



OFFICIAL REPORT
AITHISG OIFIGEIL

Health, Social Care and Sport Committee

Tuesday 26 November 2024

Session 6



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HEALTH, SOCIAL CARE AND SPORT COMMITTEE

34th 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)

*Carol Mochan (South Scotland) (Lab)

*David Torrance (Kirkcaldy) (SNP)

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Donna Bell (Scottish Government)

John Paul Liddle (Scottish Government)

Maree Todd (Minister for Social Care, Mental Wellbeing and Sport)

CLERK TO THE COMMITTEE

Alex Bruce

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Health, Social Care and Sport Committee

Tuesday 26 November 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Clare Haughey): Good morning, and welcome to the 34th meeting in 2024 of the Health, Social Care and Sport Committee. I have received no apologies for the meeting.

Under agenda item 1, do members agree to take item 4 in private?

Members indicated agreement.

National Care Service (Scotland) Bill

09:30

The Convener: Agenda item 2 is an opportunity for members to put questions to the Minister for Social Care, Mental Wellbeing and Sport on the National Care Service (Scotland) Bill. I welcome to the committee Maree Todd, the Minister for Social Care, Mental Wellbeing and Sport. I also welcome, from the Scottish Government, Donna Bell, who is director of social care and national care service development; John Paul Liddle, who is deputy director of national care service development and delivery; and Lucy McMichael, who is a senior lawyer.

I invite the minister to make a short opening statement.

The Minister for Social Care, Mental Wellbeing and Sport (Maree Todd): Good morning. I thank the committee for its consideration of the bill. It remains critical that we get this right. Strong social care and community health support are the bedrock of a thriving, compassionate civil society. Given the many areas that we agree on, I appeal to members across the political spectrum to engage collaboratively on this endeavour.

I also thank the many organisations and individuals who responded to the committee's call for evidence. The overwhelming majority of respondents recognised that the status quo cannot continue and that fundamental change is required. That echoes the thousands of conversations that my officials and I have had with people across Scotland who use social care and community health services, and with people who have caring responsibilities.

In those discussions, people have told us that three key issues require urgent action, the first of which is shifting society's attitude to ensure that social care is properly valued. Secondly, there needs to be access to consistent high-quality support and services that are targeted at where and when they are most needed, with clear information on availability. There is an unacceptable variation across local authorities.

Thirdly, there must be oversight of planning and delivery. Indeed, the committee's post-legislative scrutiny of the Social Care (Self-directed Support) (Scotland) Act 2013 highlighted the importance of that, and it is on that issue that we have the furthest to go to reassure people with lived experience. They have been heard and we are taking action. The bill is intended to address all

three issues with structural reform that further empowers the role of people with lived experience.

The bill and the draft amendments that I sent in June represent how best to achieve this reform. As you will be aware, although some draft amendments garnered broad support, we encountered opposition to other proposals. I can answer questions about the Government's policy intention behind those proposed amendments, if that will be helpful, as they are part of the consensus that we are working on. I need to consider what approach will secure sufficient support to make progress.

For those reasons, on 13 November, I wrote to the committee saying that I wanted to take the time to fully reflect the views expressed in our approach, and that I was not seeking to start stage 2 today. That was a necessary step to ensure that we get this right.

We need to come together, agree the way forward and deliver for people who need it most—those who use or work in social care and community health services and those with caring responsibilities. It is vital that the needs and voices of people with lived experience are put first, and we must work together to develop a social care system that we can be proud of.

The Convener: Thank you very much, minister. We will move straight to questions.

Sandesh Gulhane (Glasgow) (Con): I declare an interest as a practising national health service general practitioner.

Good morning, minister. Are you responsible for and in charge of the NCS, or is there somebody else in Government to whom we should be speaking?

Maree Todd: As you will be aware, I am a junior minister with responsibility for those things in my portfolio. I work as part of a team of health ministers, and we work as part of a Cabinet structure within Government.

Sandesh Gulhane: So are you in charge of the NCS?

Maree Todd: Yes.

Sandesh Gulhane: Okay. Given your statement to Parliament and your comments on the BBC's "Drivetime" on 14 November, have you been entirely and wholly truthful about what occurred between the Scottish Government and the Convention of Scottish Local Authorities?

Maree Todd: Yes.

Sandesh Gulhane: The forecast cost from the Scottish Government is up to £1.3 billion over five years. How much of that will be an increase for front-line services?

Maree Todd: That statement is incorrect. The forecast cost of the national care service, as refined, is £345 million over 10 years.

Sandesh Gulhane: How much of that will be for an increase in front-line services?

Maree Todd: There has been a significant increase in front-line investment in the current parliamentary session. Our ambition was to increase investment by a quarter, and we achieved that earlier than expected. I expect, given our ageing demographic, that our front-line costs will increase in the next five years.

The financial memorandum is about the cost of the bill, not the cost of social care. At the moment, we spend £5.75 billion per year on social care.

Sandesh Gulhane: Absolutely. You are saying that that money is for the cost of the bill and it is not going directly to front-line services.

Maree Todd: The £345 million does cover some front-line services.

Sandesh Gulhane: Four different parliamentary committees have criticised and, in some cases, rejected the national care service plan, yet you continued to push it at a cost of £30 million, putting taxpayers, the social care workforce and those who rely on care at risk. Why did you continue to push it when all those committees were telling you that there were real issues to consider?

Maree Todd: When the bill was introduced, a number of committees in the Parliament, Opposition parties and stakeholders raised concerns about it. That is why we paused and refined it. We worked hard to strike an agreement with the Convention of Scottish Local Authorities and the national health service on the tripartite shared accountability arrangements, which we did last June. From last June, we have worked together on that point.

The amendments that I sent to the committee in June were draft amendments that were intended to bring that agreement to life in legislation.

Sandesh Gulhane: You touched on the amendments that were sent to the committee—I think that there were about 46 of them—and they completely changed the bill as it was originally drafted, yet we went through stage 1 and then retook evidence. You have said to us that you do not want to continue with stage 2 just yet and that you are going to take time to listen, but your letter seems to indicate that you are removing part 1 of the bill. Does that mean that we will need to start again in considering whatever proposal for the NCS the Government puts forward?

Maree Todd: I do not think so, no. It is well established that there is a great deal that we agree on in the bill. I need to hear from Opposition

parties and stakeholders which parts of the bill they agree with and which parts need to be refined. I am in the process of listening, reflecting on what I am hearing and making decisions on how to move forward.

You will have heard in the evidence to the committee from people who access social care and whose loved ones depend on social care that it is very clear that the status quo is not acceptable. Many people are telling us that the social care system in Scotland is broken and that there needs to be fundamental and systemic change to deliver better social care. I will be keen to hear from all political parties in the Parliament on how we proceed.

Emma Harper (South Scotland) (SNP): I want to pick up on what you said about the variation in care across Scotland. I know that certain local authorities have one health board, and that other health boards work with up to three local authorities. Are health and social care integration and the variation that you are describing—in relation to delayed discharge, for example—part of why the service needs reform and why the people who provide care and access care are asking for change? The variation is one aspect of that.

Maree Todd: Yes, absolutely. That is one of the most crucial things that people are asking us for. They are unhappy that they face a postcode lottery, with people in one part of the country having one type of social care system and access to certain services and people in another part of the country facing a completely different situation.

There is a focus on delayed discharge numbers not because they are the most important aspect of social care but because they are indicative. Delayed discharges are the tip of the iceberg and they indicate a dysfunctional system. Delayed discharge numbers vary by a factor of 10 across the country—the level of delayed discharges in the worst area in Scotland is 10 times that in the best area in Scotland. That is an unacceptable level of variation for our citizens to tolerate, and I agree with them that that needs to change.

Emma Harper: Thank you. I know that we will come to the issue of integration later, so I will pause there.

Paul Sweeney (Glasgow) (Lab): During our scrutiny of the draft stage 2 amendments, it was clear from numerous stakeholders that there was an immediate need to pursue concurrent reforms, notwithstanding the passage of the bill. What is the scope of any measures that you are considering to address immediate concerns in relation to a number of factors that stakeholders raised? Those factors include the recruitment and retention of staff; ensuring consistency and equity in the delivery of social care; the complex

governance landscape of integration; unmet need; waiting times for assessment; and carers' right to breaks?

Maree Todd: You are absolutely correct. During the bill process, I have personally spoken to hundreds of people who access social care, and the team has heard from thousands. People are telling us loudly and clearly that the system is not working. We have increased investment and, as I said, we have set ourselves a target of increasing investment. Many would say that the fundamental challenge is a lack of investment, and I would not disagree that social care needs more money. However, we have invested an extra £1 billion over the past few years, and we have not seen the systemic improvement that we would have expected from that investment. The Feeley review looked closely at the system, and Derek Feeley said that the system very clearly needs reform and that it is not simply a case of pumping additional money into a system that needs reform.

We have a suite of work. A lot of work is being done to improve conditions for social care workers. We have worked closely on, and are close to delivering, a collective bargaining system. A lot of work is being done to attract people into social care careers and to support them with continuous professional development.

As I described in the chamber last week, we have a weekly collaborative response and assurance group meeting at which Government and local systems come together to look at delayed discharges in particular in order to work out how to tackle them and how to tackle unmet need and to look at what can be done to improve efficiency in the system and pick up areas of best practice. It is difficult for local systems to pick up best practice in other parts of the country and translate that into their area. It is not a case of one size fits all, so people have to adapt best practice and apply the methodology that has been used in parts of the country where it is working well to their area. As I have said before, I live in the rural west Highlands, and it is clear to me that it is not a case of one size fits all. However, a national care service would enable us to better pick up best practice, share it around the country and ensure that our entire system works as well as it possibly can, despite the strains.

Paul Sweeney: You highlight the fact that financial resources alone are not the solution and that other metrics must be considered, and you have outlined some examples. To what extent are you considering legislative amendments? For example, could you amend the Public Bodies (Joint Working) (Scotland) Act 2014, the Social Care (Self-directed Support) (Scotland) Act 2013 and the Carers (Scotland) Act 2016 to give effect to some of the goals that stakeholders have

highlighted and to address problems in the system?

Maree Todd: I might ask my officials to chip in, but, fundamentally, aspects of the National Care Service (Scotland) Bill would amend those pieces of legislation to deliver the changes that people have told us, through the Feeley review, they want to see.

Paul Sweeney: I suppose that what I am asking is whether you are trying to do this through discrete actions rather than as a single move. The proposal has clearly not been met with support from key stakeholders, but could you consider taking forward certain actions through amendment of existing legislation?

09:45

Maree Todd: That looks like an attractive option—I can understand why that looks like an approach that could be pursued. However, the reason why we chose to have the National Care Service (Scotland) Bill was that we think that fundamental structural reform is needed, and we think that it is wise to bring all of those things together into one piece of legislation that the Parliament can scrutinise in one go.

There are some things that we can do only with primary legislation. For example, a crucial part of the national care service, as proposed—and one that everybody supports—is the information-sharing aspect, which requires primary legislation.

You could perhaps pursue each of the goals of the Feeley review on an individual basis, and you could probably, by regulation, achieve some of them, but there are some things that you just cannot do without primary legislation.

Paul Sweeney: Do any of your colleagues wish to come in on that?

Donna Bell (Scottish Government): No, I think that the minister has answered the question fully.

Paul Sweeney: Clearly, there is a problem with gathering support from trade unions, local authorities and, indeed, Parliament. Do you think that one way to break through that impasse would be by highlighting where there are opportunities to implement reforms incrementally using existing legislation, and then pointing out where there is a clear need for a discrete piece of overarching legislation that could come in later? Trade unions have expressed a view that action is needed in the social care sector now, and perhaps they would be more likely to lend you their support if certain actions were taken sooner.

Maree Todd: I work closely with the trade unions. Many of the comments that they have made do not actually relate to the legislation; they

are comments on social care in general, and their view is absolutely valid. To be clear, they are raising concerns about the social care system, not about the legislation.

It is important that I listen to all of the parties in Parliament and work out what there is support for. What I am hearing at the moment is that there is strong support for a number of aspects of the bill. In fact, I am not even hearing much concern being raised about amendments that might be needed. There is clear consensus around elements such as complex care commissioning, Anne's law, information sharing and support for unpaid carers. There is strong support for those aspects.

The things that the trade unions are asking for are outside legislation—so they are not part of the bill—and concern issues such as sectoral bargaining. We are making good progress on that and are close to the point of that being a reality. In fact, the legislation that Stephen Kinnock has introduced in the United Kingdom Parliament is probably more relevant in that regard, and I am in negotiation at the moment with the UK Government about how that legislation can apply in some way to Scotland, particularly given the work that we have already done to put fair work principles into social care in Scotland—we are well ahead of the United Kingdom Government in that regard. I am keen to collaborate with the UK Government on that piece of work, but that would be a separate piece of legislation from the NCS bill.

Paul Sweeney: Could you furnish the committee with an outline of where the Government sees an opportunity to make progress, regardless of the bill, at the moment? You highlighted collective bargaining, but perhaps areas including the right to breaks, Anne's law, ethical commissioning and the national social work agency could be progressed without the NCS bill going forward, unlike the areas that you have highlighted, which include information sharing, that would require new primary legislation. What discrete elements could be taken forward under existing legislation, and which depend on the NCS bill progressing?

Maree Todd: Absolutely. Part of the reason for having this discussion is that we make sure that members of the committee understand that there are things that we can do by different means. There are subtle differences in how we can achieve things.

Take Anne's law, for example. Relatives of care home residents were initially very keen on the idea of that being achieved through primary legislation. One reason for wishing to use primary legislation is that it cannot be changed so easily. Were we to face another pandemic, changing primary legislation would require a level of scrutiny from

Parliament that changing secondary regulations would not require: the latter do not attract the same level of scrutiny.

There are definitely different ways to achieve the same thing. I need to spend time listening to stakeholders and to political parties in Parliament, then I will need to navigate a way forward. It is really important that I work closely with stakeholders. I am content to come back to you with a clearer idea and a proposal. In my letter, when I asked for a pause, I said that I would like to set out in the new year what I think the next steps are likely to be.

Joe FitzPatrick (Dundee City West) (SNP): In his initial question, Paul Sweeney asked about the immediate challenges and financial pressures that social care is facing. One big thing that has happened recently is the UK Government's decision to raise employer national insurance contributions but not to exempt the social care sector. Will you talk a little bit about the impact of that decision?

Maree Todd: We had a debate in Parliament last week about the impact of that decision on the entirety of our public services. Social care in Scotland is delivered slightly differently from how it is delivered in England. The UK Government's decision was made without any detailed examination of how social care is delivered in Scotland, without consultation of stakeholders and, as far as I understand it, without modelling of the consequences of the decision.

The decision to raise employer national insurance contributions was made because the Labour Party boxed itself in during the run-up to the general election and left itself with few options for raising extra funding, which we all, in this Parliament, have agreed is required for our public services.

I would go as far as to say that the impact on social care could be catastrophic. We think that the cost to the social care sector will be around £84 million a year. Much of social care is delivered by private companies and not-for-profit companies, which have no way of increasing the amount of money that they take in. Most businesses can increase their charges to cover the extra national insurance costs, but it is very difficult for our social care sector businesses to do that. For example, the not-for-profit sector has calculated—it does not think that this is the entire cost; this is its initial rough calculation—that it will cost £21 million annually. It is inconceivable that the sector will be able to find that extra money easily next year.

You will all have heard about market failure and the challenges that are faced in certain parts of the country. For example, you heard evidence from

Fiona Davies that, over the past two years, there has been a loss of 200 care home beds in NHS Highland. The system is extremely precarious there—we already have market failure in Highland. I believe that the added pressure from extra national insurance costs could be catastrophic for our system and I am really anxious about the impact that it might have.

Joe FitzPatrick: You mentioned costs of £21 million and £84 million. Those are annual costs, so they cannot be filled from reserves.

Maree Todd: No—those costs will come every year. It is a permanent change to employer national insurance contributions. Social care will be hit particularly hard because of the number of part-time employees in it; there are lots of low-paid and part-time employees, so the change will hit the sector particularly hard.

David Torrance (Kirkcaldy) (SNP): How do you respond to the criticism that the committee has heard from many stakeholders that the expert legislative advisory group had very limited input to the formation of the Scottish Government's stage 2 amendments to the bill?

Maree Todd: I will bring in Donna Bell, who was very close to the ELAG. The ELAG was brought into being largely because Parliament suggested, during stage 1, that we needed to put together such a group. We were already in the process of hearing from and listening to stakeholders a great deal. I will check with Donna, but I think that more than 70 organisations were involved in the group.

Donna Bell: At times, yes.

Maree Todd: Given the complexity of social care and the number of stakeholders involved, it was very likely that no single stakeholder view would be reflected in the bill. However, each of them was heard and the bill was developed with their collaboration. We worked hard to bring to life what people were telling us.

Do you want to say more, Donna?

Donna Bell: The ELAG met regularly and was well attended, and we covered all the themes on which draft amendments were later brought forward. There was honest and open debate over a number of weeks, which allowed people to give us their views. As Ms Todd said, it was tricky to reflect individual views—indeed, in some cases, there were conflicts among the views that were offered. However, overall, it was a successful process.

John Paul Liddle chaired the group a number of times, so he might want to say a wee bit about it.

John Paul Liddle (Scottish Government): I echo what Donna Bell and the minister have said. Given the size of the group and the diversity of

views that were expressed, we were not aiming for consensus among that group of people—that would not have been a realistic goal of the discussion. It was an opportunity for people to hear one another's points of view and for us to hear all that rich discussion to inform the draft amendments that were shared with the committee in June.

David Torrance: What is the current status of the ELAG, if it exists? What do you expect its future role to be in the national care service?

Maree Todd: The group is not meeting at the moment, but we could revive it. I regularly meet a number of stakeholder groups. I meet very regularly with the social covenant steering group and the key stakeholder reference group, and have done so throughout the development of the bill. In fact, I am meeting them today, after my committee appearance. The expert legislative advisory group is a much broader group that focused particularly on the drafting of the bill. We could bring it back together in the future if we or Parliament feel that it would be useful.

Brian Whittle (South Scotland) (Con): Good morning, minister and officials.

I want to ask about accountability in the national care service. It is fair to say that there is a pretty strong divergence among views about where accountability should lie. You mentioned the postcode lottery, which I recognise very much from my area—Ayrshire—which has three councils and one health board, with significant variation among the three councils. How would you address the need to overcome the postcode lottery while recognising that local government will still have responsibility for delivering the service?

Maree Todd: You are absolutely correct that there is an unacceptable level of variation. We often use Ayrshire as an illustration of that. As you said, the area has one health board and three local authorities. East Ayrshire has a fairly low level of delayed discharges. As I said, delayed discharge is not the be-all and end-all, but it is the tip of the iceberg. North Ayrshire has more than double the level of East Ayrshire, and South Ayrshire has more than three times the level of East Ayrshire.

There are different levels of priority, spend, grip and assurance in each of those systems, and there are challenges. Demographic differences might contribute somewhat to the differences; indeed, we probably will not get uniformity across the country, even if there is a national system.

We are hearing loudly and clearly that there is some support for recognising the situation as it stands and improving and picking up learning nationally. For example, South Ayrshire Council, which I spoke to recently, has started a frailty

service in its hospital that is having a huge impact on the efficiency of its system. That is a really effective piece of work. We need to learn about that quickly and translate it throughout the country, because it is having an almost immediate impact, but we have very little in the way of mechanisms for doing that.

10:00

I think that it was Henry McLeish who said to me—he does a lot of work for Alzheimer Scotland—that if he visits an area of Scotland where there is absolutely amazing work going on and asks, “How do we get this happening in the other 31 local authority areas?” he is told that the charity or third sector organisation that is delivering that amazing work has to go and persuade the other 31 local authorities to do the same thing. A mechanism is needed to make sure that great work is picked up nationally.

When we first made the shared accountability agreement, we agreed that operational responsibility and statutory responsibility delivery would absolutely remain with local authorities. I have reiterated many times that I believe that that is really important. I come from the rural west Highlands, and what works in my part of the country will not work in Edinburgh or in Fife. It is important that delivery of social care can take into account the local challenges and the local assets that are available in every community.

However, there is undoubtedly unnecessary variation. The bill, as it was originally introduced, meant that ministers would have had sole responsibility for social care in Scotland. At the moment, it sits with local authorities. We said that local authorities, the NHS and ministers would share accountability and that together we would make sure that there was top-notch local delivery and national oversight. When the committee looked at self-directed support, it made it clear that one of the things that was required was national oversight. That is what we agreed on, and we have been working on that. We have been meeting weekly with local authority colleagues and the Convention of Scottish Local Authorities since June last year in order to deliver that. We had agreed, I would say, 90 to 95 per cent of what was required to deliver that.

As I set out in the chamber last week, around June this year, local authorities came to Government and said that they had capacity challenges in facing the delayed discharge crisis and continuing negotiation over the National Care Service (Scotland) Bill. They asked whether we would take that off the table temporarily so that they could focus on delayed discharge, so we did that. We paused negotiations but, without coming back to the negotiation table, local authorities then

withdrew their support for the shared accountability agreement. I set out in Parliament that I was so disappointed with how that happened. I believe that we should have come back to the table and worked on the remaining very small percentage of areas on which we disagreed, but that is not where we are—local authorities have withdrawn support.

On accountability, I think that you have heard in your evidence sessions that the disabled people's organisations say that we have given far too much power and responsibility to our local authorities, and the local authorities say very clearly that we are trying to take too much power away from them. The fact that we have those polar-opposite views is just the reality of the situation that we are in at the moment. We have to strike a balance between those polar-opposite views—on accountability being entirely the responsibility of local systems, which are democratically accountable to their local population but with no national oversight, or national oversight with no difference in local delivery. We have to find a balance in the middle, and I thought that we had found it. That is why I am frustrated and disappointed by what has occurred.

Brian Whittle: As an aside, I think that Ayrshire is a very interesting example of that. I happened to meet the chief executive on Friday and asked her why there was such divergence locally. I wonder whether you have done the same. I thought that it was quite enlightening.

Maree Todd: As I said, we meet weekly with local systems—every one—across the country. The Cabinet visited Ayrshire recently to meet system leaders and had detailed discussions about some of the challenges that they face.

We very regularly meet people in some of the areas that face particularly difficult challenges, in order to drill down to find the explanation for local variation. For example, as part of my ministerial role I have regular meetings with Highland systems to look at why their delayed discharge rate is so high compared with rates in the rest of the country. There are some reasons for that—for example, rurality and poverty have an impact. However there is undoubtedly a level of variation that is not explainable only by those factors. The challenges that are faced in Highland in delivery of social care—the geography, topography, sparse population, labour market shortages and competition with hospitality in the labour market—also apply in Argyll and Bute, for example, which does not face the same challenge in respect of delayed discharges.

Brian Whittle: The Public Bodies (Joint Working) (Scotland) Act 2014 was about trying to integrate health and social care. It is fair to say that whatever changes you make in social care will

have a significant impact on delivery of healthcare in general. Why, therefore, is a national care service, not a national health and social care service, the right model?

Maree Todd: A national care service was recommended in the Feeley review, which came, I suppose, from the experience during the pandemic, the impact of which on social care delivery around Scotland was strongly felt by the people who accessed social care. That impact is still being felt. The Feeley review was an independent review of what happened during the pandemic, but it looked more broadly than that and recommended a national care service.

There is no getting away from the fact that healthcare and social care need to be integrated, so we need to think of an integrated whole system when we think of all of the challenges that are faced in both healthcare and social care. For example, the four-hour accident and emergency target is a health target, but it is a canary-in-the-mine target that reflects the whole system: it tells us how healthy things are in primary care, and how healthy they are in social care, in terms of how easy patient flow through a hospital is. They are a whole system—you cannot separate the two—so it is vitally important that we think of the issue in that way.

Brian Whittle: I have a further small question. Are you still committed to the creation of a national care service board, and how will that be constructed?

Maree Todd: I have not yet made a decision on that. As I said, I am hearing from political parties in Parliament and listening very carefully on what I think we can legislate on. However, I think that it is important that we have national oversight of what is happening in social care in Scotland. We have heard that loud and clear throughout the process of developing the legislative proposals for a national care service bill.

Emma Harper: I will follow on from Brian Whittle's questions. I heard what you described about the variation between East Ayrshire, North Ayrshire and South Ayrshire. It is obvious that something needs to change to address the variation of care. I am interested in exploring what you would like to take forward—for instance, in changes to integration joint boards—and what you would like as an outcome as we go forward.

Maree Todd: The Government thought that the legislative proposals that we brought forward would deliver the change that is needed.

On how integration joint boards operate, there are clearly challenges with regard to the different cohorts that are represented on the IJBs. We need to provide support and training to ensure that IJBs are able to act as a whole as well as representing

their individual constituency. For example, when a local councillor sits on an IJB, they are not simply representing the council's view; they are also representing citizens. We could provide more support to enable that representation.

I am absolutely determined that an equal seat at the table for people with lived experience would bring better focus, grip, assurance and scrutiny to the local system. People with lived experience need representation at local and national levels, and the Feeley review was clear that one of the main ways in which we would deliver a human rights-based approach to social care would be by ensuring that people with lived experience had a seat and a voice at the table at local and national levels.

There are challenges. I hear clearly from carers' and service users' representatives that there is a power imbalance round the table, but there are things that we could do to support people to ensure that they are able to represent users and lived experience effectively. We could put supports in place to ensure that that process works really well, which would deliver a level of grip and assurance that is not there at the moment.

Emma Harper: People with lived experience say things such as, "I don't want to have to repeat my story multiple times." You have set out the fact that primary legislation is required to support better or safe information sharing so that people with lived experience are not retraumatised by being asked to share their story time and again. Is that part of the reason why we need this primary legislation to create a national care service?

Maree Todd: Yes. The data-sharing potential is absolutely crucial, and it can be delivered only by primary legislation. You are right that people regularly tell us how traumatising it is to have to tell their story time and again. Committee members will have heard evidence from people who have a variety of carers who wear health or social care hats, and those carers might go into someone's house every day, but the systems do not appear to talk to each other. Therefore, we absolutely need to do better.

Data sharing would make the system significantly more efficient and free up a lot of time at the coalface. Such an approach would also be a lot kinder to the people who access social care, because they would not have to tell everyone the things that are important to them time and again—they would do that just once.

Emma Harper: How are you taking forward the proposals that are in the legislation to delegate children's services and justice social work services?

Maree Todd: When we paused negotiations with COSLA, there were three areas of

disagreement—direct funding, removal of people from boards and the issue of children and justice, which had been contentious throughout the process. I have been clear that it would be best for children's and justice services to be within the national care service. That is important to give an individual who is accessing care the most cohesive and joined-up experience. Children who are taken into care are often vulnerable, and they are taken into care because of issues that make their parents vulnerable. Their parents often have adult social care support or justice social care support.

It is important that we look at how integration of the whole system can mean that it works better for vulnerable citizens. That is about recognising that children live in families and in communities and that the child usually requires care not because of their own situation but because of the family situation.

10:15

The social work profession has been clear to us that it would like the profession to stay together under one umbrella, so that is something to bear in mind. However, the issue has been contentious with local authority partners, who believe that the decision whether to delegate services should be a local decision.

I do not know whether any of my officials wants to add more or whether I have explained the position adequately.

Donna Bell: No—you have explained it well.

The Convener: Minister, you will be aware that the committee's stage 1 report called for greater clarity about the scope and purpose of the co-design process and for the Parliament to be updated regularly on progress and outcomes. Will you provide an update on what the Scottish Government is doing to address that recommendation?

Maree Todd: Donna Bell will take that question.

Donna Bell: We have provided updates to the Parliament during the co-design process, and we have said throughout that co-design will be an ongoing process, because that is how we intend to build the national care service.

We have published a number of reports from the co-design work that was done last year on keeping care support local, information sharing, making sure my voice is heard, realising rights and responsibilities and valuing the workforce. We have followed up on each of those and we have done specific work on the national care service charter and the workforce charter. A significant amount of work has also gone into the co-design of the complaints process.

All those reports have been published on our web pages, and we are happy to share them again with the committee if that would be helpful. There is also an on-going process of co-design with the lived experience expert panel and the wider stakeholder groups that we engage with.

We can provide an update on the specific things that we have published and a more general update on the engagement that we are undertaking.

The Convener: Thank you. How will the co-design work on the charter be completed and implemented? Will that work be on-going while the bill has been paused?

Donna Bell: I can start, and John Paul Liddle might want to come in. We are on the second iteration of the charter, which is available to committee members and the wider public. The process will be iterative. We have a version that is in use at the moment, but we have been clear that the process needs to be iterative and that, if things change, we should absolutely be open to that change. I am happy to share that with the committee again and to provide regular updates, if that would be helpful.

The Convener: That would be helpful.

Carol Mochan (South Scotland) (Lab): I have a question about the national social work agency, as stakeholders have approached many of us about it. I will then ask a more general question, if you do not mind.

Is it the intention to move forward with a national social work agency? I think that everyone agrees that we do not need legislation for that, but people are keen to know whether the agency would be just for social work or whether it would include the wider healthcare professional group.

Maree Todd: You are absolutely correct; we are still committed to establishing a national social work agency. There is consensus that it would be a good thing, and it stemmed from a recommendation in the original Feeley report. We think that it is required for the social work profession, which does not have the same level of professional oversight and representation as do some of our other health and social care professions. An agency will help to drive change and continuous improvement and will provide support.

Committee members will all be aware of the number of newly qualified social workers who leave the profession. We want to provide a good and supportive environment so that people are supported to become effective professionals and to progress, through the course of their working life, into specialist areas, if that is required.

I think that Feeley picked out the social work profession particularly because it has a particular role in legislation. I always describe the social work profession as absolutely crucial to upholding human rights in the system. If we want to achieve a rights-based approach to social care in Scotland, it is vital that the social work profession is supported and enabled to fulfil its duties according to law in terms of upholding human rights in the system. That is why there is a particular focus on social workers.

That is not to say that there is no focus whatsoever on social care workers; everyone in the system is really important. The scale of the challenge that the social care system faces because of the change in employer national insurance contributions and how many people no longer working in the system that might translate into is really concerning. Everyone who works in social care is really important.

I am well aware that professionals such as occupational therapists work in the same sort of areas as social workers. We are working with their professional body to make sure that they are well represented in the decisions that we are making. However, it is important that social workers have their own professional body and that we, as parliamentarians, recognise how crucial that profession is to the delivery of human rights-based social care in Scotland.

Carol Mochan: I think that people will find that answer quite helpful, because we get asked about the agency.

I have a more general question, if you do not mind my asking it. I have been listening carefully to the points that you have been making, in your leadership role as the minister for the national care service. When you make your recommendations to the Cabinet, do you emphasise that we should stick to trying to get agreement on the national care service, or do you give advice on three or four things that we know that we can do now and that we should be moving forward with? I am interested to know what balance you give, as the leader in that area, when you speak to your colleagues.

Maree Todd: My main focus is on outcomes and on what we need to achieve for the people of Scotland. I have heard loud and clear that the system that we are currently overseeing to deliver social care is broken and that we need to fundamentally change the way in which we deliver.

I ensure that the voice of lived experience is heard loud and clear, which I think is part of my role as minister. I have been dismayed at how that voice has not always been heard in the discussion about social care. Some very strong institutions are involved in delivering local and social care,

and the people who access social care are often not heard within that. I consider my relationship with those people to be very precious and, when I make representations to Cabinet, I absolutely talk about how the decisions that we make will impact on them, as well as what their wishes are and what outcomes they want to see in the system.

Those people tell me clearly that they want a human rights-based approach, to tackle the variation around the country, and a system of social care that protects their dignity, supports them and has in place early intervention and prevention before they reach crisis. They also tell me that, when things are not going well, they want a clear system through which to put in complaints or concerns and to have those concerns investigated and upheld.

I am a junior minister, and I am very happy to take the guidance and wisdom of all my senior colleagues. That is what happens with collective responsibility. We have a great deal of experience around the Cabinet table and in our Government. I listen carefully to how my colleagues think that we can deliver the improvement that we need to see, in the same way as I listen to all of you as parliamentarians.

Carol Mochan: I accept what you say about the outcome that you are looking for. My question is, do you think that, at this point in time, you should be doing some of the things that can be done now quickly? Would that benefit the whole group that you have said you want to get outcomes for?

Maree Todd: Absolutely, and I will be looking for allies who will work with me on the things that we agree on—and we agree on a great deal. I will be looking for allies across Parliament who will help me to progress the changes that we all want to see. I rarely hear from parliamentarians here that they want things to stay the same. I think that everybody acknowledges that the system needs fundamental change, so we need to work together on what that change will be.

Carol Mochan: Thank you.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): Good morning, minister. I want to explore some issues around the fair work agenda. We have already touched on some of that, but I would like to go into a bit more detail.

Stakeholders have advised that a definition for ethical commissioning should be discussed and agreed, emphasising that that is critical in delivering the fair work agenda.

We have heard from you this morning about the sectoral bargaining issues that you have been discussing with your UK counterpart, which was quite helpful. It might be good to get a bit more information about that.

We have also heard about the pressures that will be put on the system by the estimated £21 million in additional costs for the third sector because of the national insurance changes. We know that there are good examples of collaborative commissioning and procuring arrangements, such as the Granite Care Consortium and the Fife care at home collaborative. How do you intend to further facilitate and accelerate more ethical commissioning models and improved procurement practices, bearing in mind that those new pressures will perhaps put some spanners in the works?

Maree Todd: You are absolutely correct to pick out the examples of really good practice that we have in Scotland. As I said, although there are areas where brilliant things are happening in our social care system—the Granite Care Consortium and the Fife care at home collaborative would be exemplars for ethical commissioning and procurement—picking up on them and ensuring that things happen that way all over the country is a challenge. Through ethical commissioning and ethical procurement, fair work principles will be embedded in social care tenders and contracts—where we can manage to do that in a non-discriminatory, proportionate and relevant way in relation to the subject matter of the contract. There are some tricky issues of law to navigate, but we will be able to do that.

You mentioned the definition of ethical commissioning. There has been concern from people who are examining the legislation that the profile of ethical commissioning has slipped. There has certainly been no policy change from us—we are committed to ethical commissioning and procurement. If there are issues with the drafting of proposals to remove bits from the legislation or to give them a lower profile, we are more than happy to take the committee's guidance and make sure that those areas have prominence.

We know that there is a big implementation gap between the commissioning intent and the delivery of social care for people. There is an inconsistency of approach in different areas, and the views of people with lived experience are not always heard. We established the adult social care ethical commissioning working group to look at improvements to the current commissioning process. We did that in partnership with COSLA, because ministers are not responsible for commissioning and procurement of social care—local government is.

The group is considering existing good practice, such as the examples of collaborative commissioning that we have within Scotland. It is also looking at what the barriers to ethical commissioning might be. As you say, the hike in

employer national insurance contributions may well be a spanner in the works, so it is looking closely at the barriers and the financial considerations.

10:30

Local examples have been looked at very closely. I would caveat this by saying that it is not a case of one size fits all, and although I hear great things about Granite Care, for example, we cannot make things work exactly like that in every part of the country. However, the way that Granite Care is working is certainly something to be examined, picked up on and learned from.

Elena Whitham: I have one other wee question—you touched on it earlier—about many of the workers within the sector being part time; also, a lot of them are women. I would like to explore a little how we will make sure that the workforce will have their lot improved, as far as we can possibly do that.

If we are not proceeding with the national care service at this stage, how can we protect that workforce as much as possible in the meantime, given the precariousness that we are now seeing, with the added pressure of that national insurance change?

Maree Todd: You are absolutely correct—there are real challenges. There are some structural reasons why the social care workforce is disempowered compared to other workforces. First, caring is not generally valued in society. That is not my view, but care is regarded as a drain on society rather than as an investment in society globally. We need to shift that narrative.

It is a largely female workforce; I think that more than 80 per cent of the workforce is female, and we know that, even 50 years or so after the equal pay legislation came in, women are not paid equally in society.

The workforce is also largely non-unionised. Less than 20 per cent of the workforce is unionised—I think that the figure is just about 19 per cent. The workers who are unionised are largely those who work for local authorities. Social care workers in the private sector tend not to be unionised. I think that many of us around the table would have concerns about that and would recognise that unionisation would be a way of strengthening the workforce's hand and ensuring that they were empowered and recognised within the system.

I regularly talk to unions about that—I say, “I’m not sure if you think I’m an unusual sort of Government minister, but I would be far more comfortable if this workforce were more unionised”. I cannot introduce unionisation to the

workforce; in lieu of that, I can work with the unions to take away some of the barriers. We are working carefully on sectoral bargaining. We think that that is very close to being ready and that it will deliver an improvement in pay and conditions for the sector. Sectoral bargaining has been really challenging to deliver, and the unions were very helpful to us in recommending academics who could help us to unlock some of the barriers. The challenge is that there are more than 1,000 different employers and we in Government are not part of the negotiations, but I think that we have managed to make really substantial progress, so I am pleased about that.

We need to try and give effective voice to the workers in the sector. I should make it clear that when I talk about lived experience, I am talking about the lived experience of people who access social care—people who use social care, their carers, the people whose loved ones use social care, and the people who work in social care. To me, those are the voices of lived experience, and they need to have representation. My idea for the national care service board was that people working in social care would have representation on the board as well.

There are things that we can do. We will work with the UK legislation that is being introduced. Many of the barriers to progressing fair work in Scotland are because employment law is reserved, so we do not have the power to tackle many of the issues. We try to get around that through procurement and commissioning.

We now have a different Government in the UK and the legislation that it has introduced is interesting. We are significantly further ahead in Scotland in delivering fair work in social care, and I am keen to work with the UK Government on the issue. Of course, I want it to devolve powers to the Scottish Government because we are much further on, and the social care situation in Scotland is sufficiently different from that of England to warrant it. We will work together however we can to ensure that we make a difference to the people who work in social care.

The other thing that we do regularly is talk up social care. I am not sure how much difference that makes, but I do that because I see social care as a massive investment in society. I think that I have spoken to the committee previously about attending a national forum at the Glasgow Science Centre and seeing on the wall there a quote from Stephen Hawking, who made an incredible global contribution to our understanding of the world and the universe that we live in. He would not have been able to make that contribution if he did not have social care. Social care is absolutely vital to the individuals who access it and their families, and it is vital to our communities and our society. It

makes a profound difference to our society, and we must all say that loudly and clearly as often as possible.

Gillian Mackay (Central Scotland) (Green): Good morning, minister. We have touched on Anne's law already. During the evidence that we took on the stage 2 amendments, we heard from people who support Anne's law that they were frustrated at the lack of progress in achieving the aims of Anne's law before the legislation is passed. Do you share the frustration of those families? What work is being undertaken to give life to the practicalities of Anne's law before it is actually put on the statute book?

Maree Todd: I regularly meet the care home relatives' representatives. In fact, just last week, the First Minister and I had a meeting with them and Campbell Duke, who is Anne's widower. As is often the case, we had a very emotional discussion about the circumstances that have led them to plead with the Government and Parliament to bring Anne's law to life. At the meeting, the First Minister and I reiterated our absolute commitment to delivering Anne's law in legislation. We assured the families that under no circumstances will we allow the difficulties in legislating for the NCS to mean that we do not legislate for Anne's law—we will do it.

It is really important that we get the bill right, and I am really grateful for the families' continued input to that. The reason why the amendments on Anne's law were held back from the package of amendments that came to the committee in June was that we have not quite got the bill right yet, and I have assured them that it will not be right until they think that it is right. It is not my opinion that counts; it is theirs.

On that basis, I am really pleased that Anne's law has, in effect, been introduced in Scotland, which we heard Kevin Stewart mention in the chamber last week. He put the spirit of Anne's law into health and social care standards for care homes, which has strengthened them, and people who live in care homes can now name family members or friends to visit them when there are restrictions on routine visiting to prevent infection. They can also name people who directly participate in meeting their care needs.

I go back to the discussion around Anne's law. The National Care Service (Scotland) Bill was chosen as the vehicle for Anne's law because of the commitment throughout the entire bill to people's fundamental human rights and to embedding human rights in our social care services. There are more options and flexibility with primary legislation than through amending secondary legislation, but we will not let the challenges with the bill prevent us from legislating. We will do what the families are asking of us.

Gillian Mackay: Do you have a timeline for that? Obviously, the bill has been paused, so I may be asking you to get your crystal ball out, but some of the families are concerned that the pause will mean that full implementation is kicked further down the road. Can you reassure them about the impetus to get it done and over the line?

Maree Todd: Anne's law will be implemented as soon as is practically possible. I think that the care home relatives know and understand the challenges that we are facing. Anne's law will engage the European convention on human rights, and when we are balancing human rights, it is always tricky to get the legislation correct. They understand the complexity, the sensitivity and the challenges that are involved, and we are working very closely with them to get the balance right on those rights. I assure them that we will deliver Anne's law. We need to take time to get it correct. As I said in my letter to the committee, I will come back with a new timetable for the new year, so I do not think that they are going to be waiting terribly long. I do not think that there will be a long delay.

There has been lots of discussion about how long it will take for the national care service to come into being once the legislation has been passed. There have been quite a lot of headlines in the newspapers about how many years it will take for that to happen. Anne's law could be implemented immediately, as soon as the bill is given royal assent. As soon as the bill becomes an act, we could see rapid implementation from that point on, and we would be working to deliver it as soon as was reasonably practicable. I am remembering my Government jargon: as soon as is reasonably practicable and as soon as the bill becomes an act, we will be working hard to deliver it for them. There is no reason to wait.

Gillian Mackay: That is great. Thank you.

The Convener: Minister, I thank you and your officials for your attendance. You can leave now if you wish. The committee's work will continue.

Subordinate Legislation

Official Controls

(Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) (No 2) Regulations 2024 (SSI 2024/324)

10:42

The Convener: Agenda item 3 is consideration of three negative Scottish statutory instruments. The Delegated Powers and Law Reform Committee considered all three instruments at its meeting on 19 November 2024 and made no recommendation in relation to them, and no motion to annul has been lodged.

The first instrument for our consideration is the Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) (No 2) Regulations 2024. The regulations amend Commission Implementing Regulation (EU) 2019/1793, which is on the temporary increase of official controls and emergency measures governing the entry into the European Union of certain goods from certain third countries.

Do members have any comments?

Emma Harper: I have no problem with any of the instruments but, having reread the information, I have a comment. It is worth recognising and highlighting the work that Food Standards Scotland and the Food Standards Agency do in reviewing the food products and other products that come into the country. In thinking about high-risk food and feed, we need to consider the levels of pesticides that are used in other countries. Aflatoxins, mycotoxins and other things that are potentially carcinogenic may exist at levels that are not acceptable. We should value the work that Food Standards Scotland and the Food Standards Agency do in reviewing products and making sure that what goes into our food system is safe.

The Convener: Thank you, Ms Harper. Your comments will be in the *Official Report*.

I propose that the committee makes no recommendation in relation to the regulations. Do members agree?

Members indicated agreement.

The Convener: Thank you.

Food Safety (Sampling and Qualifications) (Scotland) Amendment Regulations 2024 (SSI 2024/326)

The Convener: The second instrument for our consideration is the Food Safety (Sampling and Qualifications) (Scotland) Amendment Regulations

2024. The purpose of the regulations is to extend recognition of relevant professional qualifications for food examiners to those that are issued in Switzerland in order to comply with the UK-Switzerland recognition of professional qualifications—or RPQ—agreement.

As members have no comments on the regulations, I propose that the committee makes no recommendation in relation to them. Do members agree?

Members indicated agreement.

Feed Additives (Authorisations) and Uses of Feed Intended for Particular Nutritional Purposes (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/330)

The Convener: The final instrument for our consideration is the Feed Additives (Authorisations) and Uses of Feed Intended for Particular Nutritional Purposes (Miscellaneous Amendment) (Scotland) Regulations 2024. The regulations implement the decision by the Minister for Public Health and Women's Health to authorise 25 feed additives and one feed for particular nutritional purposes.

As members have no comments on the regulations, I propose that the committee makes no recommendation in relation to them. Do members agree?

Members indicated agreement.

The Convener: Thank you.

At our next meeting, which will take place on Tuesday 10 December, we will take evidence from the Minister for Public Health and Women's Health on a package of subordinate legislation on burial law and then on dentistry in Scotland.

That concludes the public part of our meeting.

10:46

Meeting continued in private until 10:47.

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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