



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Health, Social Care and Sport Committee

**Tuesday 8 October 2024**

**Session 6**



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**Tuesday 8 October 2024**

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**HEALTH, SOCIAL CARE AND SPORT COMMITTEE**  
**27<sup>th</sup> 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:**

Rachel Cackett (Coalition of Care and Support Providers in Scotland)

Fiona Collie (Carers Scotland)

Dr Jim Elder-Woodward (Inclusion Scotland)

Eddie Follan (Convention of Scottish Local Authorities)

Rob Gowans (Health and Social Care Alliance Scotland)

Karen Hedge (Scottish Care)

Councillor Paul Kelly (Convention of Scottish Local Authorities)

Louise Long (Society of Local Authority Chief Executives and Senior Managers)

Frank McKillop (Enable Scotland)

Adam Stachura (Age Scotland)

**CLERK TO THE COMMITTEE**

Alex Bruce

**LOCATION**

The Sir Alexander Fleming Room (CR3)



**Scottish Parliament**  
**Health, Social Care and Sport**  
**Committee**

*Tuesday 8 October 2024*

*[The Convener opened the meeting at 08:45]*

**Decision on Taking Business in**  
**Private**

**The Convener (Clare Haughey):** Good morning and welcome to the 27th meeting in 2024 of the Health, Social Care and Sport Committee. I have received no apologies.

The first item on our agenda is to decide whether to take item 4 in private. Do members agreed to do so?

**Members** *indicated agreement.*

**The Convener:** Thank you.

**National Care Service (Scotland)**  
**Bill: Stage 2**

08:46

**The Convener:** The next item on our agenda is a concluding evidence session that forms 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 Eddie Follan, who is the chief officer in health and social care, and Councillor Paul Kelly, who is spokesperson for health and social care, both from the Convention of Scottish Local Authorities. We are also expecting Louise Long, who is the chief executive of Inverclyde Council, to join us. She will be representing the Society of Local Authority Chief Executives and Senior Managers in Scotland. We will move straight to questions.

**Emma Harper (South Scotland) (SNP):** Good morning. I am interested to hear whether you are still in support of a national care service.

**Councillor Paul Kelly (Convention of Scottish Local Authorities):** Good morning to the committee. It is good to be here. The position that COSLA leaders took at our most recent meeting was to withdraw from the shared accountability arrangement for the national care service due to a number of reasons that we have outlined. That decision was taken by COSLA leaders after lengthy discussions and negotiations with the Government over an extended period.

At this stage, our position is that we have withdrawn from the process and want to work with partners and others on the reform that we think needs to happen to the system right now to make the changes that are required to support the people who need support.

**Eddie Follan (Convention of Scottish Local Authorities):** I will just add to what Councillor Kelly said, Ms Harper, about COSLA leaders taking the decision after lengthy negotiation around the shared accountability arrangement. At the moment, we do not feel that the arrangement reflects the discussions that we had with the Scottish Government over a long period of time.

Let me be clear, though: COSLA is fully supportive of system reform. We are still in favour of a national care service but we are not in favour of a national care service as it is set out in the bill, at the moment. You will have seen from our evidence that we started negotiations in, I think, April 2023, or something like that. We had a long period of negotiation in which we talked about policy and there was a lot of compromise, a lot of

discussion and a lot of negotiation with the Government.

By June 2023, before the draft amendments were produced, we realised that we had got to a stage at which we were down to three issues on which we couldnae get agreement: direct funding of integration joint boards, children's services and the removal of members from IJBs by ministers. When we got to that stage, we had done a lot of work—the principles, the charter and the national board were more or less nailed down, as far as we were concerned.

We knew that the Government was producing amendments but we hadnae seen the amendments—you will know that from our submission. Unfortunately, we got the proposed amendments about an hour before. We had an hour in the room to look at them. They were pretty detailed amendments, so we couldnae really get a chance to go over them. When we looked at them, there were issues for us, particularly around the national board, the shared accountability agreement and the ability for ministers to move services from the “may be delegated” category to the “must be delegated” category. However, we still support reform. As far as the national care service goes, we are still supportive of it but we are not supportive of it as it appears in the legislation at the moment.

**Emma Harper:** You talked about direct funding, children and the removal of members from IJBs. In your negotiations with the Scottish Government—in the tripartite agreement that came to be the way to move forward—what additional reform would you like? What fundamental changes need to happen now?

**Councillor Kelly:** As Eddie Follan has highlighted, we were in extensive negotiation with the Government over a long period. We felt that we had reached three areas that local government was not able to support. Subsequently, when the draft amendments were laid, there were other substantial areas. The total has risen to seven areas, as Eddie Follan said.

We are very concerned about what the bill looks like now. There is centralisation, bureaucracy and additional layers of governance that are really not what the system is looking for right now. We work extensively with the Government and partners on the issues that currently face the system through, for example, the collaborative response and assurance group—the CRAG—together with the whole-system improvement group and the statement of intent. People who work in social care and those who use our services tell us about the need for investment and for a look at recruitment and retention, which are key issues that need to be addressed right now.

We do not think that, in the current format, the national care service will deliver that. If anything, it will add bureaucracy to a system that is already struggling. There are lots of areas in which we could work on improvement and are committed to doing so, but we do not think that they currently take the form of what is in the National Care Service (Scotland) Bill.

**Emma Harper:** Last week, the example of delayed discharges in East Ayrshire, North Ayrshire and South Ayrshire was raised in evidence. There is one health board but three local authorities. One local authority is doing really well in addressing delayed discharges. Is the support of care boards not part of the reform of creating a national care service, so that we can identify why something works really well in one area but not in the other two? That is only one example, but other local authorities struggle with delayed discharges. Is it not part of the reform to look at what is working in one area but not in others?

**Louise Long (Society of Local Authority Chief Executives and Senior Managers):** Good morning, committee. I am Louise Long. I am the SOLACE representative. I apologise for being slightly late; I got caught in security.

I have had the pleasure of being a chief executive, a chief officer and a chief social work officer. I have worked in a number of local authorities, including one of the Ayrshires. The situation is very different because of the different needs of different communities. Even the three Ayrshires are very different in some things that they do and some of the third sector organisations that they have. You cannot always compare; it is not comparing apples with apples. Sometimes, for example, the Highlands are apples and Glasgow is pears.

The Promise board is a vehicle for scaling up and disseminating improvement. We do that all the time for children's services, without the need for legislation. We need to think about how we drive improvement across the totality of the system.

**Eddie Follan:** You are right. We have been working fairly intensively with the Scottish Government on the joint mission to reduce delayed discharges. It is fair to say that there has been a fair amount of intervention from ministers, and Councillor Kelly has been involved in that as well, in local areas. We are working with civil servants to support those areas.

I have heard about the Ayrshire example but, as Louise said, even in that area of Ayrshire there are very different circumstances. For instance, we know that North Ayrshire faces particular issues around care homes, and we have been working intensively with South Ayrshire, which has

completely different circumstances from North Ayrshire. East Ayrshire is different again.

The issue for us is about what would make the biggest difference. The way in which the bill is framed at the moment is about ministers having the power to intervene and to set strategic direction. We had thought that the board would do that; however, it is about ministers doing it, but not in partnership with us. At the moment, we intervene and there has been some progress on delayed discharges, but it is a very difficult and complex issue.

Everywhere we go—we have been out in most local authorities with civil servants and ministers—the issue that we hear about is inability to get the workforce to provide care at home because of a shortage of social workers. We need to deal with that, but it is not clear to us how the legislation will deal with the workforce issue. We could probably do that without legislation, but we all know that there are workforce issues across the piece.

**Emma Harper:** I have a final wee question. In the agreement that ministers are working on with COSLA, ministers have the ability to co-design a framework bill—it is a framework bill—then to build on that with further legislation. Would continuation of negotiation support the challenges that you describe on standardising the competency requirements for all staff across Scotland? That is part of it. The bill might not address the shortage of staff, but it looks at how we approach the engagement that is required to have a workforce that could be paid equally, for instance, across the whole of Scotland. That is my understanding of the joined-up co-design approach to creating a national care service that would work across Scotland with the local levels that are required, as Louise Long described.

**Eddie Follan:** The way that the bill is framed at the moment is about governance and structure. We thought that we would have a shared accountability arrangement between council leaders and Scottish ministers. We would then have the national board, which, in our view, should set the strategic direction and set national standards. We would have a national strategy for social care—which, amazingly, we have never had in this country. The board would drive that. There would also be a relationship between the national board and the IJBs—or, as I think the Government wants to call them, the local care boards. That is all fine; that is about governance, but it is difficult to see how it would deal with pay and the terms and conditions of the workforce.

COSLA is working closely with the Scottish Government on the fair work agenda, so we are pushing that as far as we can, but it has come up against one fundamental issue, which is finance. We all recognise the state of public finances,

including when it comes to fair work. I know that colleagues in trade unions are frustrated about that, but that is separate from the national board.

It is really difficult for us to see—I do not know whether my colleagues will want to come in on this—how that governance arrangement and structure will change the local relationships that we have. We have bargaining structures in local authorities and we have the Scottish joint council, which deals with the local government workforce. I know that there have been discussions about sectoral bargaining with the third and independent sectors, but those are separate from the bill.

As you said, Ms Harper, it is a framework bill and we need to see more detail, but we are always open to discussing our position and to negotiating, because the bill is too important. This is about people's lives and the care that we deliver. I do not think that anybody in this room doesnae want to see improvement in the system but, ultimately, we have fundamental differences over some really sticky issues. However, we are always open to discussion.

**Tess White (North East Scotland) (Con):** Councillor Kelly, in your opinion, how can the national care service go ahead without the co-operation of COSLA?

**Councillor Kelly:** As Eddie touched on, we never wanted to reach this position. We have been part of this process extensively since 23 April, and we have had discussions on the issue with all the various cabinet secretaries at different times since I took my post on 22 June. We have tried hard to reach a position where we can support a national care service that delivers the changes that we all want.

09:00

As to what became difficult in the negotiations, and to answer your question about what the next stage will be, we got to the point at which things were not negotiable any more, because we made points that were heard extensively but were not listened to. We were quite clear that we had compromised in a number of areas, and that there were three outstanding matters that we wanted to see compromise on. When the draft amendments were laid—we had only an hour to look at them—that led to there being other significant areas that threatened the role of local government and local decision-making in social care. That caused significant concerns about what the bill would deliver, other than bureaucracy, increased governance and other things that would not make a difference to the system.

**Tess White:** The next step would be that COSLA is bypassed. What is your view of the

Scottish Government bypassing COSLA and going directly to the councils?

**Councillor Kelly:** The cabinet secretary referenced having discussions with councils outwith COSLA. The Convention of Scottish Local Authorities is the representative membership body of the 32 local councils, and councils are committed to COSLA taking on issues of significance, such as the national care service and budgets, in discussions with the Scottish Government. Leaders have stuck to that position. It is up to the cabinet secretary if he wants to have discussions of that kind with local authorities, but it would inevitably come back to COSLA.

As part of withdrawing, we have been clear that we want to focus on the here and now and the issues that are faced by the system. As I outlined, we are already doing extensive work with the Scottish Government on some of the key areas including recruitment and retention of staff and the financial vulnerability of authorities. We are committed to doing that and to working with partners. We have made our position on the bill clear; it is up to parliamentarians and the Government to decide the next stages.

**Tess White:** Are you saying that it is part of negotiating tactics, or are you saying that there is a real possibility that COSLA could be bypassed?

**Councillor Kelly:** That is not part of our negotiating tactics. It has taken a significant amount of discussion and thought for us to come to this decision and for leaders to withdraw from shared accountability. We have done so because we have significant concerns about the direction of the bill as it currently stands and the impact that it could have on service users and on our workforce. We are still open to having discussions with the Government and others about reform of the system.

**Tess White:** I have one follow-up question. Many councils do not want the national care service anyway, and there will be huge issues if COSLA is bypassed and the Scottish Government goes directly to councils. I was looking at the written submissions, and Aberdeenshire Council asked whether staff retention, attraction and retention and pay could be focused on. If COSLA continues with withdrawal of its support and the councils do not support the bill and its proposed implementation, is it completely dead in the water?

**Councillor Kelly:** That is not a position that COSLA can take. That is up to parliamentarians and the Scottish Government. As I said, we will represent the view of local authorities. Collectively, all local authorities and leaders were behind the submission that we made to the committee, which showed the quite serious concerns that we have in a variety of areas. Leaders want us to focus on the

issues that social care and service users face right now, which are very significant, so we will focus on them.

**Joe FitzPatrick (Dundee City West) (SNP):** I have two quick questions. First, does COSLA think that the bill will be improved by the stage 2 amendments, or will the amendments make it worse? Would you prefer the bill without the stage 2 amendments, which have not yet been passed? Secondly, have you done any work on amendments of your own that you might ask MSPs to lodge during the stage 2 process? We are in an unusual situation of having a pre-stage 2, which means that the amendments have been proposed, but have not been voted on yet.

**Councillor Kelly:** As we outlined in our submission, we have significant concerns about some of the amendments. We were disappointed because we had outlined three key areas, which were focused on in the negotiations, but we had only one hour to look at the amendments before they were proposed. We were told that that would not be the case, and we thought that we would get more advance notice so that we could have a proper discussion. We then had other substantial concerns, including national accountability and what the board would look like. There was a lot of deviation from the discussions that we had with the Scottish Government, the cabinet secretary and ministers.

**Eddie Follan:** I want to give a wee bit of detail on some of our major concerns around the amendments. Councillor Kelly has laid out our broad issues. The bill would give a power to ministers to move local authority services from a “may delegate” to a “must delegate” category. That would include children’s services, as ministers have been quite clear that they want them to sit under the national care service board. It could include homelessness services. Louise Long can talk to that point—those services are fully delegated in Inverclyde Council, so it might be useful to hear from her.

Those services are delivered through local decisions, because of local circumstances. For local services to all be in the “must delegate” category would mean that there was a central decision that local services must be delegated under the auspices of the national board. Those services would then be under the national board and the shared accountability—which is, in our view, overly focused on Scottish ministers—and strategic direction would be set, which would mean that ministers would direct local services in a particular way. I know that the Government may disagree, but that is how we see the bill at the moment.

The other bit that we are concerned about is the national board. Originally, our vision of the national



board had been about support, improvement and national standards, and about setting the strategic direction, advising ministers and leaders on issues, supporting local improvement and monitoring. We have agreed that there should be a support and improvement framework but, in the bill at the moment, it is about support and improvement but about monitoring and scrutiny. If we could go back to the original vision, we could make some progress. However, at the moment, we are pretty far from it.

As far as amendments go, we would like to see the bill amended to recognise the role that local decision making plays. I do not know whether Louise wants to add anything.

**The Convener:** We may come back to some of that if our members have questions.

**David Torrance (Kirkcaldy) (SNP):** In the light of the withdrawal of COSLA's support for the bill, do you still accept that there is a need to amend the Public Bodies (Joint Working) (Scotland) Act 2014 to improve integration of health and social care, and if so, are there adequate options in the secondary legislation in the 2014 act to allow that?

**Councillor Kelly:** We have been clear in discussions that we want to see reform of integration and to be clear on what integration looks like. However, we have also been clear that it is early—the 2014 act is still fairly recent, and a lot of progress still can and must be made around integration authorities.

There needs to be a supportive role. The issue is about how we support integration authorities and integration authority members who have a significant responsibility. We have been very much up for considering reform and changes to integration that actually support and empower local decision making in the communities that we represent.

**Louise Long:** I was around when the 2014 act was brought in. We could learn from that act and add things to the current legislation to give integration joint boards more authority. What is in the 2014 act is not that different from what is in the legislation on the national care board. You do a strategic needs assessment in your local area, then make a strategic plan that belongs to your IJB, and then give directions to your health board and council. All the tools are currently in the 2014 act and, with some amendments, that could be supported to be better.

**Eddie Follan:** We have to remember that integration is still fairly young. We are 10 years on, but it is a complex process and we have had a pandemic in the middle of it. We feel that more support should be in place for integration and for integration joint boards—we have discussed that point with the Government and we all agree on it.

Members of the IJB should really get more support for what they do and there absolutely should be more training for IJB members. Those are the kind of softer reforms that we would like to see that would really make a difference to the integration process.

**David Torrance:** In the light of an earlier answer from Mr Kelly, I want to ask what discussions you have had with Highland Council and NHS Highland about the impact of potential changes. In evidence last week, the committee heard that they were in support of the Government's proposed stage 2 amendments, but earlier you said that all council leaders are in support of what you are doing.

**Councillor Kelly:** Yes, all council leaders have supported our submission to the committee and the actions that we are taking. The most recent dialogue with Highland Council was on the situation that it is facing, and there has been dialogue between me, the cabinet secretary and others with the Highland Council in a supportive role with regard to what it faces.

On the lead agency model, which is different from the rest of the integration positions, we want to see support for Highland Council to move to whatever comes into existence. That will involve looking at its structure and financial support for it with regard to any changes that would have to take place. We have been committed to that dialogue with Highland Council in a very positive way.

**Eddie Follan:** I want to reiterate that the submission to the committee was supported by 32 local authorities. There are discussions in Highland Council about the lead agency model and where that sits as a result of the amendments. That is very much a discussion and a decision for it locally, as it should be. In any discussions that we have had with the council about that, it has been clear that any change needs to be funded, because there could be significant financial implications of a move from lead agency to the IJB model. That is also a matter for Highland Council.

**Ruth Maguire (Cunninghame South) (SNP):** Good morning to the witnesses. Thank you for being with us. I would like to ask questions about the care service principles and charter. All of us will have experience of how challenging it is for people to navigate social work complaints processes. The committee has heard in evidence that, to all intents and purposes, local authorities are marking their own homework in this regard, meaning that people have nowhere to go if their care package is cut or if they are assessed for a certain level of package but then do not get that. How should the process be improved?

**Louise Long:** There is the Scottish Public Services Ombudsman. There are a lot of complaints processes. There is the health complaints process, the council complaints process and the joint health and social care partnership complaints process, so it is complicated. With regard to the principles, one of the good things in relation to the original bill was that it included advocacy and the right to information and advice. Giving people the right to information and advice as well as the right to advocacy could be done now, if additional funding could be put into advocacy services. Those services are difficult to navigate, just as it is difficult to navigate the health system on its own or the council system on its own. When you have two systems, it is difficult for service users to navigate that and it is not easy to think about how that would work with another system.

My understanding of the bill is that the national care board would take in complaints and give those to us to investigate and that we would then hand those back to the board. That feels like another layer. There is also the SPSO and the health complaints process. It does not sound as though we are simplifying the process.

**Ruth Maguire:** How do we simplify the process? It is always helpful to think about it from the perspective of someone who, for example, has a family member whose care package has not been fulfilled. How do we simplify the process for them to complain and get what they are entitled to?

**Louise Long:** People need to have rights, know their rights and know where to get advice and support. That experience can be very different in different areas. We need to ensure that people have the right information and the right advice. Lots of people already have rights, but they do not know how to complain or make sure that those rights are enforced. The problem in relation to things such as care packages is that demand outstrips capacity. When you do not have the workforce, you cannot provide some of the care, so there is a balance to be struck in relation to that.

**Ruth Maguire:** How do local authorities balance expectations against the reality that you are facing?

09:15

**Louise Long:** Most health and social care partnerships—it is not the local authorities now—have eligibility criteria in social work and social care that prioritise those who are in greatest need, which means that we do not end up doing prevention. That is exactly what the Feeley report referred to. We need to invest more in prevention

so that people are not going into crisis, but that is one of the issues with the current system.

People have a universal right to healthcare services and they should have a universal right to social care services, but it is a very scarce resource. Even if we had all the money in the land, we do not have the workforce to deliver some of that. We have to be realistic and have a system that prioritises those who are in the greatest need.

**Ruth Maguire:** You spoke about the importance of service users knowing their rights. Would you be confident that all the services and employees across health and social care partnerships understand the rights that people have to their services and what the levels are? You spoke earlier about criteria.

**Louise Long:** I would be confident that social workers understand eligibility criteria. There are health and social care standards and Care Inspectorate standards—there are all sorts of standards within health and social care. That is why I think that something like the principles could simplify all that.

It would be difficult to say that everybody right across the land understands what their rights are, whether they are care experienced children, people with a learning disability or older people who are in hospital.

**Ruth Maguire:** What are local authorities doing to ensure that complaints and feedback are learned from and are helping to improve services?

**Eddie Follan:** An extensive amount of work goes on in local authorities on the complaints process and how feedback is brought into the system. That happens in different ways in local authorities across Scotland. It is an important part of the work that the integration authorities and local authorities do to make sure that we can best support people when there are issues with their care and social care packages. Local authorities are continually looking at that and going out to communities to consult on it. It is a really important piece of work.

Going back to your point about the NCS principles and NCS charter, we are generally supportive of those principles. They are very important. A lot of work is undertaken in areas such as fair work and looking at how we can support people as best we can, and the NCS charter is supportive of taking that forward. We want to see those improvements.

Louise Long has made the point that we cannot get away from the fact that social care has been underfunded for a number of years. Local authorities have been faced with significant challenges to their budgets for more than a decade. That has had an impact on the social care

packages that we can provide for our communities. Certainly, from our discussions with local councils and partnerships, we know that they want support right now so that we can provide better support for the people who need our services.

Louise Long also made a good point about how money could be put into advocacy and local partnerships to help people with navigating the system, whether it is through local authorities, integration boards or health boards.

**Ruth Maguire:** We always acknowledge that more money would be helpful for everyone. We are definitely in tough times, but it cannot always just be about money. We need support for the charter and the principles, and I think that everybody wants to achieve the aims that are outlined for the national care service, especially if we think about our citizens and the service users who are not always getting the best at the moment.

COSLA's position is that it is open to negotiating and achieving those aims. We have spoken about areas in which there is disagreement, but if support for the overarching aims is there, I would imagine that you would want to talk more.

**Eddie Follan:** I have a good example of where we have had constructive discussions. There have been extensive discussions and debates on complaints with the Government. We absolutely want to get that right, but we have to make sure that, when it comes to complaints, we are streamlining the system and not adding a layer of complexity.

My understanding is that, as Louise Long said, there would be a repository of complaints that could be looked at and allocated to the specific complaints body. If there is a role for monitoring how those complaints are addressed and dealt with, we would discuss that. We are quite clear that we have been working on that area of the bill and have made compromises on it.

**Carol Mochan (South Scotland) (Lab):** Good morning. I am interested in the topics of the national social work agency and the national chief social work adviser. Our job is to scrutinise the legislation as it comes through. I recognise the position that you are taking, but it would be useful for us to understand how you would feel about having a chief social work adviser and how that position would link to the roles of local authorities.

**Councillor Kelly:** I will touch on the first part of your question and then hand over to Louise Long. For the reasons that have been outlined, COSLA supports the proposal for a national social work agency. We have done extensive work on it with the Scottish Government and we would like to push forward on that and keep our discussions

going. The agency would cover many important areas that could make improvements to a system that really needs support right now.

Louise, perhaps you could touch on the chief social work adviser position.

**Louise Long:** SOLACE supports the proposal for a national social work agency. Anything that helps our social work staff to feel valued, stay in their careers and have pathways of support can be only a good thing. The bill misses an opportunity, though. Although the social work profession is important—I am a social worker, so I would say that—it is only one part of the adult social care world. There are many social care workers, and it would have been helpful for them to have some form of leadership through a national social work agency. However, there is a whole range of support for a national social work agency out there from professional bodies—for example, I know that the committee has heard from Social Work Scotland as well as SOLACE. That is because we understand that the aim of the bill is to put social work staff on a better footing with other colleagues, such as those in education and nursing.

**Eddie Follan:** That is another area where we have been working pretty extensively with the Scottish Government and the office of the chief social work adviser and are supportive of a partnership approach, with Social Work Scotland, COSLA and the Scottish Government working together to explore what a national social work agency would do. We are talking about workforce planning, having a national strategy for social work, implementing support through social work employers to ensure that Scotland achieves its policy intentions, and promoting training and professional development. We have had a really positive discussion on those aspects.

**Carol Mochan:** I have one follow-up question. I have listened to what you have said, which has been helpful for our scrutiny of the bill. Do we need the legislation that would establish a national care service to do this stuff, or could or should we be doing it now?

**Councillor Kelly:** That is an area where we would like to say that we can do it right now. Obviously, it would be for the Government and parliamentarians to decide the requirements for legislation, but we certainly think that we can get on with such measures. Eddie Follan has covered many of the areas that we are in discussion about, but we are not waiting around on those. We know the situation that social work staff face right now: providing them with support and getting more people into social work is important. We would want to work on that no matter what.

**Eddie Follan:** To be honest, it probably doesnae need to be in legislation. What is in the legislation is establishing the chief social work adviser. There are merits to that, and we have discussed those in the context of how the chief social work adviser could be an influence within Government. However, we need to have a wee bit more discussion about what that partnership would look like. My understanding is that the Government is thinking of having an executive agency, but my view is that it would have to be a partnership. We have the statutory responsibility for the workforce, Social Work Scotland does the professional development bit, and the Government obviously has an interest as well. We need to think a bit more about whether that is necessary and how the partnership would work.

**Paul Sweeney (Glasgow) (Lab):** I thank members of the panel for their answers so far. I turn to the commissioning and procurement provisions in the bill. More generally, what appetite is there among COSLA members to undertake fundamental reform of social care that would further embed integration? We often hear about variation across the country. Is there an appetite in COSLA to undertake that effort in order to understand how to improve the experience of those seeking care and support?

**Councillor Kelly:** Absolutely—that is key for us. There is variation across the country for a variety of reasons. We would not want to see local voices lost from local decision making. For example, someone in Shetland faces different issues—accessing services and Shetland-specific issues with the recruitment and retention of staff—from the issues that are faced in areas such as Glasgow. That is important, and it is something about which we get a lot of feedback from users. They want to see local decisions taken at the local level that reflect the needs and requirements of communities.

However, across the country, there are common themes, such as the recruitment and retention of staff and the funding of the system. We have to work on those common themes right now. We have been very clear with the Scottish Government that, if we want to see improvements to integration and partnerships, those are the areas that urgently need to be worked on, because the social care workforce is doing a tremendous job in the most difficult circumstances with some of our most vulnerable individuals.

**Eddie Follan:** I keep referring back to where we have actually got agreement on things, and we have had fairly positive discussions on commissioning. Councillor Kelly has touched on variation, but there is a case for national commissioning of certain services. We have been in discussions about that. We recognise that a

national board might have a role in undertaking national commissioning on agreed and complex specialist services. That is why it is so important that we get the shared accountability arrangement right, so that we make decisions on those issues jointly with the Government. As I said before, we feel as though the balance is out at the moment when it comes to ministers taking control in that direction, and we certainly see that with national commissioning. Perhaps Louise Long would like to add to that.

**Louise Long:** It is disappointing that ethical commissioning does not have a more prominent part in the second part of the bill. Fair work is different from ethical commissioning. Local government is working with the Scottish Government across the piece on fair work, but ethical commissioning would go a long way towards supporting the workforce who work in the third and private sectors and making sure that they feel valued—a social work agency might achieve that, too—and feel engaged. We need to keep as many people working in social care as possible. There is an opportunity with commissioning to do something different.

**Paul Sweeney:** As I understand it, there are proposed amendments that would remove explicit reference to ethical commissioning. Do you or any other members of the panel have a view on how best to realise ethical commissioning? Would that be through the bill or through some sort of secondary legislative provision?

**Louise Long:** Ethical commissioning is expensive. It is about more than people's terms and conditions or travel in relation to work. I know that, having tried to ensure that we ethically commissioned home care services in Inverclyde over a long period of time. It took a lot of work and a lot of input, and it was very expensive in comparison with other approaches. If we are committed to ethical commissioning, we will need to provide more funding for it, which is difficult when resources are so scarce.

**Paul Sweeney:** Would you prefer to see it in the bill?

**Louise Long:** If we are looking at social care as a whole system, and if we want to make the whole system better, ethical commissioning should be in the bill.

**Paul Sweeney:** I turn to the point that Mr Follan made about proposed new section 12M of the bill, which is about the reserved procurement process. What is your view on the proposed amendment that would enable the national care service board to procure goods and services on behalf of other public bodies or the Scottish ministers?

**Eddie Follan:** We probably need to take a look at that more closely. There is something about the

broader role of the national board and the detail of the way in which it would work that we have not really got to yet. Our principled position is that that would have to align with local decision making and with local financing and budgetary arrangements. I could certainly come back to you on that.

09:30

**Paul Sweeney:** No problem. Would you like to make any further points about that?

**Eddie Follan:** Louise Long might wish to.

**Louise Long:** I suppose that we could see a case for procurement by a national body for the secure estate, for instance. It is very expensive for a young person to be held in secure accommodation. Given the services that private and third sector organisations run for the secure estate, we could see a case for a nationally procured secure estate to reduce costs across the country and to ensure capacity. You would need to understand the detail, however, and to get agreement to ensure that what you are procuring on a national basis adds value and does not distract from what people need locally.

**Paul Sweeney:** Concerns have been raised by stakeholders in submissions to us about the interaction between Scotland Excel and local authorities and how the new board would intersect with that. Do you share that concern?

**Louise Long:** The SOLACE submission mentions Scotland Excel. We have had a very successful relationship over a number of years with Scotland Excel, which commissions on behalf of local authorities and which has a framework that we all buy from. It is a long-established organisation that provides high-quality services to local authorities. We need to think about the interface between what the national care service wants to do and the bodies that are already in place—Scotland Excel, the Care Inspectorate and the SPSO. It is a matter of working out how all those things weave together.

**Eddie Follan:** The lack of clarity in those relationships is one of the issues that we have. We do not really know how things would work. As Louise Long said, local authorities have a fairly strong relationship with Scotland Excel, which is working hard with other providers. We have had discussions with Scotland Excel in recent weeks about that. That relates to the secondary legislation aspect. Commissioning is a complex area, as is procurement.

**Paul Sweeney:** What consultation has been carried out on that between the Government and yourselves? For example, in its submission, Carr Gomm said:

“We do not observe anything in Section 12M that will change the existing approach being used, and so fear that fundamental procurement orthodoxy will continue to dominate at the expense of strategic, collaborative and thoughtful commissioning.”

That point must surely have come up in consultation.

**Eddie Follan:** There have been discussions around the commissioning processes, but we do not have the detail of how that would work.

**Paul Sweeney:** Okay. That seems to be a shared view.

**Gillian Mackay (Central Scotland) (Green):** Good morning. We have been discussing a few of the things that everybody has some concerns about, but there are parts of the bill that people agree should be implemented. There have been delays in the implementation of Anne’s law—we have heard from relatives of care home residents regarding their concerns about implementation. Pending the implementation of Anne’s law, are the two new health and social care standards that were introduced in 2022 sufficient to ensure that care home residents can maintain meaningful connections? Why have there been delays? What else could be done to support the implementation of Anne’s law?

**Louise Long:** People have a right to a family life—that is already enshrined. Both COSLA and SOLACE are supportive of Anne’s law.

I have considered the two standards, as I was involved in establishing care home visiting during the pandemic in my role as chief officer, so I have a keen interest in what we are doing in relation to our care homes. They are inspected by the Care Inspectorate, and those inspections are really important.

There has been a care home collaborative, and the Care Inspectorate has been doing some work on improving people’s experience in care homes. I would be confident that nobody in the system wants to keep people away from their families.

During Covid, people were really scared. They did not know what to do, and they took public health advice. I am still very supportive of Anne’s law, but now that we are better informed and the Care Inspectorate covers the issue in its standards, I think that we are in a better place to make sure that people get access to their family—and that they feel connected, because it is about more than just access to their family.

**Gillian Mackay:** Are the two standards sufficient?

**Louise Long:** They go a long way towards giving us some reassurance that things are happening now and that we do not have to wait until 2028 for their implementation.

**Gillian Mackay:** What are your views on the intention to bring social work services together, particularly given the potential inclusion of children's services within the national care service, the pattern in which things are included—or not—across the country at the moment, and the potential difficulties that that could cause?

**Councillor Kelly:** I will start. We have expressed significant concern over where children's services and justice services fit within councils or within partnerships, and, when it comes to the bill, over the ability of ministers to decide where things will lie in terms of integration and the new care boards. We are very concerned about that. There is no evidence that that will improve the system. We have been very clear that local government wants local decision making to remain at the local level, with decisions taken by local authorities and partnerships. We are clear that it is very important that the current system of children's and justice services is aligned to the work of councils and partnerships.

**Louise Long:** I am all in for integration. We have homelessness, children's, justice and adult services. The last time that SOLACE presented to the committee, we talked about the time, energy and resources that go into a long piece of legislation. The committee will know that CELCIS did some research for the Scottish Government that said that children's services are in crisis. I am now concerned about the instability of moving things around despite the fact that there is a crisis in children's services and that children require to be supported. Local authorities are trying to bring in the Promise, but we are talking about moving children's services out of a partnership with education in different places across the country.

I remain concerned that children's services have not recovered from Covid. I probably feel more strongly about that issue than do my colleagues in COSLA. This is about timing and about making sure that services are safe and that staff feel supported. The staff in children's services want direct support. They do not want more governance or more layers of confusion. CELCIS talked about their wanting clarity.

**Gillian Mackay:** What parts of the bill would the witnesses like to progress? Your opinion may be personal or be given on behalf of the organisation that you represent. Notwithstanding the fact that Anne's law could in theory be progressed outside of legislation, I very much recognise why carers organisations, people with lived experience and many others want some of those things to be enshrined in law, so that they are not negotiable. Eddie Follan is nodding along, so I go to him first.

**Eddie Follan:** I will not speak from a personal perspective, if you do not mind. We have been clear that we are really supportive of Anne's law.

The single shared record is also important. COSLA has done significant data and digital work in relation to social care. Not only can that work play a role in making the experience much better for service users; getting it right can also alleviate pressures on the system. We are working on how the community health index number—the CHI number—translates to local government. The single shared record is crucial and central. We would like that to progress.

We have talked about principles and charters. We probably do not need legislation for a charter, because we work with charters in other ways. However, a charter needs to be deliverable; it needs resource. We want to see stuff that would improve outcomes and improve the situation for people who use the services.

**Councillor Kelly:** We have talked about the national social work agency, and the extensive work that is going on in that regard. We have also talked about carers having a right to a break—that is important, and it is something that COSLA is keen to develop and work on with the Government. We have also discussed Anne's law and other areas, including the need to acknowledge the current issues that are facing the system, such as the important issues around funding and the recruitment and retention of staff. Those are all issues that we all need to collectively work on right now.

**Sandesh Gulhane (Glasgow) (Con):** I remind members of my entry in the register of members' interests, which states that I am a practising general practitioner.

Councillor Kelly, you said that COSLA had pulled away from shared accountability, yet paragraph 80 of the memorandum talks about the importance of shared accountability. Given that unions have withdrawn support from the NCS—the Scottish Trades Union Congress and COSLA are the latest bodies to do so—and that, as we have heard, most of civic Scotland is united against it, it seems to me that the bill is dead in the water. However, Maree Todd, the Minister for Social Care, Mental Wellbeing and Sport, has said that COSLA's

"walking away ... shows total disregard for the people we all serve."

If the NCS is pushed through in its current form, what do you feel will happen to the sector?

**Councillor Kelly:** In our submission and the evidence that we have given today, we have been clear about the serious concerns that we have about the impact that the bill, in its current format, will have on those who access social care and on our workforce. We have not seen evidence that it will lead to the improvements that we are all looking for. If anything, the additional level of

bureaucracy and governance could lead to significant concerns around those services. Certainly, the bill does not deal with the issues that we currently face.

On the minister's comments, I want to be clear that people with lived experience and service users are at the heart of everything that local authorities and partnerships do. They are absolutely vital to us and, at a local level, they direct decisions that we take. We know what many people with lived experience have gone through as part of the bill process and we certainly do not want to lose any of those experiences or voices. In the current situation, we are absolutely committed to continuing to have dialogue and discussion with those individuals. We want to see reform of the system as soon as possible, but, as we have said, we cannot support the bill in its current format.

**Sandesh Gulhane:** I would like to examine how we can evaluate what is going on. Looking at the bill, I believe that there are no references to rights, accessibility, ethical commissioning, procurement or quality, and, as we have just heard, children's services are currently in crisis. How are we supposed to evaluate what happens to people on the ground if the bill is brought in?

**Councillor Kelly:** It is clear from our submission that we have significant concerns. Some of the areas that you have listed are areas in relation to which we were negotiating. However, as I said earlier, when the amendments were produced in draft form, local government had some quite serious additional concerns about decision making and process. All that we can say is that those areas are very concerning to us. We are concerned about the impact that the bill could have on service users and our workforce.

**Eddie Follan:** You will have heard these concerns before but, because it is a framework bill, there is a lack of detail on how it will eventually look and how it will be implemented—we acknowledge that what is in legislation can sometimes look different when it comes to implementation.

The lack of detail hampers us a bit in terms of what we can say about how the legislation would apply locally and how it would change the system. I guess that that is something that we would see in time.

We have previously expressed a concern that secondary legislation is subjected to less scrutiny. If we were in discussions with the Government about that, we would want to discuss what the secondary legislation would look like, but, at the moment, we are not.

**Sandesh Gulhane:** It has been suggested that there was a huge political divide in COSLA with

regard to its position. Is there a huge political divide? What is your absolute current position?

09:45

**Councillor Kelly:** As far as the submission that I mentioned earlier is concerned, there is absolutely no political divide within COSLA. All leaders signed up to that submission, and all the concerns that we, as a membership organisation, have raised at committee were directed to them. The question whether we were to continue discussions with the Government or withdraw from supporting the proposal for a national care service went to leaders. They had a debate on it, and they took the decision to withdraw.

Right now, we have withdrawn from shared accountability. As we have mentioned a few times, we want to focus on the reform that the system currently needs. We are working extensively with the Scottish Government on the pressures that the system faces, such as delayed discharge and other medium-to-longer-term issues. We want to see the focus being placed on those. We are committed to working on the required reform with our stakeholders, whether they be the trade unions, which have made clear their opinion of the bill in its current form, or others, such as service users or the third sector. However, at this stage, we have withdrawn from shared accountability.

**Sandesh Gulhane:** Louise, one of the areas that you mentioned as desperately needing reform was children's services. What reforms can we undertake now, or should we wait for an NCS to be established before we do them? Once we have put reforms in place, what should be the criteria for their success? How should we go about considering all that?

**Louise Long:** I believe that the committee has received a submission from The Promise Scotland, which focuses on care-experienced young people, trying to keep young people with their families and ensuring that we improve their outcomes. There is a commitment on that, and work is already going on in the system.

The committee has also heard from Social Work Scotland. The issue in children and families is that we currently have a very young workforce. We have inexperienced social workers all of whom are working really hard, are dedicated and want to make a difference to children's lives but, at the same time, very experienced people are leaving. We used to have a mixed economy. That is why we support the social work agency by doing whatever we can to value social workers, including encouraging them to come into and stay in the profession.

If we could reform children's services, we would see fewer children coming into care, fewer

children being involved in the children's hearings system, and the provision of early support for families that is easily accessible in people's own communities. Each of the areas across Scotland that are funded by the Scottish Government has developed its own family wellbeing service. They are all slightly different, because those areas are all slightly different: for example, the service in Argyll and Bute is different from the one in Inverclyde.

That is a good indication of earlier help and early intervention to try to ensure that we stem the flow of people who come into crisis further up the system. However, that will take time, because the service is still recovering from the Covid pandemic. Young people still have significant mental health issues, so the system needs stability.

**Sandesh Gulhane:** This will be my final question. On 27 September, the Scottish Government told the BBC that it was "extremely disappointing" that some COSLA leaders had chosen to "frustrate progress" towards a national care service. Do you feel that that is an accurate representation? Did you engage with the Government after the draft amendments were laid? If you did, what was the timeline of the response that you received?

**Councillor Kelly:** I do not think that that is an accurate representation. We have been clear today about how extensive our negotiating and discussions with the Scottish Government have been, and we have been honest and upfront about our concerns. We engaged when the draft amendments were laid. As I said, we were disappointed that we got only an hour to look at them, given our significant involvement in those discussions.

I know that some of the spokespeople at COSLA wrote to the Cabinet Secretary for Health and Social Care, and we followed that up with a subsequent letter to the cabinet secretary in September. I had a meeting with him to discuss our concerns. We got a response to that in a formal letter the day before the leaders did.

At every stage, we have tried to have discussions and dialogue with the Scottish Government and we have made our position clear. As we have shown today, we have been more than willing to compromise. At the heart of everything that we want to do in local government is delivering the changes that our communities and service users need and require right now. That is what has driven us in the making of every decision that we have taken.

**The Convener:** I have a few follow-up questions on issues that other committee members have raised. Councillor Kelly, I heard

you say a few times that you had only an hour to read the amendments before they were published. Of course, they are draft amendments at the moment; they have not been voted on.

Joe FitzPatrick asked a specific question about COSLA amendments, which I did not hear answered. Has COSLA drafted amendments for stage 2?

**Eddie Follan:** No, we have not done so at this stage but, if we remain in the situation that we are in and are looking to influence the bill from the outside, we would consider drafting amendments.

It is important to explain this. We have had a very collegiate and constructive year of discussion as we have moved along. As I have said before, a lot of compromise, negotiation and hard work went in from officers and officials on both sides—not just from COSLA, but local government officers and a wide range of Scottish Government officials.

There was genuine disappointment. We asked to see the draft amendments as we went along, because we knew that what was in the policy might not translate exactly to what the legal amendment might be. We wanted to see the amendments so that, if there were issues with them, we could sort them out or say, "That doesn't work so well for us. What can we do here?" We would then go through a process. However, we never got there—we never saw the amendments. We had an hour in a room with the amendments, but they are complicated, and we would need more time than that.

**The Convener:** So, if things remain as is, we can expect to see COSLA amendments.

**Eddie Follan:** Yes.

**The Convener:** What sort of discussion did COSLA have with the Scottish Government, or what notice did it give, that it was going to withdraw its support?

**Councillor Kelly:** The first indication that we might possibly withdraw came in February this year, when leaders made it clear that there had not been progress in the three areas that we had discussed, and which we had been talking about extensively for a long period. There had not been significant progress. The impression was that we were perhaps not being listened to around those key areas.

Throughout the year, we were very clear with the Scottish Government—with the cabinet secretary and ministers—about what leaders were thinking at every stage. There was probably an update on the national care service at every single meeting of COSLA leaders, and we were able to articulate views back, including when we got closer to the decision that leaders took to withdraw, indicating that that was a possibility. We



were very clear with the Government that that could happen.

**The Convener:** That was in February initially, but significant amendments to the National Care Service (Scotland) Bill were published in response to that over the summer, which is essentially why the committee is sitting here rescrutinising the proposals.

Councillor Kelly, you mentioned that service users direct us at local level—you said how important service users' input is into providing services. What discussions has COSLA had with stakeholder groups about the withdrawal of support from the NCS bill, either before or since?

**Councillor Kelly:** We have a variety of discussions with various stakeholders, who will approach us in different ways regarding the NCS and what is happening with it.

**The Convener:** I am talking specifically about the decision to withdraw support.

**Councillor Kelly:** The decision to withdraw support came only pretty recently, and we are committed to having dialogue with stakeholders and others around our decision to withdraw support.

**The Convener:** So, there was not any beforehand, and there has not been any since, specifically. That is what I am trying to establish.

**Councillor Kelly:** We had discussion with stakeholders and others on the position as it was regarding the national care service. Leaders took the decision to withdraw only relatively recently. Following that decision and other discussions, we will be back talking to stakeholders. COSLA is continually talking to stakeholders at every stage of the way. They can often be vital partners for delivering social care, and we want to ensure that their views are articulated through the national care service process and in all the other things that we are involved with in considering reform to the system right now.

**The Convener:** So, you did not have discussions before, and you have not had them since, specifically on that issue.

**Councillor Kelly:** We have spoken about the national care service with stakeholders—

**The Convener:** No, I am talking about the withdrawal of support.

**Councillor Kelly:** The withdrawal was a COSLA leaders' position. We could not talk to stakeholders about withdrawing, as it is up to leaders to decide about that. After—the decision having only just recently happened—we would absolutely be talking to stakeholders.

**The Convener:** Another issue that you have spoken about—among lots of issues that you have spoken about—is that there has been a lot of consensus between the Scottish Government and COSLA, with a lot of support for lots of parts of the bill as drafted. What will it take to get COSLA back round the table?

**Councillor Kelly:** I have been very clear that we have withdrawn from the bill in its current position, and it is now over to the Scottish Government. Our position and concerns are very clear, we have articulated them for over a year and we have made significant compromises. The areas of concern are very significant, however. It was not particularly easy or helpful for us to get no notice of the draft amendments and to be unable to have a proper discussion. We have clearly articulated our position and it is now for the Scottish Government to take that forward.

**The Convener:** You may have been very clear with the Government, but your position is not clear to me. What will it take for COSLA to get back round the table?

**Eddie Follan:** We have significant concerns about the national board not setting a strategic direction. At the moment, the shared accountability agreement sits completely with Scottish ministers, who make the decisions and have the power to direct. There are issues with the fact that ministers can move council services from the “may be delegated” category to “must be delegated”. The issue of children's services is also fundamental for local authorities and we have spoken about the issue of direct funding, which is still outstanding.

**The Convener:** Are those the issues?

**Eddie Follan:** Those are the big issues.

**The Convener:** Those issues have been on the table for quite some time.

**Eddie Follan:** We have not had a resolution to them. The cabinet secretary wrote to Councillor Kelly the day before he wrote to council leaders. There was some movement in a couple of areas, but the fundamental issues were not resolved and it was clear that the Government was intent on carrying on in the same direction.

**The Convener:** Emma Harper has a supplementary question.

**Emma Harper:** I will pick up on the reference to having one hour to see the draft amendments. What were the circumstances? In its written submission, SOLACE says that it

“recognises that there are specific areas that would benefit from a national approach”.

Those include

“Leadership and driving improvement ... Standards, assurance, performance, reporting and scrutiny ...

Workforce planning, fair work and training ... Ethical commissioning ... Complex and specialist care commissioning ... Improvement and innovation including improving research”,

and more. There is loads that you can agree on. The fact that COSLA has walked away is so significant that I am wondering about those one-hour circumstances. How is it possible that you had just one hour to look at amendments?

**Councillor Kelly:** Louise Long can talk about the SOLACE submission but, in our discussions with the Scottish Government throughout the process, we asked for more advance notice of the draft amendments so that we could have a dialogue about what those would look like before they were published. That did not happen and we had only one hour's notice to look at those draft amendments. So there is a lot of—

**Emma Harper:** Was that one hour before making a decision about whether to give your support?

**Councillor Kelly:** It was one hour before the amendments were lodged.

**Eddie Follan:** The amendments were lodged in June. Two things happened. The first was a meeting at COSLA, in which we got to look at the amendments but had no time to analyse them or to understand their implications. We saw the amendments an hour before they were lodged, so the bottom line is that we never really had the opportunity to understand what was in those amendments, despite having had almost a year of discussion. We had asked all the way along the line to see the amendments, but we never saw them.

**Emma Harper:** Did you want to see the amendments in order to make a decision about supporting them?

**Eddie Follan:** We wanted to work on the amendments to ensure that they reflected the policy discussions that we had been having.

**Emma Harper:** I am finding it really difficult to understand that you had one hour to look at amendments but then had June, July, August and September before you walked away. We have marked-up pages of amendments, with lots of additions in blue and strikethroughs in red. I am trying to understand why that one hour is so significant when no decisions were made about the amendments.

**Councillor Kelly:** If you have been negotiating in good faith for a year and trying hard to establish a national care service that we all want to see, and if you are told throughout that process that you will see draft amendments and that you are a key partner in delivering social care, it is not helpful to

see those amendments only an hour before they are published.

As we have articulated, we went from having three areas of concern to having an additional seven. They are not minor concerns; they are serious and significant, as we have explained in our evidence. We have shown that they will have a significant impact on the service delivery and service users. It is a pretty significant issue.

**The Convener:** For the record, the amendments have not yet been lodged. They are proposed amendments. I say that to keep us all correct.

I thank the witnesses for their evidence. We will suspend briefly to allow for a changeover of witnesses.

10:00

*Meeting suspended.*

10:05

*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 Rachel Cackett, chief executive officer, Coalition of Care and Support Providers in Scotland; Rob Gowans, policy and public affairs manager, Health and Social Care Alliance Scotland; and Karen Hedge, deputy chief executive, Scottish Care.

We will move straight to questions.

**Emma Harper:** Good morning. My initial question is, what are your thoughts on the proposed amendments to the bill?

**Rachel Cackett (Coalition of Care and Support Providers in Scotland):** It is hard to know. I was sitting at the back listening to the evidence from COSLA earlier this morning. We have a bill that is sitting as an amended bill—although amendments have not been lodged—which we did not ask for and which we had no part in amending, along with a shared accountability agreement that was not part of what we were looking for. We now have the removal of shared accountability, which we also had no part in. We are left with a set of amendments whose status feels quite uncertain.

It is quite hard to know how to work with an amended version of a bill, which, at the moment, is not amended because the amendments have not been formally lodged. The amendments that are currently sitting in the paper that was shared in June with a lot of red and blue pen all over it,

which Emma Harper mentioned, are a significant departure from the original bill.

We have remained committed to working to ensure that this reform, which we wanted when Feeley was published, delivers for the not-for-profit providers of social care that I represent and, most importantly, for the people whom they support in communities every day. We still have quite significant concerns about the amended bill, but we are certainly up for working on that.

My issue at the moment is that I do not know what to talk about amending. I am not sure of the status of the bill or whether the joint accountability arrangement will be back on the table if COSLA returns to negotiations.

I will finish by saying that it seems ironic that many of us are saying that we feel that the bill does not go far enough, and we have a discussion between COSLA and the Government in which it seems like the move to keep the status quo is the deciding factor. That feels very far from what we think the potential of a national care service bill could be.

**Rob Gowans (Health and Social Care Alliance Scotland):** We continue to support the principle of a national care service, which is an opportunity to improve people's experiences of social care if it is done correctly and in a rights-based, person-centred way. We were clear throughout that the bill as introduced did not fully meet that and would need substantial amendment at stage 2. I do not think that the Scottish Government's proposed amendments fully deliver on that, so further amendments are needed. In our response to the call for views, we identified something like 30 different areas where we believe the bill could and should be amended.

As long as there is a bill, we are committed to working to make it as good as it possibly can be, both because it will have a significant impact on our members and because there is potential for improvement.

Although there are some things that can be done now, we have been clear for some time that the social care system needs substantial reform and the status quo will probably not address that.

**Karen Hedge (Scottish Care):** I agree with those who have already spoken that, as it stands, the bill does not meet the full intentions of the independent review of adult social care by Derek Feeley. The principles of the national care service do not necessarily require a bill to make changes and improvements to the system. What is left, however, is clearly about where power would sit, and that is open to question, but I guess that there is at least evidence that people are passionate that something needs to change. That is what I would take away.

The removal of ethical commissioning from the bill and the retention of the paragraph on reserved procurement are a significant concern to our members, because of the implications for the sustainability of the sector and, therefore, their ability to continue delivering care and support to people.

**Emma Harper:** What is the impact of COSLA walking away? Has that caused damage?

**Rachel Cackett:** Council leaders need to make the decisions that they need to make for the constituents whom they represent. We have had a year in which national and local government have negotiated an agreement in which those of us who are meant to be equal partners in social care, if we believe the winter plan, have had very little influence.

To be honest, as a civic leader in the sector, I feel quite angry about the past year. We have a system in which, at the end of last winter, more than 80 per cent of providers in my membership were delivering a public service under public contract at a deficit. We have people who are struggling to keep services going and we have 6,000 people waiting for a social care assessment and more than 3,000 not getting the care that they are assessed as needing. We should remember that with criteria as high as they are, that is the tip of the iceberg of what we are dealing with every day.

It feels a little bit as though we have had a year of negotiation that has come to naught, although we should wait to see whether that negotiation reopens. We need to sort the fact that the system is actually burning now, and we have spent too much time waiting for this change to be negotiated separately. Keeping the status quo going with little changes at the edges will not deliver the fundamental reform that Feeley suggested.

On whether the bill has potential, the one advantage of it is that there might now be a space for those of us who have been sitting waiting to have these conversations to get involved in shaping something that might get us closer to Feeley than either the original or the amended draft of the bill has proposed. This might be the one opportunity that we have, but we cannot keep waiting. We need to do both, not one or the other, and not just codify the status quo, which does not work for people.

**Karen Hedge:** The implications of COSLA leaving underline specifically how the national care service has been developed in a bit of a vacuum. A lot of people with expertise across what is a living system have not had the opportunity to contribute effectively. What we therefore have is two statutory bodies and health coming together to have conversations in a room, alone, and that is

far from what the national care service's ethos should be and how it should be developed.

We know that negotiating with people works better when there is a diverse mix of individuals representing the different parts of the system. If we had been having those conversations with representation from across the whole system, we might well be in a different position. However, when negotiating is reduced to two individual partners, it highlights the power play in that space.

**Sandesh Gulhane:** I declare an interest as a practising NHS GP.

It is not just COSLA that has pulled out; all the unions have done the same. I have been looking at the submissions, and no one is in full agreement that the bill as written is the way that it should be going. Certainly, that is true of the panel.

Karen Hedge spoke quite powerfully about the bill being about where the power sits. First, where does the power sit in the bill? Secondly, do we need the NCS in order to make the reforms that you have all said are needed, or could we make those reforms now, given that we have spent £28 million on the NCS so far?

10:15

**Karen Hedge:** In response to your first question about where the power sits, the ethos of the independent review of adult social care was that the power needs to sit with the people who are accessing care and that the support needs to sit with the citizens of Scotland, but the bill has been reduced to being a power play between COSLA and the Government, which is not serving the needs of our people. We need to move forward from that and get back to the original principles and ethos. Apologies—could you remind me of your second question?

**Sandesh Gulhane:** We have spent £28 million on the proposed national care service so far. Do we need a national care service in order to drive the reforms that you have all said that we need, given that there is a significant deficit, which Rachel Cackett spoke about?

**Karen Hedge:** The £28 million that has been spent is the equivalent of a million hours of care at home and housing support that could have been delivered; perhaps that tells us what we need to be shifting the focus to. There is significant unmet need in those areas, and that money is the equivalent of a significant amount of provision that could have been delivered.

I have said this in rooms such as this one before; we have some really good legislation and policy in Scotland, but we fail in the implementation. To date, the bill and the work on

the national care service have not looked at how we create the conditions for change and what we need to do to look at the system in a different way. What can we take out of the system to make it work more effectively, instead of piling more and more on to it? That is what is causing it to break and, frankly, that is where there is duplication and increased expenditure as a result. We need to get back to thinking about how we support our social care workforce and how we can pay them, as people who are professionally qualified and professionally registered, a wage that is acceptable, rather than the £12 an hour that they are currently paid. It requires paying people who deliver the services—the providers—effectively.

**Tess White:** In your opinion, will the national care service help people in care homes who are receiving care?

**Karen Hedge:** With the removal of Anne's law, which put a significant focus on people living in care homes, the implication of the national care service for people who are living in care homes has yet to be determined, particularly with the removal of ethical commissioning. At the moment, the Government pays care homes £5 per person per hour for each person who lives there, which is nowhere near enough to deliver the complex care and support that is required. The bill as it is currently drafted does not help that.

We have some really good examples of other work that is happening in parts of the country where people have come together, such as in Dumfries and Galloway—Emma Harper's part of the world, I think—where specific work was done on collaborative commissioning. Representatives from different parts of the system came together to have an honest, open conversation about what was needed and were able to share information about people in a way that was ethically sound but meant that those people could move freely through the system. That work reduced the number of people who were stuck in hospitals by 28 per cent and got them into care homes where they needed to be living in their own space. The bill will not change whether people can come together locally to have conversations.

**Tess White:** One of the issues raised at First Minister's questions last week was the disparity of care among all the different areas of Scotland. There is an argument that we need a national care service in order to standardise care, accepting that there is no streamlined funding. In your opinion, how do we get standardised, high-quality care?

**Karen Hedge:** I do not think that we need a once-for-Scotland approach; I think that we need to provide whatever each individual needs. That will be very different between social care and health, for instance. Each individual person has different wishes, different needs and different

requirements. However, what we need is equity across Scotland. My concern is that the call for a once-for-Scotland approach represents a shift away from equity, which we see, in particular, with the removal of the human rights bill, towards an approach that involves thinking about how we build a system that puts more regulation on services to deliver. When we already have in play excellent health and social care standards that are used to regulate services, how do we create the conditions to bring about equity? That is the problem. Without the streamlined funding that will enable that, I do not think that the approach that is proposed will do that.

**Tess White:** I have a question for Rachel Cackett. You spoke about the position that 80 per cent of your members are in. I am thinking of the role of the voluntary sector in the provision of care homes. The elastic band is already stretched too far. You said that the system is burning now. In your opinion, how will a national care service help your members, especially those members who are struggling now, to run care homes?

**Rachel Cackett:** I go back to the twin-track approach. The national care service, in and of itself, will not deal with the here and now. It is clearly some way down the line. We need quick action now to deal with the current situation.

I was interested to hear one of your previous witnesses say that ethical commissioning is much more expensive. Ethical commissioning is perhaps expensive because it reflects the true cost of care. That goes back to the point that was made. Either we make a contract, through our social care service, with the people of Scotland to meet the needs that they have, and we are honest about some of the costs that are involved in that, or we end up with a non-ethical commissioning process that tries to drive down the price for those such as my members in the not-for-profit sector, who are trying to deliver care—whether that is care in a care home, care at home, a mental health service or any other type of service—in order to make sure that people can live their best possible lives and are able to engage with their community and have their rights met.

I go back to the point that we could do more ethical commissioning now. Maybe ethical commissioning is a bit like the Leveson inquiry for the social care sector: while it is optional, it is often not happening. An interesting question for me is whether a national care service could lever some of the things that, by choice, are not happening now. Could it take away some of the risk aversion from those who are responsible for procuring? How could the bill—it currently does not do this—allow us to have an honest conversation about the quantum of funding that is available for social care and how that can be made to flow through the

system as efficiently as possible and with the least amount of waste, so that the decisions that are made at the front line mean that people's care needs can be met? That goes back to the committee's report on self-directed support.

If we could have got the bill right, we could have done that. Maybe we can still get it right. In the meantime, we cannot wait. In the meantime, there are things that could be done that are not being done to think creatively about how to ensure that we buy in the care that people need in a fair and equitable way. That would mean that we would not be in a situation in which, as was the case the last time we took a temperature check on this, we are somewhere between 17 and 20 per cent adrift of the pay that local government pays its staff. Local government pays its staff a great deal more than those it contracts from third sector providers. I do not like the "third sector" label, because it almost makes it sound as though that is okay to do, because we are on the third rung. We are not. We are joint partners. A third of social care in this country is delivered by the voluntary sector. Either we are seen as joint partners or we embed inequity in communities by paying a workforce that consists mostly of women less than it would get in the public sector.

Therefore, there are things that we can do now. We can genuinely start to embed fair work, and we can get ourselves a timetable for getting to a position of equity. In addition, with the bill, there is the potential to have a national care board of the kind that Feeley suggested, which is a board of everyone with a stake—in other words, not a joint accountability agreement, but a genuine joint board that is able to drive innovation, improvement and ideas for standards. At the moment, what is codified in the bill is a board that will have a small number of members and a system that sounds much more punitive than even the Government is looking for at this stage.

Some things that we could do are for the future—in the bill, if we can get it right. We have to do other things now. We have to deal with the issue of equity—between those who contract themselves in the public sector and everybody else. That is why I think that the joint accountability agreement, in and of itself, is flawed.

**Tess White:** Are you saying, as COSLA did, that you are not being listened to? You have come up with so many ideas; it feels strange to me that it is so late in the day. Is it the case that you have come up with those ideas and have just not been listened to? If you put forward suggestions and ideas, would you expect them to be listened to?

**Rachel Cackett:** I would hope so. To go back to 22 December—those of you who were on the committee at that time may remember this—we produced a document suggesting areas in the

original bill that we thought could be strengthened. Everything then went very silent for some time, while—it turned out—the joint accountability agreement was negotiated in the background. To be honest, that has been the real game in town.

Although we were major proponents of an expert legislative advisory group—because we always thought that it was odd that there was no formal bill group, if you like, as there had been for every other bill in which I have been involved in 20 years of working with this Parliament—that did not really give us the space to go in with ideas. It was very much a case of, “Here’s a proposal. What do you think? You’ve got a day—or two days—to respond.”

Karen Hedge’s point about ethical commissioning is fundamental and could make a real change to the members of my organisation. Papers from the expert legislative advisory group led us to think that the bill was going to be much more radical than it is. In fact, it does not feel like a radical move.

We have lots of ideas. I will be honest: we will meet officials from the Government on Thursday to share some of those ideas. There has been one potentially good thing over the past week—which, you will appreciate, we are trying to get our heads around, as you are. It has been only just over a week since support was withdrawn. There may be more space for us to be listened to. If that happens, it will be great. We have ideas, as many of our partners in the sector will have. People are full of ideas. We know what needs to change.

**David Torrance:** Good morning, everyone. My questions are on the accountability and functions of the national care service board. What do you understand to be the board’s purpose? To what extent could it or should it contribute to fundamental reform of the social care landscape?

**Rachel Cackett:** The board should and could do exactly what I just suggested. A national care board would be unlike a national social work agency, whose focus would be on social work, which involves an important but tiny part of the overall workforce market that we need.

We know what our demographic looks like, yet we have no strategy to deal with that. If the national care board genuinely drove a strategy for the future of our social care workforce that covered how we grow our talent and how we support and sufficiently train enough people to go in and meet the sorts of needs that we have been talking about in chambers such as this for 20 years; if, in ethical commissioning, it set clear standards for what was expected and monitored the situation; if it worked with Audit Scotland, the Care Inspectorate and others to give us a clear overview; and if it was given the powers to drive

the sorts of change that we think we need, it would be a very different national care board from the one that is in the bill.

The board should certainly not be a triumvirate that involves the public sector providers in a shared accountability agreement. It should provide the drive for, and oversight of, all of us—not just not-for-profit providers. Obviously, I am here to represent my members, but the board should apply to everybody who has a genuine stake in making a national care service work for the public of Scotland.

**Rob Gowans:** We support the creation of a national care service board, but there is a lot about it that I would change. First, we are particularly concerned by the proposal that the third sector would not be represented on the board’s membership. It is not entirely clear why that is proposed.

I fully support and welcome the inclusion in the board, with voting rights, of people who have lived experience. That is a big step forward from the current set-up of IJBs. However, the third sector should be represented as a major provider. That would point towards having everybody round the table with an equal voice, as Rachel Cackett described.

10:30

Much of what is proposed for the board’s role and functions relates to a focus on oversight of local boards. Although scrutiny is important, there is an element of marking the local boards’ homework. There are gaps, such as things that could be done on national consistency, improvement support, monitoring progress, setting national standards, monitoring needs and supporting the sharing of learning, good practice and ideas across the country. We want the national board’s role to be amended to reflect that and to allow it to go some way towards addressing some of the issues that exist—such as the “unwarranted local variation” that Feeley described—so that it can drive up the quality of social care across the country.

**Karen Hedge:** I completely agree with everything that both the previous speakers said. The board should also have a role in raising the sector’s profile and sharing good practice. To make it work, real learning needs to be gained from the report on the review of progress with integration and, of course, the associated Audit Scotland report on integration.

I cannot speak to the matter without saying that the bill talks about the “provider” of social care but does not specify what it means by the word “provider”. It could mean local authority provision, but local authorities represent only 23 per cent of

provision. The wider spectrum of provision needs to be represented in the bill and, as 87 per cent of that is my membership, I hope for greater clarification.

**David Torrance:** Rachel Cackett touched on my next question. How should the breadth of stakeholder views be represented on a national care board to ensure that it remains responsive to everyone who is affected by board decisions, including service users and providers?

**Rachel Cackett:** The first thing is to get the board's functions right, because then you can get the right people around the table. For us as providers of social care—two of us on this panel of witnesses represent providers outside the public sector—a priority is ensuring that the providers' voice is represented, so that the entire system can be designed in a way that allows funding to flow and decisions to be made without unintended consequences. The problem at the moment is that too many decisions have unintended consequences, because there is a lack of understanding of how the system works.

People compare the NCS to the NHS, but we are talking about different things. Not only is the model different—I hope that we would ensure that a national care service used a social, not medical, model—but there is a difference that takes us back to the SDS report and what Public Health Scotland published a couple of months ago about people's experience of care. Few people know that they have a choice. Few people have really taken forward the fact that choice and control should be at the heart of people's experience of social care in the way that was meant to be the case with SDS. A multiplicity of providers is needed to achieve that. People need to be able to make choices—otherwise, we are paying lip service to that approach. That means that social care will always look different, which needs to be reflected in the sorts of boards that you have and the way in which a national board works.

The bill is missing any sense of how ministers come up with their strategy or how they fund it. It would be great if the national care board could take the existing data and research, particularly on unmet need, and reflect that to ministers when decisions are being made on the allocation of tight resource, which is often the biggest political choice facing the Parliament. That, too, is a really important function for the national care board and, unless providers such as mine are around the table, the issues that they face in the contracting situation that they are in, which I have described, will get lost.

**Karen Hedge:** I want to say something about the necessity to extend self-directed support to those who live in care homes. It does not seem right that the legislation does not cover everyone

living in Scotland. In fact, that seems discriminatory.

**David Torrance:** I have no further questions.

**Carol Mochan:** I have a question about the social work adviser and the social work agency. I know that the issue has been touched on and that we have had submissions about it but, for the record, will you tell us how you think that should play out? What advice would you give us about scrutinising such an idea?

**Rachel Cackett:** As I said in our submission, I point out that, as far as setting up a social work agency is concerned, we already have a chief social work adviser sitting in the Government. I guess that the relationship involving the social work agency, the social work adviser and the national care board is a moot point, because I do not think that the bill makes that clear.

As I have said, our social work colleagues are best placed to describe whether the agency as set out will do what is needed for their profession. What concerns me deeply is this: where is the leadership voice for everybody else? There are 50,000 workers employed in social care in the third sector. Where is their voice in this? Where is the workforce strategy going to sit? Who will advise the national care board or ministers—or some joint accountability arrangement that none of us is quite sure about at the moment—on what is needed for that workforce? Believe me—I am not suggesting that we should retrofit that into a national social work agency. Clearly, the discussions in that respect have been about social work, and those involved very much have their own needs to deal with. If the national care board does not have the role that I described, and if there is no social care adviser, my fear is that the imbalance that we already have in social care—for example, in the way in which contracting works—will continue in how the workforce is valued and developed.

Whatever happens to a national social work agency—I am not the best person to say what that should be, apart from saying that there should be clarity with the national care board—we must have such a leadership space for the whole social care workforce. Too often, it is undervalued and forgotten, and that cannot happen in a national care service.

**Carol Mochan:** That was a helpful addition to your submission. Does Rob Gowans want to come in?

**Rob Gowans:** This is one of the few areas of the NCS proposals that we have not really taken a view on. I think that colleagues in social work are best placed to comment on how the proposals will affect them, and we do not have a great deal to add.

**Karen Hedge:** My response is similar. In our submission, we, too, called for either a social care adviser or a professional social care officer, for exactly the reasons that Rachel Cackett has set out.

I also point out the feminist dynamic in all of this, given the largely female workforce. There is a real requirement to raise in a more formal way the profile of people who work in the social care sector, because we know that the current approach is not working. Very few members of the workforce are members of unions or have other routes to getting their voice heard.

However, the issue is not just about the workforce but about knowledge and understanding of the complexity of how the social care sector operates and the landscape that it is in. The fact that we have no one with that expertise at the table is partly why bitty bills and bitty legislation are being developed. It is therefore great to be here today and have an opportunity to speak.

**Carol Mochan:** That was helpful. Thank you very much.

**Ruth Maguire:** Good morning. I have a couple of questions to hear your reflections on the charter of rights. First, what reassurance does the draft charter provide that people who use care and support services will be fully supported to lead the independent lives that they are entitled to lead?

**Rachel Cackett:** It is tricky, as we said in our submission. Making clear to the Scottish public what rights they have in relation to social care seems a good thing to do. Having everything in a one-stop shop, where people can be assured of what is expected, also seems like a good thing to do.

I go back to what we said when the original bill was published—that this is a charter of no rights that conveys no new rights. A human rights bill is no longer expected, and I very much doubt that one will come forward before the next election.

Given the situation that we are in, it is good to see a draft charter. We can see the intent, but it has been written before we know quite where the bill is. Again, that makes the situation really difficult. I look at two sets of principles—one in the original bill and one in the proposed amended bill—that look very different. The amended bill would remove all the principles from the Public Bodies (Joint Working) (Scotland) Act 2014 and transfer at least some of them into the bill.

There has to be a really clear line of sight between the principles that are being described, which should drive every decision and action of a national care service, and what goes into the charter. Of course, until we have that in place, it is really hard to see how that translates across.

Having some indication is helpful, and you can have a charter and have ministers writing a strategy about the national care service but, if you cannot follow through because the investment is historically too low and does not improve, there is no ability to deliver the rights. That goes back to the implementation gap. I appreciate the financial situation that we are in, but social care has historically been underfunded and is always desperately trying to catch up. Often, the rights that are set out can be enacted only when funding enables that.

My concern remains that, under the bill, the risk is held by front-line practitioners and organisations and, ultimately, people who access care and support, who might fail to have their rights realised, simply because the bill does not force through the issue of increasing investment in a sector that has historically been way too short of cash.

**Ruth Maguire:** Before I come back to the complaints aspect, I will put the previous question to Rob Gowans.

**Rob Gowans:** Quite a lot of the charter is welcome. Some bits of it are placeholders at the moment and, without the bill, some bits need to be filled in.

We welcome the creation of the charter in helping to explain people's rights to them in an accessible way. Inclusive communication and accessible formats are important for that, but it is also crucial to get the complaints system right and to signpost clearly to people what they can do if their rights, as described in the charter, are not being met, and how that can be put right.

It is hugely important that there is independent advocacy, support and advice. There needs to be a system of complaints and redress, as well as independent advocacy to support that.

**Ruth Maguire:** I ask Karen Hedge to what extent the draft charter makes clear the rights that people have, versus what they can expect from the national care service.

**Karen Hedge:** The charter is an amalgamation of principles and rights in one space, which I guess offers some clarity. It is good to see information included in it, because that is not being called out to the same extent in other areas, but the reality is that, if the landscape in which the charter is implemented is not changed, the charter will not make a difference to people who access care and support.

I give the example of fair work principles. We have a fair work charter, which was put into some contractual arrangements. I would go so far as to say that the charter of rights should be put into contractual arrangements. However, contractual



arrangements are currently not reciprocal or balanced and do not follow through. We have seen the removal of fair work principles from contracts in some areas because, without a fair commissioning process, the commissioning and procurement bodies know that they cannot afford or fund the implementation of the principles. In effect, the principles will be just words if we do not make the changes.

I am working with the University of Birmingham and the University of Stirling on a piece of work that is funded by UK Research and Innovation and the Health Foundation on improving adult care together, which is specifically looking at what needs to happen on the front line so that we can make this stuff work in reality. That points to the idea, which the Fraser of Allander Institute mentioned in its submission, that the currently quite limited view of the national care service board could be extended to consider research in the social care sector.

10:45

**Ruth Maguire:** Is there enough clarity in the bill on how a complaints process might work for service users and on which bodies would be accountable for what decisions?

**Rachel Cackett:** The proposed charter is meant to make rights clear, which you would hope that a thriving social care system could then enact. If things go wrong or people are unhappy, those rights need to be really clear. Given that I still cannot map in my head how the national care board links to organisations such as the Care Inspectorate, the Scottish Social Services Council, Scotland Excel and others, whatever provisions are put in the bill must make the process simple.

Very often, complaints can be dealt with most effectively and quickly at the point at which things are perhaps not working as they should. We need to avoid losing the ability to deal with redress quickly and at the point at which the issue is happening, while ensuring that people can escalate a complaint if they need to. The previous witnesses spoke about what is already in place, which is quite a lot. Simplification is fine, but we need much more clarity on exactly how the process will work.

**Rob Gowans:** The inclusion of the section on complaints is really important, but the provisions do not give a great deal of detail. Some of that could be fleshed out in secondary legislation. One thing that we have suggested is that the bill could be amended to include redress routes.

As has been described, the current complaints system is messy and covers a lot of different things, whether that be appeals against decisions, somebody feeling that they have been

discriminated against or surface queries. There is an opportunity to look at whether the process can be streamlined, simplified and made easier for people. It is also about people having the independent advocacy and support that they need to make complaints and have things put right.

**Karen Hedge:** The complaints that land on my desk are those that fall in between places. For instance, when an individual chooses to live in a care home that is not in their local authority area, who funds that? Ordinarily, the care home would manage that for a time while the statutory bodies had a wee fight about whose responsibility it was, but now we are finding that the fight is taking up to two years, by which time the care home is struggling to have the cash flow to pay their staff. That increasingly happens.

There are other examples. At the National Care Forum yesterday, there was discussion about access to a piece of equipment for an individual, which is something that the complaints and redress process does not currently cover. The national care board could do that—there could be some responsibility about what happens in the spaces in between and how we take the matter forward and offer clarity—but the process as it stands does not.

**Ruth Maguire:** It is helpful for us to have a bit of colour when it comes to people's experience. Are you able to expand on the complaint that you were talking about on access to equipment?

**Karen Hedge:** That is another common complaint. During the pandemic, the Scottish Government rewrote what was formerly called the equipment protocol. It did not undertake a proper consultation process and rewrote the protocol without provider or COSLA engagement. The responsibility to pay shifted from the NHS to care providers, which are not funded to do that.

**Ruth Maguire:** What sort of equipment are you talking about? Who would that impact?

**Karen Hedge:** The equipment includes specialist chairs and beds, things that prevent pressure sores and things that enable people to walk and to move. The funding is not flowing through the system, and the implications for people are huge—it affects their ability to live life with dignity. Some people are suffering physical consequences as a result of the situation. The example that was given at the forum yesterday was of someone getting pressure sores because of the lack of equipment.

Those are the sorts of things that have fallen into the gaps. They are not being dealt with and they are being passed round and round. That is what the complaints and redress system needs to work on. Other than that, it is very much about local intervention and how we make that right.

**Ruth Maguire:** Thank you. That is helpful.

**Paul Sweeney:** I thank the witnesses for their answers so far. On commissioning, tendering and procurement, significant concerns have been expressed in written correspondence with the committee in relation to ethical commissioning. Do you believe that ethical commissioning should be referred to and defined in the bill, and, if so, why?

**Rachel Cackett:** I had a long discussion about that with my members yesterday. We have been considering the response that was given to the question that you raised on that issue in September, and we have been struggling to understand what the response means, and, in particular, what the words “ethical considerations” mean. I do not even know what an ethical consideration is.

We were really disappointed to see that every reference to ethical commissioning and procurement had been lost from the bill. We still cannot really understand why that has happened, given that that is a key facet of what the Feeley review called for. Services that are funded without price-based competition seems like a fundamental shift that we should be aiming for with the national care service.

How to define ethical commissioning is an interesting question, because the original bill, which is still on the table, talks about applying the principles. Some of the principles themselves have moved—many of them have now changed. We are trying to work out whether the application of principles might still be a way forward when thinking about how ethical commissioning could be delivered.

Somebody mentioned fair work earlier. The change to the fair work principle leaves us with significant consternation, because it puts the fair work principle on the employers, although, as colleagues have said, it is still not clear which employers are in the national care service and which are not.

However, if that were to include contracted employers and that principle were to apply, even though we know that fair work in social care is not being delivered through contracts, that puts the responsibility in entirely the wrong place. The national care service should, through all its work, be responsible for delivering fair work, with equity across the system.

In relation to talking to Government and other parties about amendments, we are giving consideration to whether it would be possible to look again at the principles and whether some of what was in the original bill on applying the principles could be reinserted.

However, it would then also come down to the procurement provisions in the bill, which, as I said earlier, do not go far enough. We are not sure how they would work, particularly with regard to the “power of reservation”. We have a different view to that of our colleagues at Scottish Care. The arrangements for five-year contracts and the three-year rule are not workable. We are not sure how that would work in a local authority area where many big providers will have multiple contracts.

Our understanding is that the Scottish Government has rejected a similar provision. We have provided some alternative ideas to the Government. We are talking to it about those on Thursday, to work through whether the procurement provisions that are in the primary legislation could be significantly strengthened in order to support ethical commissioning in practice.

We could tie ourselves in knots trying to come up with a perfect articulation of ethical commissioning, or we could have a bill that puts in place the levers that we think are required, and we could think about how the principles could better reflect what ethical commissioning should be from the point of view of the people at the front line who need support and those who are delivering it.

**Paul Sweeney:** Will you elaborate on how you would like the bill to be strengthened in that regard?

**Rachel Cackett:** We believe that a number of things could be done. The way that the bill is structured means that ministers would come up with a strategy and a national care board would come up with a plan, and then—almost through a process of osmosis—something would run through the system down to local care boards. We think that that arrangement should be improved and that the strategy needs to be stronger. As I said earlier, it must be informed by need and should take into account the quantum of funding that is available.

Regulations that have been introduced in England might give us an interesting route to think about whether we create a specific procurement landscape for social care, because it is not about buying widgets. Current procurement legislation is not applied in a way that separates procurement in the care sector from everything else that a council procures, whether that is school meals or anything else, but, actually, care is quite a specific sector.

Today, we will publish work by Anne Hendry and Stephen Gibb, who have been looking at whether current commissioning and procurement arrangements are working and have found that they are not. Part of that involves the gap between IJBs commissioning and local government procuring, as the translation of what is required is not always helpful. We have therefore started to

explore whether the bill could make the procurement strategies the responsibilities of IJBs, so that commissioning and procurement could be in one place. That would also mean that you are looking at local government as part of a provider market—I do not like the word, but I cannot think of a better one—for all those who are providing social care. Rather than a council holding the purse strings and paying for things, an IJB would have a say in how money is distributed among a sustainable group of providers in the local economy.

We think that a range of things could be done. We hoped that more would be said about the cap on the light-touch regime, but that is not included. We also think that the wording on the changes to the regulations on the reservations of contracts needs to be changed because I cannot see how, in practice, a provider with multiple contracts would be able to operate. It is not clear whether the reservations in terms of the five-year contracts and the three-year rule apply across the whole of Scotland in relation to Scotland-wide providers.

**Paul Sweeney:** Do the other witnesses share that assessment?

**Rob Gowans:** Others will have more to say than we do on procurement specifically, but I can say that we were also concerned that the references to ethical commissioning were removed from the bill, and we would be keen to see them put back in.

One of our concerns about the bill as introduced is that it was missing a definition of ethical commissioning. We thought that it was important to have a single definition in there for clarity and to give it a legal basis. Our concern is that not having such a definition could lead to it not happening in practice, because people would have different definitions of ethical commissioning. We would like the references to ethical commissioning and a definition of that put back into the bill at stage 2.

**Karen Hedge:** I am clear that the bill has to include ethical commissioning and ethical procurement. That we are only picking up work around ethical procurement as part of the national care service work now is significantly concerning because, in the past year, 83.9 per cent of care home closures have been in the independent sector—26 care homes have closed, and 19 of those were in the voluntary sector. It is just not working out there. In 2022-23, on average, 47 care packages were handed back per local authority area in Scotland. Frankly, that is down to poor commissioning and contractual arrangements in those local authority areas that prevent providers from passing on good terms and conditions to their employees and ensuring that there is fair work for them.

I would have huge concerns about the lack of focus in the bill on ethical commissioning, but what I really want is for it to be extended to include ethical commissioning and ethical procurement.

11:00

The bill also needs to consider not only how statutory bodies commission self-directed support but how we support and enable people to use SDS. I was listening to other people who gave evidence speak about a failed market. We do not have a failed market; we have a fake market in social care in Scotland. It is not a market—there is one main purchaser of social care and support, although that is starting to change as we see the eligibility criteria increase.

We really need to think about how we can shift and change that. Some of that is down to the collaborative commissioning arrangements that are happening in some of the examples that I gave earlier. For instance, Midlothian Council worked with some of our providers, and one of the key issues that came through related to our care-at-home staff and the amount of time that they spend between visits. They were not getting paid the full amount, or they would have a couple of hours downtime when they did not have any work to do. The issue was how they could work together to maximise response, and what we have seen happen in the Fife collaborative is now happening in Midlothian, too.

Providers also worked with the council to be able to offer block contracts to staff. That hugely increased staff retention—by 66 per cent—and it also reduced costs to the health and social care partnership, because the council was not spending money on overtime for agency workers providing cover.

The lack of inclusion of ethical commissioning removes the focus on and the ability to do that piece of work—to make those changes—and to share that in the way that could be done through the national care board.

On the continued inclusion of reserved procurement, I suggest that that is in contravention of the Social Care (Self-directed Support) (Scotland) Act 2013 because it removes choice from the system. I recommend that that is taken out of the bill.

**Paul Sweeney:** To what extent do you think that the bill's provisions and the proposed amendments from the Government offer a more level playing field in tendering for providers? Do you see that aim being progressed with the amendments?

**Karen Hedge:** No, I guess—given the tumbleweed that is rolling across.

**Paul Sweeney:** Yes, I figured that that was the case.

Ms Cackett, Age Scotland said that the current proposals have led to a market that the independent sector dominates because not-for-profit care providers are unable to compete effectively. Do you share that view?

**Rachel Cackett:** We have providers that are struggling to deliver the services that they currently need to deliver in their local communities. We need to make that a lot easier to do, and the money has to flow.

On the issue of procurement, procurement is just the end point of a commissioning cycle; it does not have to be formal procurement under regulations. There are also options for things like direct awards, which we do not talk about anything like enough.

There is an important place for not-for-profit providers in being able to use public funds to reinvest in their workforce and in their community, and to ensure that that funding exists and stays in the community. If there is anything that we can do to make that easier and fairer in relation to the differential between local government terms and conditions for the contracting of its own services—it is not just about pay, but about other uplifts—and the work of organisations such as those in my membership, we must find a way to do it. I do not think that the bill gets us there, but we are up for working to strengthen it.

**Paul Sweeney:** In general, are there any other changes to the bill that could help to facilitate more innovative and collaborative commissioning?

**Karen Hedge:** That is a good question. If it is okay to let me have a think, I will respond in writing.

**Paul Sweeney:** That is fine. Are there any immediate views on that?

**Rachel Cackett:** As I said, we have provided the Government with some examples from down south that could give us some helpful models. However, if we are to have a national care service that goes down from ministers and back up again—in fact, I think that it should be the other way round, from the front line up to ministers and then back down again—we need to ensure that the full commissioning and procurement cycle is in place.

One issue with national procurement that we have not touched on is the role of Scotland Excel and the way in which a national care board could commission national services. I know that the minister has talked about complex care in that respect, which I assume relates to issues such as those in the “Coming Home” report. I heard the previous panel talking about Scotland Excel; given

that its governance structure is set entirely within local government, we think that there is a real conflict of interest if it directs national procurement for a national care board under its current governance arrangements.

At the moment, we are doing a lot of work with Scotland Excel to try to improve the way in which it and providers work together, but we still have significant concerns. One concern is the care and support framework, which, because it was negotiated very late, has resulted in a negotiating position that will mean costs going to our members that are lower than we would have liked, largely because local councils refused higher uplifts. There will be no backdating of non-workforce cost uplifts for the first six months of the year, even though the framework was late in coming, and we are hearing more about councils—or, to be more accurate, HSCPs—withdrawing from it, because they cannot afford it.

At the moment, we have a situation in which, even though we are meant to be negotiating a national framework to cut down on bureaucracy and give us greater stability and consistency across the country, individual HSCPs and councils are withdrawing from it. Therefore, we have to be able to understand how, within the bill, we can do national commissioning in an innovative way.

Although I agree, on the whole, that a once for Scotland approach is not the way forward for all of social care, there will be areas where it is, and the bill needs to be clearer about that.

**Paul Sweeney:** Can I come back in, convener?

**The Convener:** If you are very brief.

**Paul Sweeney:** In your written submission, you state:

“83% of respondents to a CCPS survey of not-for-profit providers said they were providing a public service despite a deficit budget.”

That seems unsustainable to me. How would you address that?

**Rachel Cackett:** It is unsustainable. I can come back to the committee with the exact figures, but I think that, in the same survey, at the end of the last financial year—that is, at the end of the winter—around 60 per cent of providers were talking about contract hand-backs or reducing services.

That is not sustainable, and that problem is the reason why we have always wanted an effective national care service—and we cannot wait. I am hearing more and more from the chief executives in my organisations of the untenable pressure that they are now under to find mid-year savings in budgets that were already too low. We have a recruitment crisis, because we are not paying

people. We keep talking about fair work, but we are not doing it. It is simply unsustainable.

**Paul Sweeney:** Thank you very much.

**The Convener:** I call Gillian Mackay.

**Gillian Mackay:** Good morning, and thank you for your answers so far.

My first question is for Rob Gowans. In our evidence taking, we have heard from witnesses that a lot of the bill could be progressed outwith legislation. As someone from an organisation that represents disabled people and people with lived experience, why do you think that it is so important for some of the things that are in the bill to be in legislation?

**Rob Gowans:** Perhaps the biggest reason is that some of these things were already possible outwith legislation, but they have not happened. Quite a long time has passed, and these things have not been progressed. The prioritisation of statutory services in the bill, for example, will give impetus to that progress.

Legislation is also really important when it comes to taking a human rights-based approach, as a key element of that is legality and being clear about people's rights in law. A great example is independent advocacy. That could be funded and provided for, but giving people the right to it strengthens its role and guarantees that it will be provided for people who need it in order to access services. That is probably the key issue.

There are lots of other things—such as removing social care charges and the eligibility criteria, implementing SDS, or dealing with workforce pay and conditions—that could be done without legislation, but some things need legislation so that they can happen or so that we can move towards a human rights-based approach.

**Gillian Mackay:** You have articulated a number of things that can be given life only if they are in the legislation. Which of those do you believe should be strengthened by further amendment and what would you propose?

**Rob Gowans:** We are keen to see a definition of independent advocacy, which is important because the advocacy that is currently provided is sometimes not genuinely independent. In our response to the call for views, which we worked on with the Scottish Independent Advocacy Alliance, we said that redress for complaints would be important. There are wider issues, such as the fact that the effect of the national care service principles could be strengthened.

**Gillian Mackay:** My next question is for Karen Hedge and Rachel Cackett.

We have heard from relatives of people who are in care homes that there has been a delay in the implementation of Anne's law and that relatives are not seeing the progress that they would like to have seen. What do you perceive as being the issues with that implementation? Should it be put on a statutory footing, even though it could be progressed outwith the bill, to give those families certainty that we will never again see what has happened before?

**Rachel Cackett:** Karen might be best placed to answer that.

**Karen Hedge:** Conversation with the care home relatives Scotland group suggests that the bill, as it currently stands, does not change where the power sits and that there is still a possibility that a decision could be made by Government, through public health bodies, that would prevent individuals being able to access care homes. That does not change the relatives' current reality, so they do not see what was in the first iteration of the bill as a solution.

We must think about the fact that a care home is fundamentally home for the people living there, and we must consider how to balance their right to a family life with other people's right to safety. We must be able to work with people who run our care homes and draw on their expertise in infection prevention and control to do that in a rights-based setting. They have that expertise. During the pandemic, some health practitioners went into care homes without having that expertise. They brought hospital ward measures into care homes, which do not operate like wards. We have a big question about how to put the right people back into that setting.

We need to offer a rights-based choice for people living in care homes, but we also have to recognise the skills that people who are working in social care already have and must include them in the development of any guidance that is needed. That should be done through the lens of human rights and the right to family life.

**Gillian Mackay:** Before we set any hares running with relatives, we must be clear that that has not yet come out of the bill, which is still as it was when it was introduced at stage 1. No amendments have been passed.

Do you believe that that should remain in the bill, or is it your position that that aim should be delivered elsewhere?

**Karen Hedge:** I believe that there is no point in making legislation for things that should happen anyway, so I am not sure what difference the bill would make. However, I fundamentally believe that the connection must be in place in a balanced way so that care providers can keep their staff safe. That needs to stay in, but we need to see the

finer detail about where power will lie. It must sit with the people who live in care homes, their families and those who work there, and it should not be undermined by people who do not have expertise in the system.

**The Convener:** I thank the witnesses for their evidence. We will suspend briefly to allow for a changeover of witnesses.

11:15

*Meeting suspended.*

11:25

*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 our third panel of witnesses. I welcome Fiona Collie, who is head of public affairs and communications at Carers Scotland; Dr Jim Elder-Woodward OBE, who is co-convener of Inclusion Scotland; Frank McKillop, who is director of governance and policy at Enable Scotland; and Adam Stachura, who is associate director for policy, communications and external affairs at Age Scotland. Jim Elder-Woodward is supported by a representative from Inclusion Scotland.

We move straight to questions.

**Emma Harper:** Good morning—it is still morning.

What are your thoughts on the proposed amendments to the bill? Specifically, our briefing papers include questions about transferring accountability for the proposed national care service to Scottish ministers, as was initially proposed. Is that necessary to deliver the recommendations of Derek Feeley's review?

**Adam Stachura (Age Scotland):** It is essential that Scottish Government ministers have responsibility for the care service in Scotland, which is in desperate need of reform. From the work of the Feeley review, Age Scotland's core principles were about having proper accountability and responsibility, which will breed better resourcing and better national care standards. It is necessary for Scottish ministers to be very involved in the delivery of social care because, as it stands, without their involvement the system is not working particularly well.

**Fiona Collie (Carers Scotland):** I would simply echo what has been said. We have held a number of events with carers; when there has been discussion about things not working well, people have said that the difficulty is that they do not know who is responsible. In many cases, it is not Scottish ministers, so there is less impetus to

make changes and less co-operation in that regard. It would be a positive move to put accountability on Scottish ministers, who should have shared accountability alongside COSLA and local authorities, because the review was very clear that the social care system, as it stands, is not working for individuals or their carers.

**Frank McKillop (Enable Scotland):** Enable Scotland's frustration is that, despite the current arrangements having been in place for more than a decade, following implementation of the Social Care (Self-directed Support) (Scotland) Act 2013, far too many disabled people across Scotland are not getting access to the self-directed support to which they are supposed to have a right. Our view is that something has to be done to shake up the level of accountability. To whom do people with a disability and their families go when they are not getting the self-directed support to which they have a right? We have always supported the idea that accountability should rest with Scottish ministers, with there being a clear line that shows to whom people with a disability and their families can go to ensure that the rights that they are already supposed to have under existing legislation are upheld.

11:30

**Dr Jim Elder-Woodward (Inclusion Scotland):** I represent disabled people's organisations in Scotland. We were delighted with the original idea of the minister being responsible for the whole of Scotland because we would not lose equality of service across Scotland. We spent two years talking to COSLA about the postcode lottery system whereby people have to be reassessed by a new authority when they move from one area to another. We want equality; we want the same level of service provision. Now that we have the Verity house agreement, whereby services will be local by default and national by agreement, we feel as if a coach and horses is being driven through the whole process of the national care service.

I hope that you can understand what I am saying.

**Emma Harper:** I think so. I think I have the gist of your response—that everybody is in agreement that we need ministerial accountability to drive the direction.

**Dr Elder-Woodward:** The other point that I would like to make is that, through the Verity house agreement, we have the tripartite overlords of the national care service. I cannot see that in the bill. If it is not in the bill, we really need to know how the national care service will operate—and whether it will be a legitimate authority or whether

the tripartite overlords will make the final decisions. We are unhappy about that situation.

**Emma Harper:** Okay. You are all members of the expert legislative advisory group. I am interested in hearing about how your experience of working together in order to shape potential proposed amendments has been.

**Dr Elder-Woodward:** Throughout the process, I felt that I was being led by the nose by the Government and I could not see in the final report many of the suggestions that we made in the ELAG. We were led by the nose by the Scottish Government civil servants. It was not a co-design process. I do not know whether my colleagues agree with that.

**Adam Stachura:** The idea—which, I know, came from the committee—of including a load of people who might have some interesting thinking beyond the Government's, and of there being some degree of co-production, was fairly sound. However, the execution was really poor, to be honest. A huge number of people gave up a lot of time to read and to contribute, and the mechanism for doing that was incredibly difficult.

I am not entirely sure that any member of the ELAG feels that it was a good experience, particularly when it comes to the proposed amendments. There was no sight of work on potential amendments, nor of the end product.

There was a poorly written letter that suggested that members of the expert legislative advisory group support all the amendments, which is wrong. It was stipulated that we were there to advise, but we could not possibly get consensus from every single person on every element, especially given that they were not visible to us. Age Scotland colleagues also took part, so I know that that feeling was mutual.

It is pretty hard to measure what impact that time and effort had. Even going through the marked-up bill—with a professional hat on—to try to understand what has changed is very difficult, indeed. I do not think that the process worked as well as was intended, but I do not have a solution for how it could have worked better, to be honest.

**Sandesh Gulhane:** Good morning. I refer to my entry in the register of members' interests. I am a practising NHS GP. In your submission, Dr Elder-Woodward, you say:

"Like 'The Promise' for childcare, this is a waste of paper with meaningless words".

We heard from our previous panel of witnesses that children's services are in crisis. Given where we are right now with the bill, and the fact that £28 million has been spent on it, do you feel that it is absolutely necessary, or could we already start making changes, especially in children's services?

**Dr Elder-Woodward:** Back in the 1960s, if you remember, the Kilbrandon report recommended that children's departments, the welfare department and probation should become one organisation or department. I agree that it was a good suggestion to look at the family as a unit rather than having different kinds of social workers going to the same family. However, you have to remember that childcare is written in legislation as being a duty on local authorities, whereas adult care is a power. Local authorities, in legislation, have been given the power to help adults, but they have the duty to care for children. Therefore, more money has historically been given to childcare than to adult care.

Adult care has historically been the Cinderella service in social care, so I welcomed the Government's original idea of making a national adult care service to which childcare could be added at a later date, but I think that we need to give a lot more attention to adult care first, because it has been the Cinderella service.

I hope that that answers your question.

**Sandesh Gulhane:** Yes. Thank you. My final question is for the rest of the panel. Given that COSLA has withdrawn its support, and given that the unions, including the Scottish Trades Union Congress just yesterday, have withdrawn their support for the bill, where does that leave the bill? If we push forward with the bill as it is, with seemingly no shared accountability, what do you think will happen?

**Fiona Collie:** It is difficult, and I think that members are all grappling with this as well, but it is really clear that the issues that were uncovered during the pandemic and which were addressed in the independent review of adult social care are long standing. Disabled people and unpaid carers have been dealing with those issues for years, if not decades.

It feels as though some things in the bill could continue, such as shared accountability and national accountability and—critically—funding for social care being increased. Jim Elder-Woodward made a point about duties and support for people, which is a potential opportunity that could be lost. Carers Scotland has been very clear that the good elements of the bill, such as the things that we want to achieve to improve people's lives and help them to flourish, could be brought forward as part of the national care service, but there is nothing to stop the Government and local government from pushing forward now to improve social care for individuals. We fear that that conversation might get lost in arguments about structural change. It is important for all parties to remember the people who are at the heart of this—disabled people, older people and unpaid carers—and to consider

the support that they will need now and in the future, and how we plan to meet those needs.

**Frank McKillop:** Enable strongly supported the recommendations of Derek Feeley's independent review of adult social care. We looked forward to a national care service being introduced that would implement a lot of its recommendations. It is undeniable that much of what we thought we would get is no longer there. I am very aware of the negotiations and difficulties in getting to that point. Nevertheless, we have felt from day 1 of discussions on the bill that the process of establishing a national care service and purpose of the legislation cannot be a substitute for the immediate action that is essential in social care right now.

We have an on-going recruitment and retention crisis and a workforce that is not paid at the level that it should be through Government funding coming to commissioners. We need to act on those things immediately. Measures such as collective bargaining for the social care sector could be implemented pretty much immediately. That does not need legislation. Even a substitute for that, such as tracking social care pay, or funding for commissioners to the NHS agenda for change scale, are changes that could be implemented immediately, if there was the political will to put the funding behind them. Almost £450 million has been put up to ensure that NHS pay is increased by 5.5 per cent, which we absolutely support, but the frustration that we always have in social care is that we are probably at the back of the queue for public sector pay uplifts that come through to third sector providers.

The "Coming Home" report was published in 2018 and the implementation report came out three years after that, yet there are still hundreds of people who are in inappropriate institutional placements in Scotland. We know what we need to do to support people to return to their own homes in their communities, and we do not need the bill to make that happen.

We have always supported the principle of a national care service and we would like to see something that is like what Derek Feeley recommended coming to pass, but we need urgent action on measures to address pay and conditions for the front-line workforce, and we need to support people who are currently stuck in hospitals and institutions to get back into their own homes in their communities. We need to move on those things now, and we can do that without legislation.

**Adam Stachura:** The bill is important. It is obviously frustrating that key partners in delivering it, whether that is COSLA or the unions, no longer support the bill. It is incumbent on the Government and those parties to get back round the table and

talk. At the end of the process, if the bill does not progress and it is not amended or made as good as it can possibly be—it is really the role of the Parliament to help to shape it—we will go four or five steps backwards in the delivery of social care.

A lot of stuff can happen to fix social care now, but it is not happening just now; all the focus has been on a national care service. The two things can happen: we can improve social care and have a better model for the future, with national accountability. The frustration with COSLA is that, with the Verity house agreement, almost out of nowhere at one point there was a brand new arrangement about how social care could be delivered, and then there was a withdrawal. If you look at the detail, there was a bit of a split vote to some degree. There is an opportunity to come back and look at the challenges, and it is for COSLA, local government and the Scottish Government to do that.

11:45

Last year, hundreds of people in Scotland died before receiving any social care package. Who is responsible for that? Who is accountable? One in six older adults in Scotland receives a social care package just now. If that proportion remains in the future, more and more people will receive care. We need to reform it, but reform is difficult and not everyone will like it. I am not saying that the bill is perfect, but reform is absolutely essential, because the system does not work.

The facts that we have thousands upon thousands of people waiting for months and months to receive a social care package in the first place, and that, by the time they get it, their needs are much more severe, demonstrates that the system does not work. In March, local authorities were reassessing people's social care packages because those authorities were facing a budget black hole and those people found their social care packages being downgraded. They were not Lazarus—they did not get any better—yet there was no accountability. Almost overnight, their packages went from being critical to substantial, and then they were told that the local authorities would be delivering packages only for those with critical or palliative care needs. How on earth is that right? We need to fix that.

The bill is absolutely vital. It can of course be better and more detailed, but everyone has to think about what more they can do to deliver good quality social care, because it is not good just now. Despite all our efforts, we do not have enough people, we do not have enough resource and we do not have enough accountability and national standards. I am yet to hear a really good reason why local needs are any different. Yesterday, at the national care service forum, I heard someone



talk about how they live in East Ayrshire, but what they would get just five miles away in South Ayrshire is very different. What is the local need difference there? It has been hard to identify. I am sure that there are differences, but we are now faced with the fact that the national care service had quite a lot of bad public relations for a couple of years, and people are withdrawing support, which adds to the bad PR.

The Scottish Government might have more responsibility to talk up the proposal and to put more of a positive spin on it—well, not a spin, but the Government needs to talk up the positives of a national care service, as that has been missing. As a country, we can work out what the service will be in the future. It is not about centralisation; it is about having better national standards and accountability, and that will, I hope, come with resourcing.

We are really frustrated by the situation, because we in Age Scotland and other charities have been talking for years and years about how we need to reform social care. Right now, and to a degree, the national care service is the vehicle to do that. There is not a single other vehicle on the road to help to deliver that reform just now. It is on the Parliament, the Scottish Government and all the partners that are involved in social care services to make the bill better and to come to the table with an open mind about reform, but it will be really hard. I do not underestimate their concerns, because we have lots of concerns about the bill as it stands, as there is a lack of detail in it, but we are not necessarily the ones who will know how that lack of clarity can be fixed.

We could be doing a lot more. It is defeatist to think that this is it, because it cannot be. If it is, we will go back 10 years. We will not have reform of social care, because the political impetus to do it will disappear and we will have to wait for another pandemic for people to care, and that is not palatable at all.

**Tess White:** My question is for Dr Elder-Woodward. You have referred to King Lear and the people working in social care who have to

“bide the pelting of this pitiless storm”,

and you also say that the current system is, like King Lear, “broken and unjust”. You also said that the national care service could have been

“an opportunity to reassess the role of councils”.

That was your opinion. Will you elaborate on that and say how, if the Scottish Government were to go back to the drawing board, particularly bearing in mind the fact that COSLA and the STUC have pulled their support, councils might help to move things forward or restructure them?

**Dr Elder-Woodward:** That is a difficult question to answer. There needs to be a realisation within COSLA that the effect of austerity on social care over the past 25 years has harmed and caused misery to many people because of the way that local authorities operate their eligibility criteria and the way in which they provide services.

They look upon we service users as objects of their care, not subjects of their care. They need to realise that we are capable of managing our own support services and that, given the appropriate resources—not just in terms of money, but in terms of support and the management of our support services—we can get a human social care service.

I use the example of King Lear because his attitude to those around him was totally changed by his own experience of being exiled into the wilderness and feeling the misery of having to live in a cold environment. COSLA has not woken up to feel the cold. There has been a power grab over our lives, as service users. I feel that it is a grubby situation. All COSLA thinks about is power, not the quality of my life. I believe that we should have a national care service, with uniform service delivery and a more proactive policy of helping people from the outset of their need, rather than the end of their need. We need to have that service—the sooner, the better.

**Tess White:** So, you are saying that COSLA and everyone else has forgotten the people element—the service users—and that we almost need to have a complete paradigm shift and go back to the Feeley report and the people who are receiving the care, and build up from that, rather than have what you describe as a power grab. Is that correct?

**Dr Elder-Woodward:** Yes, exactly. I was fortunate and honoured to be part of the work around the Feeley report and to engage in in-depth discussions about what social care meant to people.

I will remind people of Clement Attlee, who wrote a book called “The Social Worker”. In it, he said that social work

“is not a movement concerned alone with the material, with housing ... and feeding centres”

but that, rather, it is

“the expression of the desire for social justice, for freedom and beauty, and for the better apportionment of all the things that make up a good life.”

Attlee wrote that in 1920, and the Feeley report tried to mimic that approach to social work when it said:

“Everyone in Scotland will get the social care support they need to live their lives as they choose and to be active

citizens. We will all work together to promote and ensure human rights, wellbeing, independent living and equity.”

I do not see that in the actions of COSLA.

**Tess White:** Thank you.

**David Torrance:** My questions are about the accountability and functions of a national care service board. What do you understand to be the purpose of such a board, and to what extent could it—or should it—contribute to fundamental reform of the social care landscape?

**Adam Stachura:** I think that it will allow you to bring together all the key partners in delivering care. There is the mechanism in the Verity house agreement for bringing together local government, health and the Government, but we must also include lived experience, and there is a place for third sector voices, too. It provides a better mechanism for national accountability and another vehicle to help to deliver the right funding, say, or interventions in those parts of the country that might not be delivering what is required.

Obviously, it is something that is missing just now. We have a variety of IJBs and health and social care partnerships across the country; we have 32 local authorities; we have COSLA and so on—we have a whole range of different people involved in care. I also point out that, in the Highlands, there is the lead agency model. The national care service board will be a different layer, but it is perhaps necessary if we are to have much better accountability and responsibility. I repeat those words a lot when you ask me these questions, but it is a core issue. What is missing in social care today is accountability and responsibility when things go wrong. Nobody is responsible or accountable, and as a result, no one is accountable for delivering what is necessary in order to make the necessary reform.

That is what the board could do. I use the word “could” rather than “will”, because you do not really know. The proof of the pudding will be in the eating, of course, and a lot of detail still has to be worked out and understood by a lot of people.

**Frank McKillop:** We absolutely support a national care service board, because there is a need for national co-ordination. Adam Stachura alluded to the postcode lottery; if someone moves house, their postcode might change but their needs have not. Why on earth should the level of support to which they are entitled change as a result? If a national care service board can maintain standards and a level of consistency across Scotland, that will definitely be very welcome.

One of the most important elements of a national care service board is the commissioning of complex care, which remains an important

element of the bill. At Enable, we have supported several people who had been in hospitals for many years—for decades, in one case. Through partnership working across local authorities, with the NHS, with Enable as a provider, with the individual’s family and with the involvement of every other organisation and stakeholder, we have been able to support people to live in their own home with their own support team for a number of years now, including through the pandemic and the many challenges that arose at that time. That sort of thing can be done, but it is difficult, and it involves multiple agencies all being on the same page and absolutely committed to making it work. However, where we have achieved it, it has been very successful.

The model has worked in some isolated cases. As we have said, the national risk register identified around 1,400 people who are either in inappropriate placements or at risk of their existing care provision failing. The fact is that too many people need that support, and I think that a national care service board that commissions, at a national level, the most complex care and learns from experiences that have worked in other parts of Scotland will make a real difference to the lives of hundreds and hundreds of people who are in those circumstances at the moment. That extended and central accountability is definitely positive, but, in particular, support is needed for those people who are stuck in hospitals and institutions where they should not be, so we need that to happen urgently. If the national care service board is the way to achieve that, we would definitely support it.

12:00

**David Torrance:** How should the views of the wide range of providers be represented, not only on the issues that are relevant to them but in relation to providing solutions, innovation and intelligence on provision?

**Fiona Collie:** With regard to the proposals for a national care board, we feel strongly that people with lived experience and unpaid carers absolutely must be involved, and there should be parity of esteem and equity. However, the approach cannot be tokenistic. We need to think about how the involvement of individuals—whether carers, people with disabilities or older people—is adequately supported. With the best will in the world, one carer cannot represent the views of all carers across Scotland, and we need to consider how to resource and support the gathering of carers’ views and to think about some of the challenges that carers have had with regard to being the representative on integration joint boards. They have not necessarily had the resource that they need. Some boards have gaps

where carers are not involved, and carers on some boards are looking to stand down because the role can be very onerous.

We need to look at equity on any national care board and at the weighting with regard to people with lived experience and unpaid carers. It should not be only one person; a number of people should be involved so that they can more readily describe the support and the changes that are required.

**Dr Elder-Woodward:** I am fearful of the idea that one individual can represent all sorts of ages and people. I am physically impaired. I know what it is like to be in a wheelchair. I know what it is like to have a speech impairment, but I do not know what it is like to be mentally ill—[*Inaudible.*] How can one individual represent the whole gamut of service users? They cannot. That is why I made the suggestion that the representatives be accountable to a sub-committee of the board. The representatives would be a range of service users, who could talk to the sub-committee about a range of items, and then the sub-committee would go to the board to represent those service users.

There needs to be some structure, as well as resources, to allow the individuals on the board to be effective. Otherwise, it will just be a token gesture. Professional people have much more power behind them, and much more of a structure of powerful people. They will rule the roost. They will run the world. What I fear about the bill is that participants with lived experience will be only a nodding head. Those people need to be supported.

**Emma Harper:** I have a wee supplementary question. Sweden has a senior alert programme, which includes an assessment for risk and prevention of falls, malnutrition and pressure ulcers. That is done before people even get to the point at which they need care. It is co-ordinated through a national programme that the Swedish Government introduced in 2010—14 years ago. It works; it has been shown to keep people out of hospital. We talk about preventing admission to hospital, but we also want to care for people when they come out of hospital.

In Scotland, we might be seen as a nanny state if we assess people when they turn 65. However, should the national care service aspire to have a programme that supports people to be at their healthiest in their home—or in a care home, which would become their home—for as long as possible, so that prevention runs alongside care?

**Adam Stachura:** If there is good integration of our services, that kind of thing could and should happen. I do not mean that there should be an arbitrary age at which, all of a sudden, a person has to go for a full medical assessment. However,

it could be part of the relationship that GPs or other medical professionals have with people. They could have discussions with people throughout their life. People could experience frailty or have dementia when they are a lot younger than 65. I was speaking at the British Geriatrics Society conference on Friday. More geriatricians should be embedded in the community. Social care is also important for prevention, and it is good to ask how those things link together properly.

If we had an integrated system in which different parts talked to each other and had a can-do attitude about what might be required and who could help deliver it, for some people going into later life, a tiny bit of care would be all that they needed for a long time. Going without such care for a long time might mean that the intervention that they receive would be for either medical needs or critical care. That would happen if they had been going without what they needed to help them live their life in whatever way they might want to. The needs of some younger people who are disabled may change massively as they get older.

Despite all the rhetoric, if we had a health and care service that was properly integrated, that kind of thing could happen. There is good practice in Scotland, but the point is that it is disparate, and there is not proper collaboration and shared learning. I am sure that those at the table who are medically trained GPs and clinicians will know what good practice looks like, but it is maybe not being shared as widely as it could be. A lot more could be done on prevention for older people. We are not doing enough.

**Carol Mochan:** Not every organisation has taken a position on this, but I am interested to know whether anyone has a view that they would like to put on the record about the national social work adviser and the national social work agency. Do you believe that they are necessary, and would that provision be of benefit? Adam, you look as if you are going to say something.

**Adam Stachura:** I am sorry; I do not mean to get in the way of everyone else. Our written response said that we tend to support that idea. I do not have a huge amount of experience of that aspect, but the more that we have learned and the more it gets talked about, the more we can understand why it could be helpful, particularly given how it might fit in with the national care service.

There is a need for consistency of standards and knowing where government can have a role. There is a lot to be welcomed in that idea. We tend to support the notion, but others will have a far better real-life view on how it could work. It is important to understand how it might fit in as part

of the picture of a national care service, national care board and local care boards. Having a standardised route for social work is important, because it is an important discipline that perhaps does not get the attention that it needs.

**Carol Mochan:** That is helpful. You said that the role of the agency can develop as it is discussed.

Fiona Collie, do you want to come in?

**Fiona Collie:** Yes, simply to concur with that view. I do not think that we have a particularly strong view on the issue at the moment. Other people are probably more qualified to comment on the agency's development and structure, and I am sure that you have either heard or will be hearing from them.

**Carol Mochan:** We have heard from them. It is helpful to hear your response, as well as to hear about support for the agency as it develops.

**Dr Elder-Woodward:** I am uncertain about what the agency will do and how it will relate to the other agencies that we already have, such as the Care Inspectorate or the SSSC. How will they fit in with the new agency? From my reading of it, I think that the emphasis is on social work education and standards. It is important that somebody is responsible for the oversight of social work education and standards. I do not know whether that should be part of the remit of the national care service or a different agency, but I think it is important.

Vis-à-vis education, there has been a long argument that educating social workers should include listening to service users and that service users should be involved in the educational process. That is not happening universally. It is happening in small institutions, but there is no policy to involve the input of the end user in social work, and I think that it is important to do so.

**Frank McKillop:** As others have said, we are fairly neutral on that question, because we are not specifically involved in that sector. I am sure that social work professionals and representatives will have views to contribute on that.

What we found interesting is the idea of workforce planning and strategy, which we see in the NHS. We have never seen it done specifically for social care. Often, social care workforce strategy and workforce planning go hand in hand with that of the NHS, and, sometimes, there is a bit of a cross-over. There is sometimes a bit of a cannibalisation of the social care workforce by the NHS when there are gaps in the NHS, which just passes the problem from one part of the system to another.

Therefore, if a workforce strategy for social care could come out of that element of the bill, we

would welcome it, because, as we have said, there is a recruitment and retention crisis in social care that we need to make a specific effort to address. Social care is not there just as a crutch for the NHS when there are issues in the NHS; we need social care at all times.

Rather like what I said about prevention in response to Emma Harper's question, investment in social care and the social care workforce will make savings for the public purse down the line. We need to have more sophistication in such workforce strategy and planning.

**Ruth Maguire:** Good morning. I would like to hear your reflections on the charter of rights. What level of reassurance does the draft charter provide that people who use support services and care services will be fully supported in accessing what they are entitled to in relation to independent living?

Jim, you are making eye contact, so I will come to you first.

12:15

**Dr Elder-Woodward:** Some people like the idea of these rights finally being written down in one place, and think that is a good idea. Personally, however, I think that it is a total waste of paper. We are bringing forward legislation—for social work, that legislation is written in terms of a duty that is placed on local authorities, not the rights of people. Therefore, in bringing forward social care legislation, we do not have any rights at all.

The only rights that we have depend on human rights legislation. In that respect, we find that, when local authorities are taken to court, the court is not interested in the outcomes of a decision—it is interested only in the process of a decision. That is illustrated in the case of *McDonald v Royal Borough of Kensington and Chelsea*. Elaine McDonald was a Scottish ballerina who contracted multiple sclerosis and required help at night to go to the toilet. In order to cut costs, Kensington withdrew her night support and made her wear pads and nappies. She took the Royal Borough of Kensington and Chelsea to court, and the initial outcome was that she won the case, simply because Kensington did not operate the correct process for reassessing her before making a decision that she needed to wear pads at night. Even in human rights legislation, therefore, we have limited powers to ensure that our needs are supported.

**Ruth Maguire:** Thank you—that is helpful. Age Scotland's submission talked about the differences between rights and expectations. Could you expand on the importance of that?

**Adam Stachura:** To go back slightly to your first question, having a charter is important. We have seen that with having a charter for social security, which has been an important step in terms of what Scotland can do. If we go back to the principle that the most important person in the room in this context is the person who needs and relies on the support, it gives them almost something to hold that says, “These are my expectations for the things I should get.” Beyond that, there is also an element of how they relate to their rights.

That goes back to the bigger human rights context, and how, for a lot of people, those rights are not enacted. It is helpful for somebody to have that written down, as the state or whoever then has to almost go out of their way to demonstrate why they are not going to be able to access those rights. It makes it pretty difficult, actually.

There is a lot in the charter that is to be welcomed. There are still placeholders on which it would be great to have more detail. The concept is important. If you have never experienced social care before, you have no idea what to expect. Many of the calls to our helpline are from people who ask, “What do I do now?” and are trying to get a financial needs assessment or an actual needs assessment. People go from never having stepped into the system to needing almost everything. That is unlike the health service. They were probably born at the hand of the health service and will have had regular interactions with it.

That is why the charter is incredibly important: it is about what your expectations are going into social care and how you can ensure that they are embedded correctly, so that you can make a point about the things that you need.

More detail is needed. I am sure that, over time, such things could be enhanced, made more accessible and made more available. Part of that is about training and development throughout the social care system, so that people who are involved in it know the starting position of what they need to deliver and do not say that they cannot possibly help people. They will need to help people, because they will have the rights that the charter sets out. The question is what they will do to achieve that.

**Ruth Maguire:** Thank you.

**Adam Stachura:** That was a little bit clunky.

**Ruth Maguire:** No, it was helpful.

I accept Carers Scotland’s premise about not conflating rights with responsibilities. That is a really important point. The submission also talks about a complaints system. That is key where people’s rights are not being realised. What can they do about it?

Fiona Collie, will you talk more about the complaints side of things?

**Fiona Collie:** I agree completely that a charter is an important document and important for people understanding what their rights are. We saw that with the charter that went along with the Carers (Scotland) Act 2016, which enabled people to see what their rights were, such as the right to an assessment or to breaks. It was all in one place, which was helpful. However, what is missing from the proposed NCS charter—and, indeed, across the piece—is provision for redress and complaints. The current system does not work for people. Although work has been done on it, it is complex for individuals. Sometimes they feel that they are not being listened to and have queries about a possible negative impact from complaining.

Therefore, it is important to develop a new system for complaints as part of the national care service that would run alongside the charter and sit with the principles. If the principles of the bill and the charter are about human rights and advancing equality, individuals should be able to complain and have decisions made and redress provided if there is a negative impact on the realisation of those rights and if there has been a detriment to carers with one protected characteristic or more and to their ability to thrive and fulfil their potential.

If we say those things in the bill and talk about rights in the charter, we need to have an effective system of redress that runs alongside it—not just say that you can go to the SPSO with a complaint. The SPSO might uphold your complaint, but that does not necessarily change things for you. Effective redress is fundamental to developing accountability, because it is accountability to the individual who uses services and to their carers, who need to know that they can call someone to account.

**Ruth Maguire:** Does Enable Scotland have views on the charter or the complaints process?

**Frank McKillop:** The simple answer to the question of what we think of the charter is that it is great. It is good to capture the rights that people have. I agree that having them in a single document is helpful, and we definitely support that.

We need to see how the charter would work in practice and how the rights would be upheld. Far too often, the experience of people with a learning disability and their families has been that the rights that they have under existing legislation are not upheld. The question is what happens then. That is a frustration.

The Scottish Government’s own health and care experience survey, which was published in May, showed that people were not able to access their rights, especially in relation to self-directed

support. According to that survey, only 53 per cent of respondents felt they had a say in their own support. That figure had been as high as 80 per cent back in 2016, which shows that we were getting things right for a while, but the position has declined. Likewise, the number of people saying that they felt supported to live as independently as possible went down from 85 per cent to only 65 per cent. That shows that, even though we have those rights in legislation such as the Social Care (Self-directed Support) (Scotland) Act 2013, people are not actually getting them in practice. Therefore, I absolutely support a charter of rights, because I think that it would capture a lot of the elements that need to be in there. I also note that there is, in parallel, the incorporation of the UN Convention on the Rights of Persons with Disabilities into Scots law.

With all such charters and pieces of legislation, the critical question is this: what actually happens when your rights are not being upheld? That is the gap in some of the existing legislation, and we are keen for there to be no such gap in this bill. If people have these rights but they are not getting access to them, what can they do to fix that? We need that to be really clear, and we need a really clear vehicle for redressing that.

**Ruth Maguire:** Thank you.

**The Convener:** I call Paul Sweeney.

**Paul Sweeney:** I thank the panel for their contributions so far.

I turn to commissioning, tendering and procurement. I note in particular Age Scotland's submission, and the belief that there is now a market that has been dominated by the independent sector, because not-for-profit organisations have been unable to compete to provide services. I wonder whether you can elaborate on your written submission—in particular, on whether you believe that ethical commissioning should be referred to and defined in the bill.

**Adam Stachura:** Given the word limit on submissions, I might not have been able to go into too much detail on that. I understand the need for that, though, given how much information you have coming in.

The point is that the landscape and fabric of our care services in Scotland have changed dramatically over the past 10, 15 or 20 years. We used to have a lot more publicly owned, publicly run and not-for-profit services as part of that mix. That is not to say, though, that private or independent care providers are not a good thing—it is just that the balance and the mix of people's options with regard to local delivery and specialisms have changed dramatically. A number of months will not go by without our hearing stories

of a local authority looking to close a care home, not on the basis of quality of care but on the basis of cost.

Back at the bill's inception, I remember having conversations with care providers from the not-for-profit and third sectors, who felt that there was almost a race to the bottom with regard to commissioning. Whoever was the cheapest, would get the gig. I think—I am sure—that at one point years ago, the Royal Voluntary Service had to withdraw from parts of the country or withdraw some services, because it could not possibly deliver the care that it wanted to on the money that was available. The challenge that folks had been facing was that there was not enough money in the system, that the bids were not viable and that they were not going to get picked, because they were too low. They then almost had to create an environment or a bid that was going to be the cheapest thing and which was not going to have the best care outcomes.

I think that ethical commissioning is vital. There will be experts on how that really works and, to be honest, I think that they will be better placed to give you that insight.

The thing that we have lost, though, is a really good mix of care provision. Rural Scotland is a big challenge, for instance. I do not mean that in a negative sense, but what if a private care home is looking to close in the Highlands? There will not be another care home for miles, so where do folks go? How do they stay connected? Moving home when you live in residential care can be a matter of life or death. It then becomes a challenge for the health service to pick up, by and large, and the quality of life will be poor.

I think, therefore, that this is about ensuring that there are better means of commissioning, that there is more money in the system and that there are more options. That will mean our having a much better care service and many more options.

That brings us back to Fiona Collie's comments about complaints. People perhaps do not complain about the care that they receive because there are no other options. They might think, "If my care home evicts me because it can no longer meet my needs, there's nowhere else for me to go. The council hasn't given me any other options for delivering a home-help equivalent, so I won't get any care at all." That is why it is crucially important.

Thank you for the question. I hope that I have answered it, to some degree.

**Paul Sweeney:** Do you feel that the Government's proposed amendments would level the playing field? Do you feel confident about that?

**Adam Stachura:** I do not know whether I would say that I feel confident, although I do not necessarily mean that in a negative way—I am just not really sure. A lot in the bill is lacking in detail. To be honest, I do not really know how things will work in practice in the future. There is an opportunity at this stage of the bill for there to be a better system, but I cannot answer with any degree of certainty whether I feel confident about that.

12:30

**Paul Sweeney:** To be clear, would you like to see ethical commissioning explicitly in the bill?

**Adam Stachura:** Yes. I would like to see the concept in the bill. There are people far better versed in it than I am who could work out how that might be possible, but I think it is a very important concept.

**Paul Sweeney:** What are other witnesses' views on whether ethical commissioning should be in the bill, and what could be done to strengthen the definition of it in the bill?

**Frank McKillop:** Ethical commissioning is very important. If the bill specifies and expands on what exactly is meant by that, that would be positive. On the mixed market of social care provision in Scotland, the third sector and the public sector consistently achieve better Care Inspectorate grades than the private sector does. Research published by the University of Oxford in the past few days shows that 82 per cent of care homes in England are run by the private sector but 98 per cent of enforced closures by the Care Quality Commission are in the private sector.

We see risk, especially when offshore and private equity funding is coming in to snap up care homes in Scotland, which has happened in a number of cases. We saw that the starkest and, frankly, most horrific instances during the Covid pandemic were in private equity-owned care homes. We have always supported investment in the sector, and we have talked about investing in the social care workforce. Partners in the trade union movement sometimes have a niggles that if we invest across the social care workforce, that would include the private sector and there would be a risk of some of that increased public investment being bled offshore as profit, but that is not a reason not to invest in the workforce, and we need to move on that.

If we move towards more of an ethical commissioning structure and the private sector provision is part of that, we will at least have minimum expected standards in terms of that money staying in Scotland and the level of quality that is delivered in that sector, but there is a potential gap. We do not want a situation where

ethical providers, particularly in the third sector, are squeezed out and where we have overwhelming private sector provision with perhaps less control over quality or where that public investment is spent.

**Paul Sweeney:** Is there potential for market-distorting behaviour from private players in the market? That might be a reason why they are winning contracts but then not performing well. Have you seen evidence of that?

**Frank McKillop:** That is certainly a risk. There have been instances in years gone by where—again, we have a recruitment challenge in social care—people are attracted to a private sector bank rather than filling immediate vacancies, perhaps because the terms are better elsewhere.

More proactive management of the market in Scotland, rather than waiting until something fails before a regulator such as the Care Inspectorate is empowered to intervene, would be a role for the national care service. That would include identifying warning signs in provision and intervening; we always come back to the point that it is all about the experience of care for the people who are accessing the services. Wherever there is a risk of a decline in quality or of market distortion, there is an important role for the national care service in overseeing the market and intervening to ensure that there is fairness and better quality.

**Paul Sweeney:** Are there any further views on strengthening those provisions in the bill?

**Fiona Collie:** In general, we support ethical commissioning being in the bill. There is an opportunity for leadership and for us to talk about what we expect in relation to investment of the public pound in quality and minimum standards. However, we can also think about some of those things in relation to the Scottish business pledge. We have a firm view that everybody who benefits from public procurement should be carer positive and should support their employees who are carers. If you think about family-friendly and flexible employers, you realise that the workforce in care is overwhelmingly female; we should think about that as part of ethical commissioning.

We think that there is a role for Government in looking at market sufficiency, particularly in relation to the right to a break from caring and having a diverse range of options available, in order that someone's right to a break does not go down the traditional route of a place in a care home. Instead, it must be about meeting outcomes for the individual—meeting diverse outcomes. Local partnerships already have short break statements that set out what they have in their area, but they do not set out how they are going to improve. If we are going to deliver the right to a break for carers, we need to ensure that the

commissioning, whether at national or local level, delivers the right kind of market to provide a meaningful right to a break.

**Paul Sweeney:** I want to quickly ask—

**The Convener:** We need to move on, Mr Sweeney. I am sorry, but we have only five more minutes.

**Paul Sweeney:** No problem.

**Dr Elder-Woodward:** My understanding is that the idea of being ethical is not in the bill. The bill talks about commissioning; it does not talk about ethical commissioning. The idea that I want to bring to the committee's attention is that the most ethical commissioning that you can get is to commission a collective of people to help themselves and to support one another.

For example, in Grampian, we had a self-help group to support people with their direct payments on a daily basis. The local authority went out to tender and the company that won the tender was an accountancy firm in Manchester. It offered payroll services, but it did not offer one-to-one support on a daily basis. That is not ethical commissioning. What we really need to do is to empower a collective of people to support themselves and their fellow human beings. That is nowhere in the discussions about ethical commissioning.

There is an adage that says that you cannot empower the individual without empowering the collective. [*Inaudible.*] We need to empower the collective of disabled people. That is the ethical way forward.

**Sandesh Gulhane:** I remind everyone of my entry in the register of members' interests as a registered NHS general practitioner.

I want to touch on palliative care, which we have not talked about at all—I want to stay on palliative care and not touch on assisted dying. The Scottish Government produced a policy paper with seven outcome measures. How will the national care service impact palliative care?

**Fiona Collie:** I will have a stab at answering that question. The national care service has the opportunity to have a positive impact. If we set out minimum standards for support, there is an opportunity to ensure that palliative care is front and centre.

There has been a consultation on and a discussion about a right to palliative care, so there is a potential opportunity to create that as part of the charter of rights and the national care service. There is an opportunity to improve things through a national care service. We recognise that the situation for many people is not as they would prefer or per their wishes.

**Sandesh Gulhane:** I was part of a panel that talked about palliative care and some of the issues that surround it. Funding is one of the big challenges, as with most things. People perceive that there is a lack of funding for palliative care. People feel that there is also a huge and disproportionate difference between the palliative care that you will receive at the end of your life if you are from an ethnic minority or a more deprived background and the care that others receive. That inconsistency is not just present in one health board; it exists across our country. With no more money going into palliative care—that is not what the national care service is about—and given that huge discrepancy, what can the national care service do to make a tangible difference to the people who are most disproportionately affected?

**Fiona Collie:** I want to go back to the question about ethical commissioning. Part of that is about ensuring that the services that are available in your area are of a certain quality, for starters, but it is also about ensuring that they respond to the diversity of the population in your area.

As you will see in our submission, we recognise that, across the piece, for people from minority ethnic communities in particular, the availability of and access to services is not the same as it is for the majority of the population—that applies across carer strategies and more. Commissioning could be part of the opportunity to start to address some of the deep-seated issues, particularly around poverty, which it has perhaps not been possible to address in the past. There are opportunities to do that through commissioning.

**The Convener:** I thank the witnesses for their attendance. Please feel free to leave the room.

That concludes our further scrutiny of the National Care Service (Scotland) Bill ahead of formal stage 2 proceedings. Day 1 of those proceedings is scheduled to take place at the committee's meeting on Tuesday 26 November. The deadline for lodging stage 2 amendments to the bill will be 12 noon on Wednesday 20 November.

At our next meeting on 29 October, we will take further oral evidence on the independent review of gender identity services for children and young people from the chief medical officer. That concludes the public part of the meeting.

12:43

*Meeting continued in private until 12:59.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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