research in assessing unmet and met need. The landscape in this area of research funding has been bleak for some time, and a recent tender for that research package was not awarded by the Scottish Government. Do you have a view on the implications of that, particularly for the strategic prioritisation of national care service workforce planning and establishing an improvement framework?

Robbie Pearson: I am not aware of the details, but I am happy to come back to the committee on that point.

On understanding the needs of individual citizens and how they access social care and community health services, everything in Derek Feeley's report emphasised the challenge in relation to that being a bit of a battleground and being about how a person holds on to their existing social care, let alone their needing further social care as their needs evolve.

In relation to Healthcare Improvement Scotland and informing policy and research, we have our gathering views work, which we commission with different bits of the service at different points along the way. We also have the citizens panel, which is, again, an important opportunity for allowing different topics to be used to inform policy in relation to the design of the service in health and social care. Those are important parts of whatever we do in relation to next steps with the bill. It is about genuinely and meaningfully ensuring that policy and delivery meet the needs of individuals.

Paul Sweeney: I turn to how strategic planning and ethical commissioning are currently delivered and supported. To what extent does the bill offer an opportunity to enhance a culture of organisational improvement and learning? Do you see that as an opportunity, or could it potentially be frustrated?

Robbie Pearson: Others may want to answer more in relation to the ethical commissioning point, but one of the major opportunities presented when it comes to advancing improvements in social care is that of defining, fairly clearly, the infrastructure that we need for improvement. Edith Macintosh touched on that.

We already have a pretty good track record in Scotland with the Scottish patient safety programme: it is at scale; we built the will; we advanced it with local teams; and we ensured that we drove through excellent delivery in relation to sustainable outcomes and better, safer care.

Derek Feeley's review highlighted the challenge of taking the learning from that programme and using it, at scale, in the social care sector. That sector is very different from healthcare, but through aligning their efforts to achieve improvement there is an opportunity for the various bodies in that landscape to work together to ensure that we can deliver those better outcomes at scale.

Paul Sweeney: Are there any other perspectives on that?

Maree Allison: I want to pick up on the points about fair work and commissioning. I go back to the principle in the bill about employers having to approach their workforce in a way that is an exemplar of fair work. The workforce that we regulate cannot provide the right support to the people whom they care for unless they are supported, given time for their professional development and paid in a way that gives them parity with workers in the health sector. The link between fair work and ethical commissioning needs to be there if we are to make that happen for the whole of the regulated workforce.

Paul Sweeney: Thank you very much.

Edith Macintosh: I will pick up on a couple of points around commissioning. I mentioned that, together with Healthcare Improvement Scotland, we inspect social services and integration arrangements, which include commissioning. Over the years since 2014, we have conducted several inspections. In six of those we focused exclusively on strategic commissioning. One theme that has emerged from that evidence is the lack of good-quality data to inform commissioning. That is especially true of personal outcomes data, which is critical for getting things right. Also, front-line staff feel a disconnect from commissioning decisions, and there is, in such decisions, a lack of meaningful involvement of the people who actually experience care.

We support ethical commissioning and we agree with Maree Allison about the importance of fair work and of people experiencing the right care at the right time. However, we also feel that the social care workforce should be remunerated in the right way and have the best possible terms and conditions. I hope that that is helpful.

Paul Sweeney: The proposed amendments suggest removing from the bill the explicit reference to ethical commissioning. Are you concerned by that?

Edith Macintosh: I reiterate the importance of ethical commissioning. We would certainly promote that in our conversations with local areas.

Paul Sweeney: Does anyone else have a view on the proposed removal of the explicit reference to ethical commissioning? Would you rather see that on the face of the bill?

Maree Allison: I go back to my earlier point that I do not see how we can deliver fair work across the wider workforce without ethical commissioning being in place. I am sure that strong voices will say that it needs to be on the face of the bill if we are to achieve that.

Paul Sweeney: Thanks very much.

Carol Mochan: I have a couple of questions on quite specific issues. I am interested in what has become known as Anne's law. We have discussed with other witnesses whether we are able to implement that now or whether we need to wait for the bill. What are your views on how we might implement it?

Edith Macintosh: Currently, the Care Inspectorate supports the intention behind Anne's law in care homes through the health and social care standards, and in particular through the two additional standards that are now in place. All registered care homes for adults and older people are expected to meet the two additional standards at the moment. We also have the on-going work of our meaningful connection project, in which we work closely with the sector to support providers to understand the importance of enabling residents not only to have visits but to connect with people in many different ways. Our aim is to support people who are experiencing care to be citizens of their local communities.

10:45

The need for meaningful connection—having a voice—does not diminish as we get older; it is the same irrespective of whether we are younger or older. We have been making sure that the sector understands the importance of that for living our lives well.

Through that work, we have seen a real difference in how people experience care. Having connections with people who they love and people who are important to them in life, or having the opportunity to get out into the local community and perhaps restart some hobbies or just connect and be part of that community, makes a difference. People experience a real sense of wellbeing when they are able to connect. We are very supportive of Anne's law, and we are continuing that work.

The health and social care standards are key to our inspection frameworks. We look at whether the two new standards are being met when we are out on inspection.

It is not for the Care Inspectorate to make a decision on or make much comment about the legislative process, although we are fully supportive of it. It would be wonderful if Anne's law were able to provide a more consistent approach to people being able to connect with those who are important to them and with their local communities.

Carol Mochan: That is helpful. It is something that you already promote, but legislation might help to cement it.

Edith Macintosh: Absolutely.

Carol Mochan: Does Maree Allison want to comment?

Maree Allison: We are very supportive of Anne's law. It has been such a challenging area for the workforce to navigate, and having clarity and legislative support would be welcomed.

I know that other people who have made submissions have commented on the technical wording of the provision and on whether it should be extended. We do not have any comment on that, but we are supportive of the measure in principle.

Carol Mochan: As no one else wants to come in, I will move to my next question.

Are you happy with the proposed amendments to children's and justice services? Some previous witnesses set out a particular direction for us on that. Does anybody want to comment?

Maree Allison: In our submission, we said that we would be supportive of those services being included. We are conscious that there have been some very thoughtful submissions around the complexity of that and questions over whether the evidence exists for doing it.

We have been looking at the issue through a professional regulator lens and with concerns about fragmentation of the profession. From our perspective, having the profession as one would be preferable, but we are conscious that it is a hugely complicated area and that there are lots of differing views and challenges. Anything that makes changes would have to be carefully thought through and timed.

Edith Macintosh: I echo what Maree Allison said. We appreciate that there are arguments for and against, and we appreciate that further careful consideration has been given. My main point is

about concerns around the disaggregation of services. We would guard against doing that. It is of significant importance that social work services are coherent and work together across an individual's lifespan. Therefore, any disaggregation of services would be of concern.

Carol Mochan: I have one final question. If the bill progresses, is there a particular amendment or part that should be prioritised and worked on at this stage?

Maree Allison: For me, it is the workforce issue and its definition. The most important thing about the intention behind the bill is how it will support and improve the workforce. There needs to be clarity on that aspect, so we would want that to be the focus.

Robbie Pearson: If it is an open question that goes beyond children's and justice services, it would be worth revisiting where the evidence has taken us before on integration, which is about relationships and about how to create the culture and conditions at the local level to sustain improvement. I would also note some of the limitations of legislation. Having a legal duty to collaborate does not necessarily make collaboration any better. It is about how you sustain those relationships over time and how you allow the structures to evolve and give best effect to the original intention.

I suppose that that would be my note of encouragement in relation to where we might go in the future.

Carol Mochan: Do you mean that some of how we deliver that should be in the bill?

Robbie Pearson: The bill has provisions that relate to culture, leadership and collaboration. My note of caution would be the extent to which you can legislate for those things when they are about how you create the conditions and relationships at a local level. I have worked in a territorial board and with a council, so I know that a lot of that comes down to not necessarily the structures, the committees, the governance and the accountability, but how individuals work together to ultimately achieve better outcomes.

The Convener: I thank the witnesses for their evidence this morning and I am grateful for the information that they have given the committee. It will certainly be very useful in our scrutiny of the stage 2 amendments.

I briefly suspend the meeting to allow for a changeover of witnesses.

10:50

Meeting suspended.

11:00

On resuming—

The Convener: We continue our scrutiny of the Scottish Government's proposed stage 2 amendments to the National Care Service (Scotland) Bill, with a third panel of witnesses. I welcome Isla Davie KC, from the Faculty of Advocates; Jennifer Paton, who is head of policy at the Law Society of Scotland; and Jan Savage, who is executive director at the Scottish Human Rights Commission. I also hope that we will be joined shortly by Suzanne McGuinness, who is executive director of social work at the Mental Welfare Commission for Scotland. We move straight to questions.

Sandesh Gulhane: I declare an interest as a practising NHS GP. Does anything in the bill mean that we could improve both the care that is delivered to people and the wellbeing of staff?

Jan Savage (Scottish Human Rights Commission): The commission's concern about the bill, as it is proposed to be amended, relates to the right to independent living. For so many who rely on social care—disabled people, older people and people with long-term conditions—social care is independent living. Although the amended bill, as proposed, would clarify in stronger terms the human rights implications of that, it could go further, and there could be more specificity in it about what article 19 of the United Nations Convention on the Rights of Persons with Disabilities means when it comes to independent living. That would provide greater read-across into the principles and standards—and, therefore, the delivery of a national care service that upholds them.

The commission is not qualified to comment on the workforce area, unfortunately.

Isla Davie KC (Faculty of Advocates): I am conscious that the faculty did not put in a specific response about the proposed amendments, so our position remains with the original paper that was produced. The bill has a lot of aspirations, which are generally to be seen as positive ways of implementing the intended change. The difficulty from a legislative perspective is that it is a framework bill, which concentrates on structure. A lot of the detail of how care would be changed or improved will come through secondary legislation. At this stage, it is difficult to say with clarity how that will be effected and whether it will improve the situation.

Sandesh Gulhane: Would anyone else like to comment?

Jennifer Paton (Law Society of Scotland): I can come in at a high level. Throughout our engagement with the bill, the Law Society of Scotland has said that it is important to be clear on how a new piece of legislation would add value to the existing complex legal and organisational framework in social care, how it would interact with the many existing structures and—importantly—how it would improve outcomes for end users. As my colleagues have said, the bill is a framework, so a lot of the detail that we need to be sure of is not available.

Sandesh Gulhane: Could we provide the right to independent living right now, without the bill?

Jan Savage: Arguably, we could do that, but a strengthening is needed. The Scottish Government has decided to pause the progression of the human rights bill, which would have given effect in Scots law to the right to independent living, among a variety of other human rights instruments. That means taking a right from being an aspiration, or something that is intended to happen, to being something that must happen, and there would be legal routes to redress if it did not.

A welcome development is that the bill as amended would give greater clarity on the human rights instruments that are to be given due regard in respect of the bill. However, we believe that the bill could go further to enshrine the right to independent living. There are words and concepts around supporting people and the principles of people living independently that could be strengthened to align better with the language of the Convention on the Rights of Persons with Disabilities. That would give greater clarity to duty bearers and people who use social care and, ultimately, if things got to a stage of having to be reviewed, it could give greater clarity about any review of decisions on funding and quality of care and so on.

The treaty that defines the right to independent living is already ratified by the state, but the mechanisms to make that real are not there. It appears to the commission that, for a piece of proposed legislation that is so significant to so many disabled people and older people, to enshrine the right to independent living in the bill would really help to deliver its policy intent.

Sandesh Gulhane: In the previous evidence session, we heard from Robbie Pearson about collaborative leadership, which paragraph 80 of the memorandum on amendments discusses. At the committee's meeting last week, we heard that the bill is unique in uniting most of civic Scotland against it, and we have also heard that COSLA is looking to withdraw its support from the bill. The idea of collaborative leadership seems to have completely gone.

Given that that has happened, do you feel that the bill is dead in the water? I use those words on purpose, because we should not be scared of governmental special advisers—spads—not liking language that is used in committee. Is the bill dead in the water if there is a lack of collaborative leadership from most of civic Scotland?

Isla Davie: From the faculty's perspective, we are not here to comment on the political side of things; we are here to talk about how the legislative framework works in a legal sense. The language that you are using is certainly quite emotive, but that is not something that the faculty would be looking to comment on.

Sandesh Gulhane: Does anyone else have an opinion?

The Convener: It does not look as if anyone else on the panel has a comment.

Sandesh Gulhane: No? Okay.

Given that the bill is a framework bill and that we do not have details of how it will actually come into effect, does it represent the best way of delivering for carers and for people who receive care? Do you think that there might be another, simpler, way of doing that, which gives people clarity? I am directly asking for a lawyer's opinion on that, if that is okay.

Isla Davie: You have three people here who are very qualified to answer that question. The concern that you raise is what the faculty raised about the bill from the get-go. There must always be a balance between effecting change in some manner and doing it in a way that can be properly scrutinised. The approach of starting with framework legislation and having to implement a lot of the detail with secondary legislation can always potentially be a hostage to fortune. We have always raised that concern.

It is a matter of balance—and there will never be any perfect piece of legislation that will solve everything. This is an area where we already have very layered legislation, so one of the difficulties that we face is that people who are trying to work out exactly what the proper rights and obligations are in the care system will sometimes find that quite impenetrable.

There are some difficulties with the approach. Much of the detail is still to come and will be filled in by secondary legislation, although some of the structures would be changed by the proposed amendments. Secondary legislation is not afforded the same level of scrutiny. There may also be a perception that some of the principles have already been identified and agreed, which could create the risk of them not being given the same precedence in scrutiny when people are looking at secondary legislation further down the line.

I do not know whether there is a perfect solution to that. The faculty does not have any particular proposals for better ways of doing that—we are simply flagging up concerns, and we would hope to see greater scrutiny of any secondary legislation.

Jennifer Paton: To be clear, the Law Society of Scotland has no policy position on whether there should be a national care service, and that is not something that we would take a position on—our concern is with good law and the legislative process. We have submitted evidence that highlights our concerns about the bill and particularly about the fact that some quite fundamental changes to the bill as introduced are being proposed at stage 2. Much of the stage 1 evidence has probably been superseded because of those changes, including structural changes and changes to accountability, which are significant aspects of the proposed national care service.

Our view is that changes that reflect significantly revised policy intentions will limit the scope for full and effective parliamentary scrutiny of the bill. Therefore, we are now concerned—as we said in our written evidence—that the process may not be consistent with the creation of good law, which is law that is clear, effective and efficient and which achieves its intended outcomes without unintended consequences.

The Convener: Does Sandesh Gulhane have any further questions?

Sandesh Gulhane: That was my final question.

The Convener: I accept that emotions run high on certain matters, but I remind members that I expect them to be courteous to each other.

I have also been informed that we have apologies from Suzanne McGuinness.

We move to questions from Tess White.

Tess White: My first question is for Jennifer Paton. What do you understand to be the purpose of the proposed national care service board?

Jennifer Paton: I need to find that section in my notes. My understanding is that a new public body, with an identity that is separate from the Scottish Government, is being proposed. That is reflected in the updated policy memorandum. I also note from that memorandum that

"Details of how the Board will work in practice will be informed by further co-design and stakeholder engagement".

I am not sure that we know all the details of how that will work.

We welcome the fact that the proposed stage 2 amendments give additional detail about what the board will look like. That additional detail was not present when we engaged with the bill at stage 1, so I welcome it, but we are still a little concerned about exactly how the layer of governance that is being added to the really quite complex environment that I mentioned earlier will lead to improved quality and consistency for social care users.

Tess White: Rather than staying with the idea of purpose, I will ask my follow-up question about shared accountability. To what extent would shared accountability help to deliver the board's purpose and objectives? Some people think that shared accountability could be a fudge or that it can be difficult to get traction.

Jennifer Paton: The Law Society of Scotland would not necessarily want to express a view on that at the moment, when a lot of the detail that we need is not available.

11:15

Tess White: That is no problem. To go back to your submission, I note that the Law Society has suggested that it is "unclear" how the national care service board

"will ... lead to improved quality and consistency of social care services ... or deliver improved oversight and accountability"

and

"unclear as to ... how unnecessary bureaucracy, duplication and expenditure will be avoided".

Do you have anything further to say on that?

Jennifer Paton: No—I will just leave it at what our written submission says.

Tess White: Thank you. Isla, you say in your submission that the bill

"does not contain provisions to strengthen co-operation between the national care boards and local authorities."

Is it possible to expand on that?

Isla Davie: I should clarify that we did not submit a response on the amendments—just one on the original bill.

Tess White: I am talking about your previous response.

Isla Davie: As far as the faculty committee can see, the approach that is being taken seems just to change the proposed structure. Instead of starting with a totally blank slate, the idea now is to take the model for the integration authorities, with healthcare and local authority care combined, and put in place boards whose approach resembles that, to some extent. We do not have a comment on that as an approach. As a policy matter, if that has seemed to be a way forward that has worked and on which agreement could be reached, the

faculty would not say whether that was a good or a bad thing. Certainly, it seems to address some of the concerns in our original response about keeping some continuity and having accountability among different parties. I can understand the concern that it might be a little bit of a fudge, in so far as it involves a compromise, but we do not have an official position on that.

Tess White: With something so important as a new national care service, there should be clarity if it is going to cut through and deliver. In your original submission, you said:

> "it could be several years before areas which are ... worst served by social care services could hope to see any improvement"

and

> "there are no interim measures proposed for areas or services which are recognised as being currently badly served."

I suppose that the point is that, even if those concerns are addressed, the worst-served areas will not feel any impact for several years. If we are talking about shared accountability at the top, I will just go back to the discussion that we had with the previous panel, during which the word "fragmented" was used. If there is fragmented leadership, added to the concern that has been expressed by your organisation, which is that it will be years before the bill will have any impact, that suggests that the process is all going to be fraught with issues.

Isla Davie: Again, we are not in a position to talk about that. We do not have expertise in or knowledge about the fundamental substance of the care system.

From a legislative perspective, I note that the concerns that we raised about the impact further down the line and the time that the measures will take are echoed in many responses. Although it is appreciated that the bill is an attempt to get the structures in place and to ensure that that aspect is covered by legislation, there is no doubt that there is a concern that some of the real substance and ambitions that are set out in the Feeley report are not being met.

It is all very well to say that the legislation is required and important and that we need to get the structures right, but that is not to say that we can leave everything else in the meantime. The concern that we raised has been echoed by a number of organisations, which have pointed out that there are real needs that require to be met and that none of them will be addressed by the bill.

Tess White: I accept that your area of expertise is not social care, but I have a question on an area that does lie within your expertise. Do you have a legislative point of view on how, in the bill, the Scottish Government has approached the detail about the board?

Isla Davie: I echo Jennifer Paton's comments on the lack of clarity at this stage. At first, the approach seemed to be that we should start with a clean slate, with a new system being brought in. It now appears to be the case that there has been substantial discussion that has led to amendments to the bill at stage 2, which involve a compromise on the form that the board will take.

When we look at the proposed changes, however, they do not tell us a great deal about how that is going to work in practice. We are still, therefore, hovering around the same point, which is that everybody has an idea of how the legislation could move forward, but we do not have a lot of the detail on what that would mean in practice.

Tess White: That is helpful—thank you.

My final question is for Jennifer Paton. We have heard that there is no detailed form, and the witnesses in the previous session talked about fragmentation. Do you have any views on that in respect of the legislative process?

Jennifer Paton: Can you clarify what you mean by that?

Tess White: Yes. What is your view on how the Scottish Government is approaching the detail of the board's creation in the bill?

Jennifer Paton: If I have understood it correctly, the Scottish Government's position in the policy memorandum is that co-design and stakeholder engagement still need to take place on the detail. Is that the point to which you are referring?

Tess White: Do not worry; we will move on. Back to you, convener.

Gillian Mackay: Good morning. In the previous session, Rosemary Agnew in particular spoke to us about the complaints process and the fact that it has not really changed between the introduction of the bill and the proposed stage 2 amendments. How can we improve the cluttered landscape of complaints processes and make those processes accessible for people who need support as a result of their experiences with social care?

I go to Jan Savage first.

Jan Savage: The Scottish Human Rights Commission has taken a keen interest in the proposed stage 2 amendments to strengthen the complaints and redress procedures in the bill. As I said earlier, without those effective complaints and redress provisions in place, the human rights to which the bill refers will be merely aspirational,

rather than something that can be applied in principle.

At this stage, we believe that the bill could go further in exploring how that aspect could be brought into effect for more people. One of the first and most straightforward changes to the legislation could be to introduce the right to be provided with advocacy for individuals who are in receipt of social care and who require it in order to access their rights. There is legislative precedent for putting that in primary legislation—for example, that right is baked into the Social Security (Scotland) Act 2018—and it would provide some certainty thereafter, in respect of the development of more detailed regulations.

Albeit that co-design is an important principle, a human rights base to co-design of anything also requires legality, and there are principles in the human rights legal framework that would guide what a system of access to justice should look like in a piece of legislation of the bill's magnitude. We believe that that is critical.

With regard to the charter, which will outline the standards of care that individuals can expect to receive, we believe, again, that the legislation could be strengthened further through amendments at stage 2 in order to guide the charter's effect. At the moment, it seems that it will become simply an aspirational charter that is developed through co-design mechanisms. That is not a bad thing in and of itself, but if there is no specific guidance in the legislation itself, in particular at the framework stage, individuals could be open to experiencing further challenges in respect of their rights to redress and remedy.

We believe that the bill could be strengthened even further at stage 2. We would be happy to follow up with further detail on that in writing, if the committee would find it helpful.

Gillian Mackay: Yes—that would be really helpful.

I will go a wee bit further into that. The charter of rights and responsibilities is in the bill, but—as you rightly said—we need to ensure that it has some real effect. Which bodies should have responsibilities within that? Should that be made explicit in the bill in order to help people to see where the responsibilities flow and to whom they should speak? Should we demystify the structures for the people who access social care?

Jan Savage: In any system that is to be usable, such things have to be foreseeable. In terms of good law making, we need to be clear about which public bodies and agencies are likely to be impacted. I think that the point that you are making is that individuals who are exhausted can face a complex web of remedies and routes to redress, and they need a system that works better for them. Although the commission has not yet publicly committed to a position on that, I think that it is fair to say that it expects consistency and predictability, and identification of which agencies will be involved. It would be of value if the committee were to explore that further.

The charter absolutely has to be co-designed, and not only with those individuals but with all the public bodies and agencies that are involved. However, we believe that the effect of the charter needs to be solidified in the primary legislation. I note again that the Social Security (Scotland) Act 2018 is the most recent example in which that approach has worked. Section 19 of that act clarifies that

"A court or tribunal in civil or criminal proceedings may take the Scottish social security charter into account when determining any question arising in the proceedings to which the charter is relevant."

Application of a similar principle in the bill in respect of the national care service charter would go some way towards providing clarity for duty bearers and the courts, as required, on how to give effect to the charter.

Gillian Mackay: We have heard from some people that, if social care was operating at the level that we would wish for—if there was no delayed discharge and nobody was waiting for assessment—provision of advocacy and information might not be needed. Will you outline why the right to advocacy and information is so integral to ensuring that people's right to social care support can be realised?

Jan Savage: If we go back to the purpose of the bill, one of the core principles, as outlined by Feeley, is to ensure that a national care service is developed that has at its heart the rights, the will and preferences, and the choice and control of every person who requires social care. For that care to be directed by those individuals, they need advocacy support. People need to understand not only what their rights are and where they can go for advocacy of those rights, but how eligibility criteria and their social care entitlements might impact on their social security entitlements, their right to housing and their right to work and participate as an active member of society.

That is quite a complex system for people to navigate. In the commission's experience, the people whom we are speaking about are often exhausted. The commission has published separate research on the challenges that people face in accessing justice and their economic, social and cultural rights, and we see that being borne out by civil society actors. It is too much—it is a full-time job, in many cases—to advocate for one's rights to social care.

You are right: we hope that the need for independent advocacy will reduce, if the national care service does as intended over a longer period of time, and works through all the issues that it needs to work through over many years. Maybe that could be an indicator for the national care service board to monitor over time. However, until that happens, independent advocacy will be needed, and it has to be independent: it must not be associated with the local actors or the people who hold the purse strings in respect of decision making at the local authority level. Advocacy must be independent and have the rights of the individual at its very heart.

That right would make such a difference to individuals who are seeking to navigate the web, and it would mean that they could influence the national care service board by giving it some insight, both nationally and at the local level, into what is really happening in terms of delivery. It would not only benefit individuals, but would enable systems-level learning to take place as well.

Gillian Mackay: That is great—thank you.

11:30

Emma Harper: Good morning to the witnesses. I have a couple of questions about the establishment of a national social work adviser and an agency. It is proposed that the national social work agency would be an executive agency, closely aligned with the Scottish Government, to deliver on Government policy. Is that the right way to proceed? During an earlier session and during last week's evidence taking, we talked about non-departmental Government bodies versus the establishment of a new agency. What are your thoughts on that?

Jennifer Paton: I do not think that we would take a view on exactly what form a new body should take. Although we welcome the fact that there is now provision in the bill for the agency, we are still a little bit unclear as to how exactly, as it is proposed at the moment, that will fit into the existing organisational landscape, where a lot of other organisations already have roles and different structures are in place. It is not clear to us how creating a new, further public body in that already cluttered landscape and putting it on a statutory footing, alongside the separate national care service board, would improve things for end users. That is our concern.

Isla Davie: I do not have a lot to add, other than to say that, like a lot of the bill, there is an aspiration there. One can see that, if you create the role, in and of itself, that might start to provide some clarity around it, some leadership and some structure that are currently not in the system. At the moment, there is no more than that in the bill. There is not much detail about exactly how the agency would be differentiated from other bodies, what powers it would have and the level of scrutiny that there would be. That is not to say that it would not be a good thing—it could well be a good thing—but there is not a lot of detail about it at the moment.

Emma Harper: A new agency could take the lead in further collaboration, co-design and co-working with other agencies. Earlier in the session, we spoke about how NHS Ayrshire and Arran is one health board, but there are three local authorities—East Ayrshire, South Ayrshire and North Ayrshire—and they do things differently. For example, some of them are performing well in relation to delayed discharge. Is there a potential role for the national social work agency in considering what is working really well and supporting the dissemination of best practice through collaboration with other agencies?

Isla Davie: I do not think that I am differing from any of the other responses in saying that there is certainly the potential for that. A lot of people have welcomed the potential for that to give greater clarity and leadership and to provide some consistency, not just in one board but across boards. There is certainly the potential there, and I echo what Jennifer Paton said.

At the moment, there is not a great deal of clarity about exactly how the agency would sit among a number of other organisations—what distinction there would be between the role that that would create and the role of other bodies—and what benefits that would provide in a practical sense. There is certainly potential for that to be quite positive, but we would have to see the detail.

Emma Harper: Thank you.

Paul Sweeney: I will move on to the discussion around monitoring, improvement and commissioning. Generally, what is your overall assessment of the proposed stage 2 amendments relating to monitoring and improvement of a national care service? How might the proposals change existing practice, as you understand it to be?

Jan Savage: It is not particularly clear what the national care service's monitoring and improvement role, particularly through the accountability function of its board, would look like and how it would be achieved, nor is it clear what the accountability route for improvement would be.

From the commission's perspective, it is essential that human rights are embedded in the national care service board's functions in order that that is laid out in primary legislation, to set the parameters for what improvement looks like. Many of the deep-rooted issues in social care that we

have heard mention of in today's meeting, such as delayed discharge, have a clear human rights basis, and a human rights framework provides a route through that. Again, the commission has given some thought to how the bill as presented to us could be amended further to strengthen that.

I sound like a broken record but, going back to the Social Security Scotland mechanism, there is clarity in the Social Security (Scotland) Act 2018 about the role of a national oversight board in providing that accountability, monitoring and improvement system. Section 22, for example, requires an oversight board

"to prepare and submit to the Ministers and the Parliament … a report containing—

(i) an assessment of the extent to which any or all of the expectations set out in the Scottish social security charter"

or, in this case, the principles

"are being fulfilled, and

(ii) recommendations for improvement".

Being more specific in the bill about the purpose and function of a national care service board around national accountability and therefore seeing that through into local accountability measures could be really valuable.

There is also the opportunity to make explicit reference to the requirements of article 19 of the CRPD, for example. There is an opportunity to strengthen the primary legislation here to enable that to go further. Very simply, making explicit reference to the role of a national care service board in the principles would be a simple amendment to make.

It is not clear to us how the national care service board would monitor budget settings. One of the largest challenges for people who use social care and duty-bearers alike is resourcing and its prioritisation. If a more human rights-based approach to budget allocation is taken by requiring a national care service board to at least identify an annual budget allocation—what is intended to be spent on what—and conduct a mid-year review of what has been spent and an end-year review of what has been achieved as a result, it would be possible for a national care service board to take on those monitoring and accountability roles, but it is as yet not clear that that is the intent of the legislation. It is therefore not clear to us how that translates into commissioning practice.

There are quite a number of gaps there, but there are potential routes through them.

Paul Sweeney: That is helpful. Are there any other perspectives on that?

Jennifer Paton: I would echo a lot of what Jan Savage has said. Based on the information that we have, it seems to us that a lot of the detail about exactly how the monitoring and improvement function might work will be left to co-design after the bill is passed. That will give the board quite a bit of discretion as to how it will operate. There is still a lack of clarity and a lot of discretion there. A lot of other bodies in the social care sector already have monitoring and improvement functions, so we are not quite sure how what the bill proposes would fit into that wider landscape. There is scope for more detail.

Paul Sweeney: The Law Society's written evidence mentions an

"already crowded legislative and organisational landscape"

in this space. Can you develop that point around the current structures for how strategic planning and ethical commissioning are supported? Do you have an understanding of how the bill as currently drafted would move that on and create the circumstances for better organisational improvement?

Jennifer Paton: I would not want to commit the Law Society to a position on that here and now, but I would be happy to take it to our working group that has been looking at the bill and write to the committee after this meeting.

Paul Sweeney: That would be really helpful; thank you.

Ethical commissioning is explicitly referred to in the bill, but the proposed amendments would remove that explicit reference. Is that a concern?

Jan Savage: I presume that the intent behind the rationale for having ethical commissioning in the bill was to ensure that good decisions are made in respect of services that ultimately empower the right to independent living. There would be a concern about the vacuum that removing that would create. The notion of leaving it to co-design is welcome, because you need to do that and to have those conversations, but it must be based on legality.

It would give us some degree of comfort if those principles were to be connected back to the purpose and function of the national board, because that would ensure that those human rights, and that human rights-based approach, were guiding what success looks like, and, therefore, what ethical commissioning looks like in practice. That would be one route to providing us with some comfort about the impact of the loss of ethical commissioning in the bill itself.

Paul Sweeney: That is helpful.

Carol Mochan: Where could we advance Anne's law? The committee has heard from witnesses that the intent is there and that, from a policy perspective, people are making sure that that important contact with families is happening.

Do we need to wait for the National Care Service (Scotland) Bill, or is there legislation that we could use or something that we could do to ensure that that is a right, rather than it being the case that there is just the potential to make it happen?

Jan Savage: There are two elements to that question. It is good to see those requirements coming through in the bill, and, whether this policy happens through the bill or through a separate legislative measure, what is almost more important than redefining rights in the bill is defining what a redress mechanism would look like. People already have the right to family life. The requirement for Anne's law has come from the situation of those rights not being met. Simply restating those rights in legislation will not necessarily achieve the policy intent, unless a proper route for redress is designed at the same time, and that could happen through a national care service route or an alternative legislative route.

Carol Mochan: Could you describe that in a few sentences? I know that it is complex, but what could we do now to ensure that that redress is provided?

Jan Savage: There would be two elements. One would be the route to information and advocacy, which means ensuring that everyone is aware of their rights to family life and how to access those rights. The second element is quite straightforward in that it sets out what to do if that is not happening. That means setting out who you complain to—whether that is an existing public body or whether this needs to be a new duty of a new public body—whether that is a requirement of a national care service, what steps you need to go through, who, ultimately, upholds a complaint and what happens as a result. It is about ensuring that those steps are baked into the system.

Carol Mochan: That is lovely—thank you.

Isla Davie: Those seem like very practical suggestions.

Carol Mochan: That is excellent. We are at stage 2 of the bill process and we have proposed amendments from the Government. Would any of the witnesses prioritise any of those amendments or suggest anything that is missing or that the committee should pick up on in its scrutiny process?

Jennifer Paton: We would not take a view on exactly how Anne's law should be delivered in terms of a legislative vehicle or anything such as that. However, it is important that there is consistency and coherence across the statute book, and I know that there are other reforms going on at the moment, potentially around human rights, mental health and incapacity law and so on. There are quite a lot of different reforms going on, so it is important to ensure that, in addition to the proposed national care service, everything matches up and there is no inconsistency.

Carol Mochan: That is lovely—thank you.

The Convener: I thank the witnesses for their evidence. It has been a good contribution to the committee's scrutiny of the proposed amendments at stage 2.

Next week, the committee will continue to take oral evidence on the Scottish Government's proposed stage 2 amendments to the National Care Service (Scotland) Bill with three further panels of witnesses.

That concludes the public part of our meeting today.

11:44

Meeting continued in private until 11:57.

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