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Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 30 April 2013

Session 4

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	3677
VICTIMS AND WITNESSES (SCOTLAND) BILL: STAGE 1	3678

HEALTH AND SPORT COMMITTEE

13th Meeting 2013, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Mark McDonald (North East Scotland) (SNP)

*Aileen McLeod (South Scotland) (SNP)

*Nanette Milne (North East Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*Drew Smith (Glasgow) (Lab)

David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rosemary Lindsay (Scottish Government)

Richard Lyle (Central Scotland) (SNP) (Committee Substitute)

Jean Maclellan (Scottish Government)

Michael Matheson (Minister for Public Health)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 6

Scottish Parliament
Health and Sport Committee

Tuesday 30 April 2013

[The Convener *opened the meeting at 09:46*]

Decision on Taking Business in Private

The Convener (Duncan McNeil): Good morning and welcome to the 13th meeting in 2013 of the Health and Sport Committee. As usual at this point, I remind those present to switch off mobile phones and BlackBerrys, as they may interfere with the sound system.

The first item on the agenda is a decision on whether to take in private item 3, under which we will consider our work programme. Do members agree to take item 3 in private?

Members *indicated agreement.*

Victims and Witnesses (Scotland)
Bill: Stage 1

09:47

The Convener: Agenda item 2 is our fourth and final evidence session on the Victims and Witnesses (Scotland) Bill. I welcome the Minister for Public Health, Michael Matheson, and his officials from the Scottish Government. Jean Maclellan is head of the adult care and support division; Louise Carlin is the bill team leader from the adult care and support division (SurvivorScotland); Anne MacDonald is a professional adviser in the SurvivorScotland strategy team; and Rosemary Lindsay is principal legal officer for food, health and community care.

We move directly to questions, the first of which is from Bob Doris.

Bob Doris (Glasgow) (SNP): Good morning. Our previous evidence sessions on the bill have provided us with a pretty good focus on where we need to drill down for more clarity from the Scottish Government. I want to discuss some of the details in the bill.

There has been a great discussion about whether it is appropriate to draw the line in the eligibility criteria to participate in the national confidential forum at the age of 18. I know that the minister has written to the committee to outline some of the reasons why the line will be drawn at 18, but there is a feeling that there would be issues wherever a line was drawn—whether at 16, 17 or 18. There are issues if someone falls on the wrong side of the line. Minister, will you put on the record the reasons why you have chosen the age of 18 as the cut-off qualifier for participation in the national confidential forum and say whether the forum could show discretion and perhaps allow a 17-year-old, say, to access the forum in exceptional or unique circumstances?

The Convener: I apologise to Bob Doris and the minister, as the minister may have wished to make an opening statement. He could deal with that question and give his opening statement.

The Minister for Public Health (Michael Matheson): I will go straight to the questions, convener, if that is okay.

The Convener: Okay—great. I wanted to give you that opportunity, just in case.

Michael Matheson: The age limit was carefully considered. Mr Doris is right: there will always be an issue to do with whether it should be higher or lower, wherever the line is drawn.

Part of our work involved looking at the experience in other jurisdictions. Ireland and

Northern Ireland, which are ahead of us on this, set an age limit of 18. In both cases, there was no request for anyone under the age of 18 to participate in any inquiry or commission. I suspect that that is largely because the policy framework and safeguards that are in place have changed over a number of years. Alternative mechanisms are now in place to address the concerns of under-18s who have been in institutional care.

The focus of the national confidential forum is on adult survivors, and 18 was seen as an appropriate limit. Other jurisdictions have gone for a specific period of time in which an individual had to be in care in order to give evidence to or participate in a forum. We have chosen not to do that. It does not matter when someone was in an institutional care setting as long as they are 18 or over.

The policy framework changed a number of years ago to improve the implementation of institutional care safeguards. There is a range of other mechanisms that can be utilised to pursue issues relating to the management of care of those who are younger than 18. The area was given careful consideration—I was conscious that there would always be different views on it. However, I think that 18 is the appropriate limit. The national confidential forum is informed in large part by our experience with the time to be heard pilot forum, where 18 appeared to be the right age limit.

Bob Doris: I asked whether there could be scope for discretion, without prejudice to whether there should be discretion. The key issue for me is that a 17-year-old who approaches the national confidential forum should not simply be told that they do not fit the criteria and that is the end of the matter. If that 17-year-old has needs, will the national confidential forum deal with those directly or will it find another organisation or support group that can do so? It is about ensuring that if anyone under 18 comes forward with unmet needs, those can be dealt with. If there is unlikely to be discretion, what assurances can you give us that any unmet needs will be dealt with appropriately and sensitively?

Michael Matheson: If someone approached the national confidential forum, which—whether or not they were under 18—was not the appropriate setting for their issues, I expect them to be guided to the most appropriate avenue of support. I expect the forum to have in place a mechanism that allows it to signpost people to the appropriate agency or organisation that can address their concerns or give them advice on what they should do to take those concerns forward. I do not want such people to be told “no” and given no further support. They should be given the advice and guidance that they require on whom they should go to and who could provide that support.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): A concern that I have from my own experience as a psychiatrist of dealing with adult survivors, many of whom were revealing their abuse for the first time—it was not necessarily institutional abuse; nevertheless it was abuse—is that at that juncture such people require a lot of support and help.

I refer to the recent north Wales inquiry and the number of new cases that have just emerged in which people felt able for the first time to reveal abuse relating to the 18 care homes in north Wales. We know from that experience that, unless there is clear advice from the forum that people may wish to consult it before they come forward, as well as advice about their likely reactions, and unless we ensure that there is adequate support, we will end up with the situation that was described to us in evidence, which is that people did not find the experience an entirely good one. Such individuals may have felt able to reveal the abuse, which is an important step for them, but what happens thereafter? It will be vital for people to have a care plan or some sort of pathway so that they can be confident that they will get access to support that is co-ordinated with their appearance before the NCF. Will the Government produce a clear map of the services that are available?

In light of the expectation that the NCF will hold 200 sessions a year, will the Government also say clearly whether the resources are adequate?

Finally, how does the Government intend to broaden the support system where it is patchy to ensure that the experience of appearing before the NCF is positive, not negative?

Michael Matheson: Dr Simpson raises an important point about the support available to individuals who choose to participate in the NCF. It would be fair to say that the time to be heard pilot was broadly a positive experience for those who responded to the evaluation. Most people found it to be of benefit to them, although I recognise and acknowledge that some individuals did not find it as helpful as they had hoped it would be.

We also learned from the pilot that the wraparound support that was provided to participating individuals prior to, during and after proved to be very effective for many. I know that some of the evidence that the committee has received from different stakeholders has highlighted that that is exactly what we need to do with the national confidential forum, and that is what we intend to do.

We are engaged with a range of stakeholders who can provide such before, during and after support to ensure that adequate provision is in place for those who require it. I have no doubt that

Dr Simpson will be aware that individuals will dip in to and out of that, depending on their personal circumstances, so bespoke support must be provided to reflect individuals' needs. We are working with stakeholders to ensure that we have that.

If the national confidential forum happens to be sitting in Glasgow or Edinburgh and some of its participants come from other parts of Scotland, we also need to be sensitive to ensuring that the stakeholders who can provide that support in different parts of the country are geared up to do so. Some of the work that we are progressing relates to making sure that that happens.

We are engaged with more than 80 organisations, I believe, in different parts of the country to ensure such arrangements are in place. It is extremely important that, if we are to get the health and wellbeing benefits that come from the acknowledgement of abuse, we ensure that we have the right supports for people. That will also be on top of the support—this does not relate to counselling—that will be available to someone going through the practical process of the national confidential forum. Once it has been formally established, we expect it to have the procedures and staff in place so that people can be provided with the necessary support while they are going through the acknowledgement process.

The Convener: Before I open the floor to questions from other members, I want to press you on the important evidence in relation to age that the Care Inspectorate raised.

The current Commissioner for Children and Young People in Scotland said that a line would be drawn and that we must be careful. The previous children's commissioner said that we must be careful to ensure that no young person slips through the net. I have no view on this, but the Care Inspectorate suggested that Scots law and the rights of young people were in contradiction here. What is your view on that?

10:00

Michael Matheson: I understand where the Care Inspectorate is coming from, and I understand that Kathleen Marshall highlighted the need to be careful about whether the acknowledgement forum model would work as well for certain young people, given the alternative support mechanisms that are already in place. I am open to considering whether there is evidence to suggest that the age limit should be changed. If there is clear evidence of a view that a lower age limit—16 for example—would be more appropriate, I am prepared to consider that. Before we make that decision, however, it will be important to decide whether the forum is the most

appropriate setting for a 16-year-old. That will depend on their circumstances and how the forum would fit with other services that are there to support 16 and 17-year-olds. I am prepared to consider the issue but we have to be careful about the evidence base and how the forum would fit with other services.

The Convener: That is helpful. Do you have a view on the Care Inspectorate's belief that the minimum age should be 16, to concur with Scots law and the rights of young people from that age? Have you or your officials considered that issue?

Rosemary Lindsay (Scottish Government): It depends on the area of law with which you are dealing. For some purposes, a child is a person under 16. Some legislation might distinguish between a child, who is someone under 16, and a young person, who is someone over 16. However, it is not the case that for all purposes a child is always someone who is under 16. In certain legislation, a young person is defined as being someone who is between 16 and 18. That is the case in relation to the acquisition of certain rights, such as voting rights, which are acquired at the age of 18, and the right to get married, which is acquired at the age of 16. As I say, it depends on the area of law with which you are dealing.

The Convener: We are just looking for some assistance. The Care Inspectorate told us that the proposal was contrary to Scots law.

Jean Maclellan (Scottish Government): Our division largely covers work with adults and older people so I thought that it would be helpful to talk to our childcare colleagues. They tell us that a number of measures are in place at the moment to support 16 and 17-year-olds who are in care and those who are care leavers. Within care, every child or young person will have an assessment, a plan and an allocated worker as well as a named person, whom the child will be involved in choosing. There is a requirement to involve a young person in their own assessment and plan and in deciding who the named person should be. A plan has to be reviewed regularly and should include the views of the young person. At a review, the young person has the opportunity to speak to their named allocated worker, who is responsible for ensuring that their voice is heard. Local authorities also have a duty to ensure that young people are prepared for the time when they will no longer be looked after, and must carry out an assessment for each young person who is leaving care, up to the age of 18.

At the time of leaving care, young people have an opportunity to complain to the relevant local authority, which is under various duties to consider and respond to that complaint. If there were multiple issues to deal with, a local authority might also fund a significant case review. Care leavers

can also alert or complain to the Care Inspectorate, which could investigate, or if the matter is specifically about staff misconduct, they can complain to the Scottish Social Services Council. Therefore, there are many opportunities within the existing system for care leavers at the 16 and 17-year-old stage to have their voices heard. That is part of what our work on historical abuse aims to do: we aim to learn from the past to inform the present and the future.

The Convener: We accepted as much from the minister. However, the Care Inspectorate has said that the current system does not comply with Scots law. We cannot answer that question this morning, although it would be helpful to have some clarity on the situation so that we can weigh it up. I do not think that the committee has any pre-set views on whether the age limit should be 16 or 18. However, given the range of evidence we have had and the bodies from which we have received it, the committee needs to make a decision. The issue has been raised by the Care Inspectorate and the current children's commissioner, and the deputy convener, Bob Doris, tried to progress things a wee bit by asking about exceptions. I accept that the minister is still prepared to look at the issue. It is a question that we need to resolve.

Another issue that has come up is the fact that some work is being done to ensure that children in the care system can stay in that system for longer—or, at least, there is that ambition. At this stage neither the committee nor I have a view on that, although if our ambition is that young people can stay in the care system to, perhaps, the age of 18, it seems to be a natural progression to change the age limit so that 16-year-olds can have access to the NCF. However, the Government's position goes against some of the evidence we have had from significant players in the process, and we need to resolve that.

Rosemary Lindsay: I want to clarify that the bill is compliant with Scots law. For the purposes of the bill and the issue of eligibility, a child is defined as a person who is under the age of 18. In other areas, there is a different definition of a child. Different rights are acquired at different ages.

Michael Matheson: I am not aware that evidence has been presented of the potential need for those under 18 to make use of the forum. I understand that people are asking whether the age limit should be lower. However, I am not aware of evidence that there is a requirement for the limit to be below 18 because there are groups of young people under 18 who would like to make use of the forum. That was our experience with the time to be heard pilot, and it has been the experience of other jurisdictions. For example, I think that about three quarters of people in the

time to be heard pilot were over the age of 50 and a very small proportion were under the age of 30. Therefore, from our experience—and from experience elsewhere—there has been no demand.

I understand the questions that organisations are raising, but I am not aware of evidence of a need for individuals under 18 to make use of the forum. If there is evidence of demand from young people who have experience of institutional care and feel that the forum is an avenue they would find helpful in acknowledging their experience, I am open to considering that, but it has to be driven by evidence.

The Convener: We are talking about whether there is evidence on both sides of the arguments, although “evidence” is perhaps a strong word to use. I welcome your response. We need to address this together, with regard to the evidence that we have had.

Drew Smith (Glasgow) (Lab): As the convener does, I welcome what the minister said about being prepared to listen further to arguments, and I hear what he said about evidence. However, I assume that we would be talking about very small numbers of 16 and 17-year-olds.

My concern over the minister's correspondence to the committee is about looking at the issue purely in terms of an age limit. Not everyone who may wish to make use of the forum will leave care at 16, 17 or 18; they may have left institutional care much earlier—for example, they may have left a kinship care arrangement at the age of 12. Have you considered the possibility of making a distinction in eligibility terms based on whether an individual is currently in institutional care, rather than whether they are 16, 17 or 18?

There seems to be consensus in that nobody is arguing that we should go below 16 for eligibility, but eligibility criteria could include a condition that the person must no longer still be in care, because other avenues would be available to them if they were. Has that been considered and, if so, why has it been ruled out?

Michael Matheson: That is a valid point. If there were to be a change to the age limit, it would have to be considered in the context of the possibility that a 16-year-old's situation could be markedly different from that of an 18-year-old. A 16-year-old may still have some sort of care provision or pathway plan in place.

The acknowledgement forum should not be seen as supplementing the safeguards that are already in place, which we have referred to; it would have to be complementary to them. We have to consider carefully how they would play out with one another. The duty of care for someone

who is under 18 is much greater, and the forum would have to respond to that.

Drew Smith mentioned that the number of 16 and 17-year-olds could be very small. International experience in a number of instances suggests that under-18s do not feel the need to make use of such an acknowledgement forum, because of the existing alternative mechanisms.

The evidence base for eligibility being at 18 and over is very strong, because of the history in this area. The organisations that have questioned the age limit have not been able to demonstrate that there is a group of under-18s who could make use of the forum, if the age limit were to be changed. If there is evidence of that, I am very open to considering it and seeing whether the matter can be addressed. Drew Smith made the point that we would have to consider the wider implications of a lower age limit, and how it would be taken forward if we were minded to lower it.

Gil Paterson (Clydebank and Milngavie) (SNP): I apologise to the panel and the committee; I have a petition that is being considered by the Public Petitions Committee, so I will need to leave early.

My question regards confidentiality and referrals to the police. The bill will give discretion to the NCF in that regard, as it uses the word "may", but we might need something more definitive. In evidence, we have heard that some people think that that word should be "must" and that no discretion should be given. What is the Government's rationale on that? Why would it give discretion to NCF to decide on matters individually?

Michael Matheson: It is fair to say that although the NCF will have discretion, it will not have unlimited discretion. It must report when it believes that evidence that has been presented to it could prevent a further crime from being committed. The discretion that the NCF will have is that when it receives evidence, it will have to consider whether it is in the public interest for that information to be passed on. It will not have unlimited discretion, which is important. Some evidence that the committee has received suggests that discretion will be almost unlimited.

10:15

It is about the nature of the acknowledgement forum itself and the participants in it understanding that the circumstances and the nature of the evidence that they present will be considered by the forum commissioners, who will have scope to determine whether that information has to be passed on to the police. It will not automatically be passed on to the police.

Acknowledgement forums in other jurisdictions have been involved in investigating matters as one of several elements working together in a wider process, whereas ours is an acknowledgement forum in itself, which is somewhat different. We believe that we have struck the right balance to assure participants that there will be a degree of consideration of the facts and information that they provide, and that the forum commissioners will come to a judgment as to whether it is in the public interest for that information to be reported. If they do not believe that it is, there is no need for them to do so, but if they think that there is the possibility of further criminal activity being committed they must report that to the police.

Gil Paterson: Thank you for that.

I am a board member of Rape Crisis Scotland. My experience tells me that people who work with vulnerable people who might have been abused will say that the threat of historical abuse being brought to the public's attention would worry those people and would mean that they would not walk through the door in the first place. I understand what you said and I am pleased about how you are addressing the matter. Some people will only want to walk through the door and disclose matters, which would help them enormously. That is not true of everybody. This is a difficult subject because no two people are the same. It is not like having a broken leg, which gets fixed and that is done. I am concerned that we ensure that people who want to participate do not feel threatened in the first place. Perhaps they could take a small step and just discuss the issues before making a disclosure. I do not know whether that is possible. I am sure that people will not participate if they think that a threat to someone else is attached to the process.

Michael Matheson: That is why we have set the legislation out in the way that we have. I recognise that some people would not, if information that they disclosed were to be passed on automatically to the police, want to participate in the forum or make use of the acknowledgement process. It is about balancing the therapeutic value that can be gained from the forum with the public interest and public safety. That is why we have not given the forum unlimited discretion. If there is a risk that further harm could be done or a crime committed, the information must be reported.

When an individual is explaining their circumstances, it is only right that the forum members be able to look at them in the context of what is being presented by the individual and to consider whether it is in the public's interest for issues that they may raise to be passed on to the police. Our approach is to try to give a level of assurance that things will not automatically be

reported to the police and that the forum will consider the overall circumstances.

Part of the forum's role, and its head's role, will be to consider the type of information that is to be provided, to those who are considering participating in it, about the forum's responsibilities in that area. If a participant provides the forum with information that indicates that a further crime could be committed, it must report that information, but there may be other situations in which the forum feels that it is in the public interest for the information to be passed on, which will also be explained to people. That is part of preparing people who may participate in the forum so that they understand that, but they must also understand that evidence that is given to the forum will be not be reported on automatically.

Gil Paterson: Should the forum take that course of action, can we be assured that complete anonymity will be guaranteed to the survivor and that they will not be invoked in any way, which might cause more damage to the individual?

Michael Matheson: The confidentiality of the forum is crucial. I am conscious that the committee has received evidence on reporting of the forum's work and how it will publish its reports and details of the evidence that it has heard. Some people would like to be named in that process and others, clearly, would not. People have different views.

My view is that it is an operational matter for the head of the confidential forum to find a mechanism for recording information that protects people's anonymity but which also allows them to identify how their evidence is detailed in the forum's report. In Ireland, a system was used whereby the evidence that was received was coded, which gave the individuals who gave evidence anonymity but allowed them to trace how their evidence influenced the report. It is for the national confidential forum to consider how to implement a mechanism, but it is important that people are assured that there is confidentiality throughout the process and that they can disclose information safely and securely.

Gil Paterson: Thank you.

Aileen McLeod (South Scotland) (SNP): My questions are about the hosting of the national confidential forum by the Mental Welfare Commission for Scotland. From evidence it seems that there is general satisfaction with that proposal. At one of our evidence-taking sessions, the chief executive of the commission, Dr Donald Lyons, gave an assurance that the commission plans to ensure that the forum is independent of it, and he explained in some detail the governance arrangements that the commission foresees.

Other witnesses underlined the need to ensure the forum's independence and raised concerns

about how we can ensure that such an arrangement does not discourage people from coming forward to talk about their experiences—which as we know is emotionally extremely difficult—and how we can ensure that people do not face issues around the stigma of mental health problems.

Does more work need to be done at the outset of the forum's work to ensure that anybody who comes to give evidence to it is assured of the body's independence, and is assured in relation to issues around the stigma of mental health problems?

Michael Matheson: It is important that we include the host body in legislation in order to give individuals who will make use of the forum legal protection against defamation claims that could be made as a result of evidence that they provide.

When we were considering which body should host the national confidential forum, I was conscious of the need to ensure that the body would not compromise the forum's role and that it would have, to some degree, a track record in pursuing issues relating to equality of care. In my view, the Mental Welfare Commission is the most natural public body to host the forum.

However, I was also conscious of the stigma that that could present in relation to some aspects of the work that we have been doing. Although the Mental Welfare Commission is the legal entity that will host the national confidential forum, the forum will have its own persona; it will have a level of autonomy that will allow it to be identified as a body in its own right while receiving support and expertise from the commission.

I would characterise the Mental Welfare Commission's role as being to provide help and support for the forum's back-room functions, such as recording and reporting, record keeping and finance. However, the forum will have the autonomy to undertake its work in the way that is most appropriate, so that those who participate in it will see themselves as participating in the national confidential forum rather than in some sub-committee of the Mental Welfare Commission.

The forum will have its own public relations programme to inform those who may want to participate in it about its work, and it will publish its own reports, but some of its back-room functions will be supported by the expertise that the Mental Welfare Commission can offer. That allows us to get the forum up and running more quickly. If we were to create a completely new body without the commission's expertise, it would take us much longer to get the forum established. However, the forum will have its own identity, and people will be in no doubt that they are engaging with the national confidential forum.

Aileen McLeod: The Mental Welfare Commission mentioned in its evidence to the committee that a memorandum of understanding to clarify the mechanics of the governance arrangements between the forum and the commission is being worked out. When will that memorandum be published and made available to the committee?

Michael Matheson: We are working on that. I cannot give a definitive date when it will be published because it will take us a bit of time to work through some of the issues. It will not be finalised until the head of the national confidential forum is in place, who will have a role in considering some of the issues. I am happy to undertake to forward that information to the committee as soon as the work has been completed, and I will also let you know when we have confirmed the date by which it is likely that it will be complete.

We need to go into a fair bit of detail in that work to ensure that the Mental Welfare Commission, as the legal entity that will be legally accountable, has the right safeguards in place so that it can work with the Government and the national confidential forum while protecting the autonomy and role of the forum. We have to take our time and get it right, but I am happy to keep the committee up to date on that issue.

10:30

The Convener: Can no one be appointed as head of the forum until the bill is passed?

Michael Matheson: We will use the public appointments process for that. I understand that we must wait for the legislation process to be completed first.

The Convener: You referred earlier to operational matters and governance. The question has arisen whether there will be a victims' representative on the forum. The committee heard from the Mental Welfare Commission that it regards itself as a host organisation for the forum, and that it will be branded differently to address stigma issues. Those are practical issues that I suppose will be covered by governance. However, it is important that we get as much information as we can about that in order to address questions that witnesses and stakeholders are asking and reassure them that the issues are being taken on. I presume that you will be able to deal with some of those issues.

Michael Matheson: We are already dealing with some of the issues with the Mental Welfare Commission. I have met the chair and chief executive of the commission to explore the issues, and my officials are engaged in that process. I hesitate, because of the practicalities, to say that it

will be finalised by a certain date. We do not want to find ourselves unable to meet a particular date. However, I am more than happy to keep the committee as abreast of the issues as I can when we get to significant points, going forward.

I should also say that I am grateful for the way in which the Mental Welfare Commission has gone about taking on its role. From my perspective, it has demonstrated a real willingness to take forward the national confidential forum in order to make it as effective as possible and to make it deliver what it is intended to deliver. Given the commission's track record, I have every confidence that it will help in that process.

The Convener: I am sure that committee members welcome that. It would be helpful for us as we write our report to know what meetings are taking place and what issues are being discussed and progressed.

Nanette Milne (North East Scotland) (Con): I have a question on an eligibility issue, which is the definition of institutional care. I think that there has been consensus among witnesses that foster care should be included in the definition. We have had discussion about kinship care in that context, and I think that the feeling was that whether a particular form of care was included in the definition would depend on whether there was a link between the care and it being assessed and delivered by the state. Could you comment on that?

Michael Matheson: You referred to foster care and kinship care, but of course abuse also takes place within the family setting. An individual does not have to be in an alternative care setting for that to take place. However, the confidential forum has been set up to focus on institutional care. We have provisions in the bill to allow us to list the types of institutions included. Originally, a lot of the evidence suggested that the confidential forum should focus on residential care, but we have taken a slightly broader approach that allows for institutional care to be addressed, which would include those who were, for example, in long-stay hospital settings that might not have been included had we restricted the focus purely to residential care. If we further widened the approach to include foster care and kinship care, it would then be difficult to explain why we should not include other non-institutional care settings in which abuse may have taken place.

In my view, the acknowledgement forum should be very much focused on historical abuse that took place in institutional settings. To expand the definition could make it more difficult for the forum to take forward its work. There is also the question whether the national confidential forum would be the most appropriate forum for such issues.

We have commissioned research to look at whether the type of acknowledgement model that will be used in the national confidential forum could also be used for individuals who have experienced some form of abuse while in foster care. It may be that the forum in which that should take place would be different from the national confidential forum, but there may be a useful role for acknowledgement in that type of model. The research that we have commissioned, which I understand has already started, will inform us whether that model could be helpful to those who experienced abuse in other, non-institutional care settings.

Nanette Milne: I think that the concern was about care that was initiated and provided by the state, as opposed to kinship care that was provided within the family without the state's direct involvement. Another issue that was highlighted is that some people may have experienced different forms of care, including foster care and institutional care. Does that need to be taken into consideration?

Michael Matheson: It is not the case that the forum is barred from having anything to do with foster care as such. We have set up the national confidential forum based on our experience of the time to be heard pilot and on the experience of those who made use of that pilot. We are trying to ensure that there is an evidence base for all that we are doing following our experience of the pilot, given the potential unintended consequences of not working these things through in great detail.

I expect the forum to be pragmatic. If, in the course of giving evidence, someone who was in an institutional setting highlighted something that happened during a period of foster care, I would expect the forum to deal with that in a pragmatic way. I expect that the forum could consider that at the time, rather than saying, "No, we cannot listen to that, because it happened in foster care." That is more of an operational issue, but I expect that the forum would deal with such matters in a pragmatic way, given that it is intended to be a therapeutic setting.

The Convener: Are there any other questions from committee members?

As well as the confidentiality issues that have been mentioned, issues were raised with us about the capacity to deal with the resource demand, the importance of supporting people who engage with the forum and what people should be able to expect from that engagement. The argument was made that people will need a degree of support and discussion prior to and post their engagement with the forum. For as long as it takes, support should be available to those people, who may rediscover an element of trauma when they go through the process. It was described to us how

people can feel that a weight has been lifted off their shoulders, but all those experiences can come back to them that they then need to cope with afterwards.

What will be the demand for the hearings? What support will be in place for the people who come through? How will we ensure that support is available to them prior to and post their engagement with the forum?

Michael Matheson: We have given quite a lot of thought to the likely demand on the NCF once it is established. In the time to be heard pilot involving Quarriers, our experience was that around 1 per cent of former Quarriers residents made use of the forum.

We have also drawn on the experience in Ireland and Northern Ireland, where around 1 per cent of people who were in institutional care settings have made use of the various forums and inquiries that have been undertaken there. We are working on the basis that the forum might be subject to that level of demand, which we think it will be able to manage over the years to come.

To come back to the point that Richard Simpson made, the challenge will be to ensure that the right type of care and support is provided before, during and after the process. Over the past few years, we have put more than £6 million into the SurvivorScotland strategy to support a range of organisations that work with individuals who have been subject to various types of abuse. We are working with stakeholders to ensure that we have sufficient capacity in place to meet any increase in demand that could result from the operation of the national confidential forum.

It is particularly important for us to be aware that people could come from anywhere in Scotland, so we must look at the geographical spread. The work that we are doing with stakeholders will scope that to ensure that sufficient capacity exists. We believe that there is sufficient capacity, but we will ensure that that is the case in our discussions with stakeholders. It is certainly my intention that the potential benefits of the NCF should not be undermined in any way by a lack of support before, during or after the process. We have already engaged with more than 80 organisations from different parts of the country, and we will continue to take forward that work.

It is also important that, once the forum has been created, it has the right processes in place so that when someone indicates that they are interested in participating in the forum, it can advise them where they can get support and advice prior to participating in it, as well as during and after their participation. We need to ensure that that works operationally. Our experience of what happened with the time to be heard pilot is

that, broadly, it appears to have been effective and to have been viewed to work well—that is the evidence that the committee has received—and it is our intention to ensure that that is achieved with the NCF as well.

The Convener: From the work that the Government has done, you believe that, on the basis of experience in other countries, you have the capacity to deal with that. There is no additional budget line available to you to beef up those services—you do not feel that there is a need to beef them up.

Michael Matheson: Apart from the resources that we are providing, we believe that there is capacity in the system to deal with that.

The Convener: Are you saying that the system is not working at full capacity now?

Michael Matheson: It depends. Different organisations are in different positions as far as the level of demand on them is concerned.

It is worth bearing in mind that the arrangements that we put in place for the time to be heard pilot demonstrated that the capacity exists in some organisations to undertake some of that support work. Part of the additional work that we are doing at the moment is to ensure that we have the right geographical spread of capacity. If organisations flag up that they are not in a position to provide further support, we will have to address that, because we cannot have individuals going to the NCF without the necessary support before, during and after the process.

The Convener: There is not a direct crossover with post-traumatic stress, but we recently held an evidence session on some of the issues to do with that, in which all the witnesses reported that they struggled to get access to many services. Therefore, on the basis of the evidence that we received—which we have not tested—there are gaps in access to wider services in the community and in the health service.

10:45

Michael Matheson: We have created some additional resource as well in some areas. For example, we set up the In Care Survivors Service Scotland specifically to work with individuals in Scotland who have been in a care setting and experienced some form of abuse. It was established a couple of years ago and is a dedicated body to support and work with individuals who have experienced abuse in a care setting.

Through our SurvivorScotland strategy, which was introduced in 2005, we invest nearly £1 million annually in helping work with different organisations. A lot of that resource goes to local

organisations to support their work with survivors of abuse.

I reassure the committee that we intend to ensure that there is sufficient capacity, because the benefits of the national confidential forum would be undermined if that capacity did not exist. We are taking forward work with organisations to ensure that we have sufficient capacity and services in place that can support people. Our experience from the time to be heard pilot was that we got that right then, and our intention is to ensure that we get it right with the national confidential forum, as well.

Jean Maclellan: The minister has talked about the development fund. On the convener's point about ensuring that we respond to need and develop capacity, we have changed our priorities in each of the funding years to accommodate need. We have therefore covered complex mental health, complex trauma, learning disability, minority ethnic services, physical health, remote and rural services, male survivors, survivors in prison and some prevention work.

The Convener: We heard from some of those organisations recently. Thank you for that.

I suppose that the other question from witnesses that we have found most difficult is why the committee is looking at the part of the bill that it is. The argument was put that we should be looking at some of the stuff that the Justice Committee has looked at, such as access to justice and people being denied justice in the wider sense. Those things have also affected people's health and wellbeing. Could you explain to us the thinking about why this aspect should be dealt with exclusively as a matter of health and not the other aspects?

Michael Matheson: This aspect of the national confidential forum stems back to work arising from Tom Shaw's review of issues to do with abuse in care settings. That highlighted that acknowledgement is a valuable therapeutic tool, and there have been calls for a number of years for a means to be established by which acknowledgement could be provided and recognised, as it has a health and wellbeing benefit. Through being responsible for the survivors strategy from a health perspective, the response that we have taken forward is that the national confidential forum can assist in achieving the health benefits that can come from acknowledgement. There is a significant history of recognising the value of acknowledgement in dealing with health issues that may arise and the therapeutic benefit that can be gained from acknowledgement.

My colleagues on the justice side have also been looking at issues such as the time bar. The

consultation on that closed just last month, and I believe that there were around 40 to 50 submissions. Obviously, they will be considered and, depending on what comes from that consultation, it will give rise to some of the justice remedies. Although we are talking about a health response to particular issues to do with abuse in care settings, that does not mean that that is it. It is clear that the work that my colleagues on the justice side are taking forward on time bar issues relates to aspects of that.

The interaction that has been taken forward by the Scottish Human Rights Commission is also worth keeping in mind. We originally commissioned it to bring forward the framework that gave rise to that interaction, and I attended the first meeting in the interaction—I think that there has been a further meeting since then. The national confidential forum allows us to move on with the health aspect of that. I have no doubt that some of the things that will come from the interaction will have a justice focus. They can be addressed at that particular time, but that does not preclude our being able to move on with the creation of an acknowledgement forum, which, as I have said, was highlighted many years ago. Various organisations have called for such a forum for a number of years.

The Convener: I thank the minister for that response.

As there are no further questions, I thank the minister and his team very much for being with us and providing valuable evidence in the process.

As previously agreed, the committee will now go into private session to discuss the work programme.

10:50

Meeting continued in private until 11:50.

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