

FINANCE COMMITTEE

Tuesday 18 January 2005

Session 2

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FINANCE COMMITTEE

2nd Meeting 2005, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Alasdair Morgan (South of Scotland) (SNP)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Jim Mather (Highlands and Islands) (SNP)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*John Swinburne (Central Scotland) (SSCUP)

COMMITTEE SUBSTITUTES

Gordon Jackson (Glasgow Govan) (Lab)

David Mundell (South of Scotland) (Con)

Alex Neil (Central Scotland) (SNP)

Iain Smith (North East Fife) (LD)

THE FOLLOWING GAVE EVIDENCE:

Richard Arnott (Scottish Executive Development Department)

Quentin Fisher (Scottish Executive Development Department)

Lucy McTernan (Scottish Council for Voluntary Organisations)

Jane Ryder (Office of the Scottish Charities Regulator)

Paul White (Scottish Council for Voluntary Organisations)

*attended

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Terry Shevlin

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 4

Scottish Parliament

Finance Committee

Tuesday 18 January 2005

[THE CONVENER *opened the meeting at 10:00*]

Charities and Trustee Investment (Scotland) Bill: Financial Memorandum

The Convener (Des McNulty): I open the second meeting of the Finance Committee in 2005. I welcome the press and public and remind members to switch off all pagers and mobile phones. We have apologies from Jim Mather and Elaine Murray, who are delayed by the weather. I suspect that Wendy Alexander might be in the same position. I hope that they will be able to join us soon.

Before we start, I inform members that our assistant clerk, Emma Berry, is moving to a job in the Presiding Officer's office and that this is her last committee meeting. I thank Emma for all her hard work. She is the person who has made sure that we get all our papers in total and on time so we owe her a considerable debt of gratitude.

The first item on our agenda is to continue our scrutiny of the financial memorandum to the Charities and Trustee Investment (Scotland) Bill. Members will recall from our meeting on 21 December that we agreed to invite the Scottish Council of Voluntary Organisations to give us oral evidence on the bill in addition to the oral evidence that we took from Anne Swarbrick on that date. I welcome Lucy McTernan, director of corporate affairs, and Paul White, director of networks, from the SCVO.

The SCVO's original submission has been recirculated and members also have copies of additional submissions from the Royal Botanic Garden Edinburgh, the Scottish Federation of Housing Associations, Anne Swarbrick, the Office of the Scottish Charities Regulator and the Institute of Chartered Accountants of Scotland. Anybody who can decipher the various diagrams in the submissions will be doing well.

I invite Lucy McTernan to make an opening statement before taking questions from members.

Lucy McTernan (Scottish Council for Voluntary Organisations): We are pleased to contribute to the Finance Committee's review of the financial implications of the Charities and Trustee Investment (Scotland) Bill and I thank the committee for the opportunity to speak to members this morning.

We know from your earlier discussions that you have a particular concern about the costs that are associated with the proposed reforms for charities and we share that concern. However, our focus is not so much on the one-off direct cost for charities, which the Executive has summarised as being up to £2,000, as on the immediate and on-going costs of the training and support that charity trustees in Scotland will need to entrench the new systems and to make the most of the opportunity to improve governance in the sector substantially.

We reinforce the message in our earlier written evidence that we hope very much that OSCR, the new regulator, will develop a light-touch approach to the regulation of Scottish charities, minimising bureaucracy for itself and the charitable sector and allowing the maximum time and resources of charities to be devoted to charitable endeavours rather than diverted to deal with red tape.

We believe that that is possible, provided that OSCR works in close co-operation with the sector to create systems that build on current good practice in record keeping and accounting. The sector stands ready to co-operate with OSCR.

We are encouraged that OSCR has scaled back—at least in the short term—its initial plans for detailed and extensive questions in its annual returns process, which would have required charities to set up new information collection systems and to recalculate their annual accounts in ways not currently required by regulation. However, we remain concerned about the possibility of bureaucracy developing in OSCR, which in turn would increase red tape in the sector. That is where the costs for individual charities could well escalate over time.

We are not at all clear how the recent increase in OSCR's budget has been justified, but we must be clear that the resources that are required by the regulator are just one side of the resources that are required to make the regulatory system function effectively in practice.

In that context, I draw attention to the role of the sector's infrastructure, which provides advice and support to individual charities—namely the network of councils for voluntary service. The established CVS network should be viewed as a key resource in the delivery of the required governance programme. The CVS network covers every local authority in Scotland and provides services in urban, rural and island environments. The network uses briefings, events, newsletters and websites to communicate with voluntary organisations locally, keeping them up to date with new legislation and policy developments and offering opportunities for local groups to share best practice.

The network, which recently agreed a new core activities framework to provide a clearer customer-focused approach to CVS work, is in touch with 26,000 voluntary organisations throughout Scotland and is therefore well placed to provide advice and promote good practice on the changes in charity law.

The SCVO and the CVS network stand ready to roll out in partnership with OSCR a new programme of information and training to charity trustees to enable them to gear up for the new law and the wider challenge of improving governance in the sector. However, the figure of £150,000 that was given by the Executive is a clear underestimate of the resources that will be required by the sector to implement the new legislation, although we appreciate that it is a difficult task to estimate accurately the cost of training of the type that is referred to in paragraph 139 of the financial memorandum. We have been given to understand that the figure of £150,000 was based on experience of other training delivered to the sector at national level in Scotland and we understand that it translates to 3,000 attendees at training courses at £50 per attendee.

Although the approach that has been taken might be helpful, we would advocate basing estimated cost on the current information about the sector that the sector itself has compiled. "The UK Voluntary Sector Almanac 2002" states that

"in general charities have on average eight trustees"

but that

"an estimated 40% fulfil that role for more than one organisation".

Currently, the index of Scottish charities—the Scottish charities register as will be—which is held by OSCR, holds details of about 18,000 live charities, but we believe the real number to be closer to 28,000. That suggests that there are somewhere between 86,000 and 135,000 individual trustees in Scotland. Using the Executive's cost of £50 per person for training would give a figure of between £4 million and £7 million. Although there is an absence of reliable statistics on the number of trustees in Scotland, we believe, based on our experience of the Scottish voluntary sector, that it is unlikely that there are as many individual charity trustees as that. Our working estimate is 50,000 for all practical purposes. We also believe that training would not necessarily have to cost £50 per head.

We would recommend a budget of £500,000 in the first year of implementation with a need for a tapering budget year on year thereafter to carry out training to entrench new practice and to provide for new trustees taking up their responsibilities in the years to come. We would be happy to discuss with OSCR and the Executive

how that could best be delivered and to work to establish a definitive cost.

The Convener: Thank you. In opening our questions, I put to one side the question of the cost to charities, on which you ended your statement, and return to the other comments that you made about light-touch regulation. As you know, I was a member of the Kemp commission in the mid-1990s. The work that we did then, on which Jean McFadden built in her review of charity law, envisaged a much less ornate system of regulation than what the Executive proposes. You seem to echo that in saying that you would prefer a light touch to be taken. Are we in danger of dealing with what is a real but nonetheless limited problem of charities that operate in unacceptable ways by introducing an inappropriate and unduly onerous system for regulation of the overwhelming majority of charities that work effectively?

Lucy McTernan: Our view is that the regulator that the bill proposes has all the right elements and is the right recipe for the regulator that we want. Critically, those elements include a new register that is transparent and publicly accessible.

We are concerned that the regulator could become too bureaucratic and start requiring of charities much greater levels of information than are required to fulfil the objectives of public accountability and encouraging public confidence in charities. We do not want to go from the absence of any regulation to so much regulation that growth and development of voluntary organisations and charities in Scotland is hampered to the point that it is detrimental to the health of our communities rather than a positive benefit. That is why the SCVO and charities in Scotland have been campaigning for this reform for some 10 years.

The Convener: You commented on the increase in OSCR's budget. Do you believe that there is an imbalance there and that the expansion of the budget is not justified by what you see as OSCR's appropriate functions? Might the increase be an indication of an orientation towards too much bureaucracy?

Lucy McTernan: The SCVO and the rest of the voluntary sector have lacked a detailed understanding of OSCR's plans for itself. We have the supplementary evidence that has been provided this morning and a consultant's report about the resources that OSCR requires. I do not know about committee members, but I find that less than helpful for understanding what OSCR proposes to do. All that has been published is the corporate plan for OSCR 1, which is the interim regulator until the bill is enacted.

We would find it helpful to understand how OSCR proposes to operate in its OSCR 2 phase,

following enactment, and to understand more clearly what it needs those resources for. That might make the sector more comfortable about the scale that a figure of as much as £4 million a year indicates.

The Convener: If OSCR is to fulfil all the regulatory functions—with which you say you do not disagree—it will require an appropriate budget and appropriate staffing for that. Have you formed a judgment about whether the budget is correct and can be justified by the functions? Does uncertainty remain?

Lucy McTernan: As I just said, without a detailed understanding of what OSCR plans to do to respond to the bill's requirements, it is difficult for anybody external to take a view on whether the figure that it has reached is appropriate. Our sense is that the figure is on the high side. We had always expected the scale of OSCR's operation to be streamlined and OSCR to work with the grain of how the voluntary sector and charities operate in Scotland rather than be a Big Brother-style regulator. The sector must deal with much regulation for a series of reasons to do with the new Scottish Commission for the Regulation of Care, health and safety, employment and all the rest of it. We would like a regulator that helps the sector to work with all those other regulators rather than providing an additional burden.

The Convener: Are there any lessons to learn from Disclosure Scotland, the requirements that relate to it and the mechanism that Disclosure Scotland uses to police that system of reporting and monitoring?

Lucy McTernan: There are clear lessons to learn. Disclosure Scotland imposes just one of the regulatory burdens that voluntary organisations face. Combined with other burdens, that is causing organisations many problems with concentrating their resources on what they are supposed to do, which is working with people and supporting communities, rather than filling in forms.

Alasdair Morgan (South of Scotland) (SNP): Given that the purpose of such regulation is to prevent charitable funds from being used inappropriately, misused or misappropriated and given your perception of whatever problem the bill is intended to address, how much money would it be worth spending on the measures?

Lucy McTernan: It is worth spending the right amount of money in the right ways. Our concern is that the money is being focused on establishing an institution—a regulator—rather than on giving proper consideration to the resources that are required to help individual charity trustees. Many of us in the room may be trustees. People throughout communities in Scotland take on that very responsible job. Such individuals should

benefit from the resources that are available through the reform to obtain the advice, training and support that they need to do their job better.

Alasdair Morgan: The point that I am trying to get at is that the bill is intended to fix a perceived or potential problem. The resources that are put into that must be proportional to the perceived size of the potential or real problem. I am trying to get a feel for that.

Lucy McTernan: The problem is viewed differently from different perspectives. The immediate cause of the bill's introduction was perceived to be one big scandal, but the sector has campaigned for charity law reform for 10 years. Reform is about not just the big scandals that break but the support and framework that trustees and charities need in order to flourish and do more. That is a big problem that nobody has ever quantified in cash terms. It would not necessarily be helpful to do so.

We do not want the sector or the reform to be short-changed. Nobody argues that we should reform on the cheap. We just want to ensure that the scale and focus of spending are appropriate.

10:15

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Did you say that you were not clear about the reasons for the costs and for their projected rise?

Lucy McTernan: The only information that we have is the information that is in front of the committee, which is from a consultant's report.

Jeremy Purvis: Table 1.1 in OSCR's evidence to us seems straightforward about how costs reach £2.1 million. After a new regulator has been established, its use is inevitable. As with any ombudsman or anything else, when citizens realise that they have an opportunity to use an independent or regulator voice, they will take it. It is fairly straightforward to build in increased capacity in the next two or three years to allow OSCR to settle. What in the costs in table 1.1 and the projected increase in workload is unreasonable and does not follow the streamlined model? The costs in the table do not necessarily imply a huge organisation.

Lucy McTernan: I understand that those figures do not represent the final expenditure on OSCR and that the budget has increased—in fact, it has almost doubled. We have not seen the information to justify almost doubling expenditure.

I return to what I said: nobody argues for OSCR to be under-resourced. We would like to know OSCR's plans and what it needs those resources for, because those functions might be delivered better in different ways. I am thinking particularly

of the role of providing guidance and advice. As I said in our opening statement, support to individual trustees and charities is better delivered to the sector by the sector rather than by a brand new institution that is created to do that. Ways exist to make that more effective and cost effective if we work in partnership with the regulator or between the sector and the regulator. We would like the Executive to consider that.

Jeremy Purvis: You will have seen the evidence from the Scottish Federation of Housing Associations, which does not say that its members will incur major cost. The federation is right to say that its member organisations' income comes from tenants' rents. All of us have housing associations in our areas and want none of their income to be depleted. The SFHA did not highlight a serious concern about the cost on its organisations. Is it not the case that what the bill will require of charities is what they should be doing already? Few charities do not have continuing training or awareness raising, anyway.

I am making two points. First, evidence that the committee has received has not said that considerable costs will arise. Secondly, do you know the current expenditure of organisations on training and development?

Lucy McTernan: We need to be clear about the distinction between the two questions to which the people who gave evidence responded. One aspect is the notional figure of £2,000 as a direct cost to charities. We understand that that is to cover matters such as reprinting stationery to comply with new regulation. Of course such costs will exist, but they are not the important costs. Stationery must be reprinted in due course in any case. Charities entirely expect to absorb such direct costs, which are what the SFHA referred to.

We are talking about the broader issue of training and support for a level of understanding of a significantly different legislative and technical regime, which we would like to be rolled out in charities throughout Scotland. That involves a significant cost that is more parallel to what the Executive referred to when it used the figure of £150,000. Of course charities and trustees undertake regular training or should be building up to those costs, but the regime is new, significant and different and requires a resource that is identified to implement it. That requirement could taper off over several years so that it becomes part and parcel of any organisation's routine.

Jeremy Purvis: Do you know what the current expenditure is on training and development for trustees and charity workers? Is that information captured?

Lucy McTernan: It is not captured in its entirety. We should be clear that the training that is provided for organisations is specific to the nature

of their business. The councils for voluntary services and SCVO deliver the only training that is supplied routinely to charity trustees.

Jeremy Purvis: What does that cost?

Paul White (Scottish Council for Voluntary Organisations): I can help on the councils for voluntary services. The Executive currently supports the CVS network with £2.5 million per annum. The overall income of the network, which includes contributions from local government, lottery funding and trusts, amounted to about £14 million in 2003-04.

To set the issue in context, our experience is that the motivating factor of trustees of groups that are concerned with arts and culture, children's services, services for older people or sport is either to make a difference in that field of activity or to make a difference to the general well-being of the community in which they live. Although we welcome the regulation that will be introduced through the bill, for which, as Lucy McTernan said, we have campaigned for about 10 years, we are concerned about how trustees in communities throughout the country will face up to the challenges that the new regulation will pose and be able to continue in their roles with confidence that they deliver efficient, effective and accountable charitable services. They must be confident that they can meet OSCR's requirements.

The issue that we have tried to highlight is that the infrastructure already exists to support the voluntary sector in Scotland and that local organisations are aware of that and are familiar with it. We want to ensure that resources are used efficiently and that support goes where it is most needed: into the network that already supports Scotland's voluntary sector. To some extent, that would take care of the debate about having a regulator that also provides guidance and advice services.

John Swinburne (Central Scotland) (SSCUP): Do you agree that charitable organisations are caught between a rock and a hard place? On the one hand, they try to deliver public accountability for the moneys that they receive and a comprehensive programme of good governance, while on the other hand, the public perception of charities means that people are slightly reluctant to put a pound coin in a can because they do not know what percentage of it will go to the worthy cause to which they are donating. I have read screeds of submissions from various organisations, but no one has yet quantified the ideal figure or percentage in the pound, or a figure below which we can say that a charity is not doing its job. Would that be a good way of measuring charitable organisations' efficiency and delivery of charitable work?

Lucy McTernan: You are absolutely right that charities are caught between a rock and a hard place in trying to achieve public accountability and do their job right. Of course they want to invest time and resources in being open to the public so that their supporters and the people whom they serve understand what they do, but they also want to maximise the resources that go to the services that they provide. However, the idea of an ideal figure or percentage, above which an organisation would be seen to be working efficiently or effectively, is not helpful. Given that the percentages of money that organisations need to spend on direct delivery of services and on central services vary radically from organisation to organisation and from year to year depending on the effectiveness of their fundraising, it is simply not possible to come up with an ideal figure.

The solution is not to have a simplistic figure, but to have public accountability and openness in the books, which is exactly what we are trying to achieve through a public register that is managed by the new regulator. That will mean that information is readily available to any member of the public who wishes to inquire about how an organisation raises and spends its money.

John Swinburne: Will the bill impinge on the amount of charitable work that bodies will be able to do as a result of the costs of accountancy and investigation into whether the moneys that are received are spent properly?

Lucy McTernan: Our point is that the bill and the proposed reforms will not necessarily mean that charities will be hampered or have to divert resources away from the front line. However, OSCR's operation in practice, the implementation of annual returns systems and the collection of information from charities may have such an effect. We want to ensure that the balance is absolutely right and that the new regulator works in sympathy with, or with the grain of, the way in which charities operate rather than providing a new set of issues for them to deal with.

John Swinburne: No one has ever answered my question about the ideal amount or percentage in the pound that should go to the cause for which it is intended. What would be the minimum amount below which we could not countenance an organisation being called a charity? Would that be 2p, 10p or 20p in the pound?

The Convener: Lucy McTernan has already answered that question.

John Swinburne: Not to my satisfaction.

The Convener: No, but she has responded.

I welcome Elaine Murray, Jim Mather and Wendy Alexander, who have struggled through the weather to get here.

Mr Ted Brocklebank (Mid Scotland and Fife)

(Con): The SCVO presentation seems to contain a paradox, in as much as while you broadly welcome OSCR's regulatory function, at another level you are saying that you want a lighter touch. You want a lighter touch, but you also seek more money to make the system work. Do you accept that that is a bit of a paradox?

Lucy McTernan: I do not accept that it is a paradox. Our point is that the devil will be in the detail. The SCVO and the wider voluntary sector support the bill because it has the elements of a new regulatory regime that we require. However, that regime can be delivered in a number of ways and we are trying to discourage the regulator from becoming over-enthusiastic about its needs and in the information requirements that it makes of charities. We want to keep the implementation at the right pitch so that the balance is correct over time. Charities must be actively encouraged and be able to make the most of the new regulatory system rather than find that it inhibits them.

Mr Brocklebank: Correct me if I am wrong, but if I understand your figures, you believe that the estimate of £150,000 for training seminars is insufficient and that the minimum that will be required in the first year is £500,000. Is that correct?

Lucy McTernan: That is our suggested figure. The Executive's figure in the financial memorandum seems to be based on the suggestion that 3,000 individuals in Scotland should receive training, but that is not even close to one trustee per charity that operates. The amount is simply insufficient. We need a focus on the number of people who are in that position of great responsibility in the charitable sector, because they will have to adjust to and learn about a new set of regulations and issues in the years to come.

Mr Brocklebank: As you are aware, about 67 per cent of charities in Scotland have an annual income of less than £25,000. In those circumstances, is the £2,000 one-off administration charge acceptable for such charities, which make up almost 70 per cent of Scottish charities?

Lucy McTernan: I am aware of the figures on charities' incomes—they are produced by the SCVO. The figure of £2,000 in the financial memorandum is the Executive's estimate of what it would cost to reprint stationery and so on; it is not a proposed fee to be paid to OSCR. Undoubtedly, adjusting to the new system will create an administrative cost for charities but, as I said, that cost would exist over time anyway. As long as the system can be implemented with common sense, charities are prepared to absorb the costs.

Mr Brocklebank: Do you mean even the charities that have an income of less than £25,000 a year?

Lucy McTernan: It is unlikely that those small organisations will incur anything like £2,000 in direct costs of that kind.

The Convener: I want to pick up on Ted Brocklebank's point about the large number of small charities. Do we need the same system of regulation for all charitable organisations or should we use a very light touch with small charities that have limited budgets and reserve more developed systems of regulation for larger charities? Might that be a more appropriate system than the one that is proposed in the bill?

10:30

Lucy McTernan: Absolutely. That is how the discussion around OSCR's initial plans for monitoring has gone. We are delighted that OSCR has chosen to issue only a very basic annual return form to organisations that have a small income. We hope that that approach will continue over the piece because it is unhelpful to small organisations to be compared with those that are many times their size. It is a matter of providing different information and of horses for courses. However, the SCVO considers it important for the purposes of transparency and public accountability that every charity that operates in Scotland—at least in the first years of the new regime—should be on the register, unlike in England, where some small organisations do not have to register.

The Convener: If the process of regulation for smaller charities is a matter of filling in a form and providing basic information about what the charity does, will we need training for every charitable trustee in Scotland? Do we need to estimate cost on the basis of providing such training?

Lucy McTernan: Filling in the form is about providing information, but the bill will change trustees' responsibilities, and the SCVO thinks that it is fundamental that all people in Scotland who operate with those responsibilities understand them. The bill's implementation will also provide a tremendous opportunity to broaden training from strict compliance with the letter of the law to addressing the underlying issues of good governance and good practice in the voluntary sector. The two matters could be combined, which would enable us to broaden the discussion out from what the bill says to include the range of governance issues that could do with being refreshed across the sector, such as how trustees work with their communities, how they respond to the needs of their users and how they spend their money efficiently. That is the broader context in which we would like training on compliance with the bill to be placed.

The Convener: I should declare an interest. I am a director of two charitable organisations: the Wise Group and the Tron Theatre Company in Glasgow. I have had other roles in and with charitable organisations. In such a role, the issues of greatest concern are one's fiscal responsibilities as a director of a company; they are not really to do with the regulation of a charity. The argument that you are making is not narrowly about the implications of the charity regulation system that is being introduced, but about the position of the directors of charities as directors.

Lucy McTernan: That is very much the point; our argument is about governance overall. The current legislation says that trustees are in management and control. That of course refers to money, organisations' wider resources and assets, staff—if there are any—and volunteers, and, critically, the users of organisations' services. Trustees have responsibilities in all those areas. We are talking about giving trustees a deep understanding of their responsibilities in a way that is not scary—we do not want to frighten people away from such responsibilities—rather than just telling them what forms they need to fill in and what information they have to collect over the year.

The Convener: Will you comment on the supplementary evidence that we received from Anne Swarbrick, which I think you have seen? In paragraphs 2.1 to 2.7 of her evidence, Anne Swarbrick mentions issues in respect of differences between the proposed Scottish approach and the proposed Westminster approach. She says that the existence of different regimes and tests in Scotland might be a problem for charities that operate across the two jurisdictions. I would be interested to hear your comments on that.

Lucy McTernan: There are two different regimes at the moment, so the reform will not change that. If anything, it will bring the two regimes closer together. We are pleased that a public benefit test will be introduced in England and Wales; the idea was pioneered in Scotland as a more modern approach to the understanding of charity that allows the public to understand what charity means and makes the legal definition of charity reflect more closely how people understand it in general terms. We are pleased that the English and Welsh bill has the same basis; that will bring the two definitional frameworks closer together. There will, of course, continue to be changes, but we do not anticipate that they will be anywhere near as large as some people have suggested.

Jeremy Purvis: I return to training. I do not think that I got an answer to my question about whether you know how much money is spent on training at

the moment. I think that Mr White mentioned the funding that you get through various sources from the public sector. Does that total £14 million or is it £14 million plus the £2.5 million from the Scottish Executive?

Paul White: The amount totals £14 million. To answer your question, we do not know exactly how much is spent on training. The council for voluntary service network's new core functions cover six different areas, two of which are providing support services and promoting good practice in the sector. Unfortunately, I do not have a breakdown at the moment of how much of the CVSs' overall income is spent directly on training.

Jeremy Purvis: I would have thought that such a breakdown would be helpful. Lucy McTernan commented on the third section of your submission, which is headed "Ensuring good governance" and with which I agree entirely. It is interesting that you do not have a base figure for your activities in supporting organisations. If you did, the committee could be more confident that your estimate of, for example, £500,000 for training is more accurate than the Scottish Executive's estimate of £150,000. You are saying that the Executive cannot base its figure on anything because of a lack of evidence, but it could be asked of you where the evidence of your experience is if you do not capture it yourselves.

Lucy McTernan: Our calculations are based on our understanding of the number of charities and trustees in Scotland and our experience of providing basic information and guidance materials through to delivering proper training courses. We would look to roll out a programme that would provide a basic set of information to all trustees in Scotland. We already publish a pamphlet called "In Management and Control", which provides the basic information that any person needs when he or she takes on the responsibility of a trustee. We hope that such information—refreshed in the new context, obviously—would go out to all trustees and would be supplemented by making training courses available in each local council of voluntary services area at least annually.

Jeremy Purvis: It is the case that you are not capturing all that information at the moment, is it not? Within your own work, information on training and education is not captured.

Lucy McTernan: It is difficult to put it like that. We have done research throughout the sector to identify what training budgets voluntary organisations have, but beyond the infrastructure bodies—the SCVO and the CVSs—that provide support specifically on governance and charity law, most training budgets are devoted to training on professional practice, such as child care regulations or new information on employment

law. We can provide the sector's expenditure on training in general. The figures that Paul White provided on the resources that go through the CVS network are the nearest that you will get to the resources that are invested in supporting charities to be charities. We are saying that that work needs to continue and that it needs to be supplemented, at least for the first few years of the new regime, to take account of the new requirements on trustees and to take the opportunity for a step change in governance of the sector.

Jeremy Purvis: In the third section of your submission, you say that you have identified

"the need for adequate training in all aspects of governance".

How much can the new requirements be absorbed into current continuing work and how much will be extra? You have said that you believe that there should be more training.

I was slightly confused about what you said on the need for a light touch. You argue for a light touch but you do not think that it is necessarily coming, although you mentioned that the basic requirement for an annual return form is a light touch. However, in the third section of your submission, you say that the bill provides an opportunity to go beyond what is in it and to work on good governance for the sector. Is it fair to say that the light touch should be in the regulation—the requirement on the charities for an annual return—whereas the work of OSCR and others on good governance, continuing education and trustee awareness needs to go beyond a light touch?

Lucy McTernan: That is probably fair. Our point is that the investment needs to be made in good governance and on-going training rather than in creation of new information-collection systems.

Jeremy Purvis: Would such investment be over and above the £14 million?

Lucy McTernan: We estimate that the annual cost, which would taper off over a number of years, would be £500,000 for development of supplementary new materials and training in light of the new legislation. Our proposal would be both effective and cost-effective as it would not involve starting afresh with a brand new system of training and resources.

Jeremy Purvis: Sure. However, is it fair to say that the cost of that would come on top of the £14 million?

Lucy McTernan: Yes. That would allow us to respond to the new legislation.

Mr Frank McAveety (Glasgow Shettleston) (Lab): I want to clarify the response that was given

to the earlier question on Anne Swarbrick's submission. Anne Swarbrick claims that the differences in approach to case law between the Scottish bill and the proposed English legislation might have a significant impact on charities. Do you share that view or do you totally disagree with it?

Lucy McTernan: There will be an impact on organisations that operate cross-border, because they will be required to comply with the charitable definitions both north and south of the border. However, relatively few organisations in that category will be affected. We disagree with Anne Swarbrick that the problem is as big as she and others have made out. I think that, in practice, the threats to existing charities are not as they have been portrayed; the vast majority of existing charities will move on to the new register and will fit into the new system quite smoothly. There will be issues only for organisations at the edges that are unable to demonstrate from the word go that they provide a public benefit.

Mr McAveety: What is Anne Swarbrick worried about that you are less anxious about?

Lucy McTernan: I am afraid that I do not understand the depth of concern that she expressed in her evidence.

Ms Wendy Alexander (Paisley North) (Lab): The committee finds itself in a bit of a dilemma when the experts disagree. The most worrying aspect of Anne Swarbrick's written evidence is paragraph 2.6, which states:

"The cumulative affect of all this is that both parts of the Scottish definition are much more restrictive than both its English equivalent and also the present UK wide definition and so the charitable status of many Scottish Charities may be endangered. ... These charities will be working in many areas of charitable endeavour."

In fairness, the SCVO has made it clear that it does not share that position, but can you give the committee any guidance on how we, as non-experts, might achieve some clarity on the issue? There is an obvious risk that if we pass legislation that does not mean what we think it means we might find ourselves in a genuine dilemma. Have you embarked on any endeavours that might provide us with helpful advice on how we might get to the bottom of that issue?

Lucy McTernan: The committee must focus on cost, but I think that few costs will fall on the charitable sector because of the new definition of charity, which will be based on the concept of public benefit. Some organisations that currently enjoy charitable status will have difficulty in proving their public benefit; those organisations will be affected. However, the number of such organisations over time will become far fewer than people have suggested. The reason why I do not

understand Anne Swarbrick's evidence to the committee is that I am not sure that it can be demonstrated—excluding organisations that operate on both sides of the border—that charities in Scotland will incur additional costs compared to charities in England.

Jim Mather (Highlands and Islands) (SNP): I will return to training. I am intrigued that the SCVO thinks that the new training requirements might be in the region of £500,000. Would that involve the SCVO retiring, or replacing, elements of existing training?

Paul White: No—an expanded and extended programme of training in good governance should be delivered to Scotland's voluntary sector. Such training could be delivered in part by the SCVO, which would be at the centre because of our track record, but more important is that support could be delivered to grass-roots organisations through the national CVS network.

10:45

In our experience, when voluntary sector organisations face a difficulty or dilemma, they turn to their local source of support, which is provided by the CVS network in every local authority area in the country. There is a council for voluntary service on everybody's doorstep. Edinburgh has Scotland's oldest CVS, which dates back to the 19th century, although it is fair to say that most are of much more recent origin. The councils are well-established players at local level and are a source of guidance and support, especially for smaller voluntary organisations.

Additional new training would ensure that the bill's requirements were entrenched among trustees in the voluntary sector but, if I may pick up on the convener's comments, wider issues such as financial management could also be covered as part of that overall programme.

Jim Mather: I understand that. However, commercial training organisations have an on-going programme whereby new courses come on stream and old courses die or atrophy. Could the challenge of the new training not be funded within that £14 million budget?

Paul White: That is a fair question, but we should be clear about the £14 million that the CVS network attracts. Each organisation in the network is independent. In addition to the funding that they receive from the Executive, the organisations make every effort to raise income from a range of other sources. Much of that income, such as lottery money, is project based and requires specific activities to be undertaken in return. Therefore, much of the money is already ring fenced.

Given the nature of the charity law review, its impact on Scotland's voluntary sector and its importance to both the voluntary sector and to our communities as a whole, we believe that we need to kick off an ambitious and high-profile programme of training to ensure that people do not fall through the net. We need to ensure that trustees have access to the information, guidance and support that they require so that they can continue with confidence in the important role that they play. As a sector, we need to put our shoulder to the wheel, but we need the resource to ensure that the bill has the impact that we all want.

Jim Mather: If the £500,000 was made available, what would that mean in practical terms? What additional resources would be acquired?

Paul White: There would be two elements. The SCVO would look to develop an in-depth governance programme that would set the tone at national level for what the sector requires. At local level, we would look to the network of councils for voluntary service to deliver conferences and good-practice events in communities throughout Scotland. More important, once those had taken place, the councils for voluntary service would then be in a position to provide on-going advice and guidance for trustees who find themselves with dilemmas or who are uncertain about the new regulations. That is pretty much where we are coming from.

The Convener: There is a sense in which the SCVO has a vested interest in the proposal. To paraphrase Mandy Rice-Davies: you would say that, wouldn't you? It strikes me that some organisations, such as housing associations, would not approach the SCVO for such training because they have governance programmes of their own. Some of the bigger charities, such as Wise Group or Barnardo's, are probably capable of delivering such training for themselves. The real issue, I suppose, is which subset of the voluntary sector will require such training from the CVS network. Should such training on governance be provided in addition to, and build on, current provision as you suggested, or should it be provided in the context of a reappraisal of the services that are currently funded and delivered? In a sense, the question is about rebalancing versus additionality.

Paul White: On which organisations a governance programme should ideally target, you are absolutely right to point out that the bigger players in the sector will be able to keep their own houses in order. We are confident that they will be able to do so. As we discussed earlier, many voluntary organisations are small or small to medium in their scope. We are particularly keen to target our efforts on those organisations.

On how we use the resources that are currently employed, you are absolutely right that one reason why we can deliver a training programme at a lower cost than the several million pounds that might be suggested by the cost of £50 per trustee—which is referred to in Lucy McTernan's submission—is that there is an existing infrastructure in place to support the voluntary sector. Our view is that we can use existing resources to deliver a governance programme, but we need to ensure that we get the profile and information out at a level and impact that is sufficient to ensure that the legislative changes are embedded in Scotland's voluntary sector. That is not something that we can do half-heartedly. We must put the resource in so that we can deliver the change that we and the general public require.

The Convener: That has been a useful exchange. Next, we shall take evidence from Executive officials, so some of the issues that you have raised will no doubt be raised with them. Thank you very much for coming along.

10:50

Meeting suspended.

10:53

On resuming—

The Convener: I reconvene the meeting. We shall now conclude our formal scrutiny of the bill by taking evidence from Scottish Executive Officials and Executive agency officials. I welcome Richard Arnott, head of the bill team, Quentin Fisher, deputy head of the bill team, and Jane Ryder, chief executive of the Office of the Scottish Charities Regulator. I would like to offer the officials the opportunity to make a brief opening statement, and then we shall proceed to questions.

Richard Arnott (Scottish Executive Development Department): We are grateful for the opportunity to talk to the committee about the financial implications of the bill. You have introduced us, so I will not do so again.

It may be worth emphasising that the overall financial implications of the bill are not expected to be very great for any charity that is already well run and compliant with the many existing legal requirements. Those requirements include adequate governance arrangements, accountability, control by charity trustees, maintenance of accounting records, preparation of accounts and so on.

However, implementation of the bill may lead to implications for any charity that is not currently compliant with those requirements. That chimes with the main objective of the bill, which is to

establish a robust, proportionate and transparent regulatory framework that satisfies public interest in effective regulation of charities in Scotland. The regime is intended to protect the public interest in charities. If it brings to bear pressure on charities to comply with a regulatory regime, and hence brings public confidence that all charities will use charitable funds for the correct purposes, the value of the bill will be significant. It will help to protect the estimated £240 million a year that is donated to Scottish charities by the public. Compared with that, the cost of implementing the bill, which I guess could be said to be a maximum of £10 million a year, is relatively small.

I would also like to emphasise a couple of key issues that we note have already been discussed by the committee. The committee asked Anne Swarbrick to provide a background note on the origins of the proposed regulatory regime; she has submitted an extra note for this meeting, on which I would like to comment. On the summary of events leading up to development of the bill, it is also important to remember Jim Wallace's announcement on 16 December 2002 of the Executive's response to the McFadden review. In summary, Mr Wallace announced that the Executive accepted the main principles of the McFadden recommendations but that, as legislation was not available at that time, it was instead planning to establish OSCR as an Executive agency, because that could be done without legislation.

Finally, it is worth noting that since the financial memorandum for the bill was published, further information on OSCR's estimates for increased resources to implement the bill have become available. As OSCR noted in its written evidence to the committee, and as was confirmed by the Minister for Communities in his letter, it is now estimated that OSCR's budget needs to be increased to £3.6 million per annum from 2006-07 to take account of the extra work that will probably stem from implementation of the bill. I know that the committee has discussed that this morning, but I want to emphasise that the figure has changed since the memorandum was published.

We shall do our best to answer your questions.

The Convener: I would like clarification on one matter. In *The Scotsman*, the Scottish Council of Independent Schools was quoted as stating that the independent schools sector pays out

"£7.5 million a year to help less well-off children attend private schools, but only receives £2.5 million annually in rates relief."

What is your view of those figures?

Richard Arnott: As we said in the financial memorandum, there is no direct implication in the bill that schools will lose their charitable status.

However, because that has been the subject of much discussion, we thought that it would be useful to include figures that are available. To get those figures, we had discussions with the Scottish Council of Independent Schools. The estimate of the value of charitable status to the independent schools in Scotland that we included in the financial memorandum is between £3 million and £6 million, which is a combination of estimates that various people made, including the SCIS and the SCVO. Since then, we have managed to obtain a little bit more information that might be helpful.

We originally estimated that the non-domestic rates benefit that schools received was about £2.5 million a year, but we have been able to investigate that further with local authorities; we now understand that that non-domestic rates rebate amounts to £4 million. There are obviously other benefits for independent schools, such as gift aid and corporation tax exemption. Benefits will vary enormously from school to school, and I am afraid that we do not have accurate information on them. We can only accept the SCIS's estimates. I understand that the SCIS is undertaking further research with schools to try to improve that estimate, but we do not have an overall value.

The Convener: It will be useful to get as much clarity as possible on those issues.

11:00

Alasdair Morgan: Can Richard Arnott give us an update on the situation with regard to non-departmental public bodies, from which we have received a fair number of submissions? You said that you are considering whether they should either cease to be charities or cease to be non-departmental public bodies.

Richard Arnott: The position has not really changed on that.

Alasdair Morgan: There has not been a decision, has there? That is the point. You said that you are going to decide whether they should either cease to be charities or cease to be non-departmental public bodies.

Richard Arnott: No, the Executive's position has not changed on that. It has been announced that, as part of the regular review that is undertaken, each charitable NDPB will be considered and a decision will be made on whether it is appropriate for it to continue as an NDPB or whether it would be more appropriate for it to continue as a charity. The Executive has accepted that there is a conflict between the requirements of public bodies policy—which, because of public bodies' accountability to ministers, requires that ministers should be able to

control them through powers of direction, which they usually have—and the fact that, in general, charities should be independent bodies. The reviews have not all been completed yet, and only once that has been done will the Executive consider whether additional funding will be required.

The Convener: I ask you to make this absolutely clear: are you talking about the quinquennial reviews?

Richard Arnott: Yes, but I understand that they are not called that any more.

Alasdair Morgan: I accept the argument, but our job is to estimate the costs of the bill, and all the evidence that we have received suggests that, if the decision is taken not to make NDPBs charities but to have them retain their status as non-departmental public bodies, the potential costs will be enormous—far greater than anything that has been expressed in the financial memorandum. Even the evidence that we have received today from the Royal Botanic Garden Edinburgh, which is based in lots of other places apart from Edinburgh, suggests that the issue is not just tax relief but the effect of donors not giving donations because they would no longer get tax relief on them. First, I suspect that the Executive's sums totally underestimate the potential loss. Secondly, even if the sums are correct, there is no chance on earth of the Executive making up for bodies' loss of funds. Is that a fair comment?

Quentin Fisher (Scottish Executive Development Department): The figures that are used in the financial memorandum were derived from the bodies themselves and their sponsor divisions within the Executive a couple of years back. The figures were checked again last year with the sponsor divisions.

Alasdair Morgan: But were those figures simply for tax relief?

Quentin Fisher: Those were the figures for the value of rates. The question that we asked was a broad one and, I confess, the bodies came back with incomplete figures, as it were. Some could not tell us—in fact, most of them declined to tell us—the value of charitable status in terms of donations, which is the issue that you raised. We accept the fact that there would be a potential loss of donations were such a body to lose its charitable status; however, as you can well imagine, it is difficult to put a figure on that. Donations depend on legacies, for example, and are not regular income or turnover. For that reason, such bodies have always been a bit reticent about putting a figure on them.

In their more recent evidence, they have put figures on them, and we have no reason to question them. However, we do not say that the

figures that we provide in the financial memorandum relate to lost donations; we are specific and say that they relate to tax relief and rates relief. I note with interest that, in the submission from the Royal Botanic Garden Edinburgh, which has been received today, the figure that is given for rates relief is lower than the figure that we were initially working on.

Alasdair Morgan: What is the Executive's view on the matter? Do you view it with equanimity? It strikes me that it would be impossible to proceed on the basis of those bodies losing their charitable status. The financial loss to a number of bodies would be enormous and would not be made up, which would have significant repercussions throughout large parts of Scotland.

Richard Arnott: The other thing that ministers will have to consider—obviously it is not for officials to consider—is whether it is more important for the bodies to remain charities or for them to remain NDPBs.

Alasdair Morgan: Surely it goes further than that and is about whether it is more important that bodies continue to do the job that they are doing and are not totally hamstrung in carrying out that function. The committee must decide that now, in considering the financial memorandum, rather than speculate about a decision that ministers will take at some stage in the future.

Jane Ryder (Office of the Scottish Charities Regulator): This is about the financial implications of applying the principle—the charity test—consistently. The difficulty for NDPBs, and possibly for other organisations that are at the direction of third parties, is not the public benefit test but the requirement for independence of constitution. Although that is not a wholly new requirement—we have had many discussions about it with the Charity Commission—it is not terribly well understood or well articulated at present. One of the themes that came through in the consultation and that is coming through in the debate is the principle that charities should be independent.

The Convener: Yes. There are some issues there.

Ms Alexander: That was a helpful intervention. We are trying to assess the financial consequences of the policy position in Scotland. As the bill stands, the clear policy position in Scotland—with the public benefit test that we are using and the independence criterion that has been mentioned—is that quangos will no longer have charitable status. Is that correct? That is the policy position that is set out in the bill.

I return to Alasdair Morgan's point and seek further clarification. It is rather puzzling that the financial memorandum deals only with the loss of

rates income and grant-in-aid funding and does not deal with the impact of the bill on charitable giving. That is not an issue for the charitable organisations; it is an issue for the Executive. We are simply observing that it is a matter of regret that that issue is not dealt with in the financial memorandum.

I ask the witnesses to clarify something else. The submission that we have received from the Royal Botanic Garden Edinburgh states:

“Under proposed charities legislation for England and Wales, the national cultural institutions will retain charitable status and will be regulated by the Department of Culture, Media and Sport or DEFRA.”

In England, the policy position is that it is possible for a body to be both a quango and a charity, and to pass both the public benefit test and the independence test. If we were discussing the financial memorandum to an English bill, we would not be interested in the loss in charitable giving; the issue would not arise, because such bodies would retain their charitable status. However, in Scotland, we have chosen to have a public benefit test and an independence test that do not allow quangos to meet the threshold, although they can meet the threshold in England. Surely, in those circumstances, it is all the more important that we have a financial estimate of the costs that will be associated with the more restrictive definition that will exist in Scotland. Why does such an estimate not appear for the bill?

The Convener: There might also be an indication of how those costs might be met separately, if they cannot be met through the existing system.

Ms Alexander: Indeed. We have made a policy decision that is different from the decision that has been made in England, but there are no figures in the financial memorandum for the costs that are associated with that decision.

Richard Arnott: As Quentin Fisher mentioned, we attempted to find out the value to NDPBs of their being charitable bodies. They were not able to provide us with a value for the donations that might stop. That is unfortunate. They seem to be thinking harder about it now and they are providing some estimates; however, when we made our estimates, they were not able to provide them.

I emphasise two further differences between the position in England and the position in Scotland. First, under current English charity legislation, there are 100,000 exempt charities, and that is to be continued in the proposed English legislation. When we were designing the regulatory system in Scotland, one of our main aims was to encourage public confidence in the charity brand—I suppose that that is the best way in which to describe it. We felt that the fact that a large number of charities

would be exempt from regulation and from the new, independent regulator that we are setting up would not necessarily encourage public confidence in charities, so we have decided not to have the concept of an exempt charity.

The other difference rather strays outside charities legislation. I think that the Executive has gone further in public bodies policy in wishing to ensure NDPBs’ accountability to ministers. I do not claim to be an expert on the matter, but the same issues have not arisen in England.

Ms Alexander: I have a supplementary question. The submission from the Royal Botanic Garden Edinburgh states:

“For the reasons given above”—

which are essentially about its capacity to seek charitable income from individuals or grant-giving trusts—

“most capital projects involving a public/private sector partnership will simply not be viable without charitable status available to the client organisation.”

The organisations include organisations such as the Royal Botanic Garden Edinburgh, the National Galleries of Scotland and the National Library of Scotland.

Do you share that view? The position seems incredible to me. It is clear that you do not share that view, given that such organisations will lose their charitable status. Is that accurate?

Richard Arnott: I do not think that that relates to the bill. I have no reason to challenge what the RBGE says. If it is saying that such things are not viable—

Ms Alexander: It states:

“most capital projects involving a public/private sector partnership will simply not be viable without charitable status available to the client organisation.”

Jane Ryder: That is because of the implications of tax relief for the organisation and donors.

Ms Alexander: I accept that we are talking about speculation, but there is a rather helpful list, which includes the Royal Botanic Garden Edinburgh, the National Museums of Scotland, the National Galleries of Scotland and the National Library of Scotland. Perhaps that short list would be a helpful place to start in estimating the sums of money involved and the impact of the differential approach.

The Convener: A number of other organisations have made the same point in previous submissions.

Dr Elaine Murray (Dumfries) (Lab): I share the concerns that others have expressed about the effects on NDPBs and cultural institutions in particular. There is a possibility that, because

English law will be different from Scottish law, English cultural institutions will be at an advantage compared with Scottish cultural institutions if the bill is passed.

I want to ask about something that I put to Anne Swarbrick—she was not terribly sure about the legal position. I presume that one possibility would be for the NDPBs that are affected to become independent organisations. Currently, NDPBs can benefit from gifts of art in lieu of tax, such as inheritance tax. Probably the most famous example is Titian's "Venus Anadyomene", which went to the National Gallery of Scotland. If the organisation became an independent organisation to retain its charitable status, I presume that it would no longer be able to get art gifts in lieu of inheritance tax.

Jane Ryder: I should declare an interest: in my previous life, I was the director of the Scottish Museums Council, which is the organisation for the non-national museums and galleries. I will have to check this, but my recollection is that it is possible for the Government to allocate to any recipient; it does not have to allocate to the National Museums of Scotland or the National Galleries of Scotland. However, there are criteria relating to security, insurance, the importance of the collection to which the item is being allocated, I think, and so on. I would have to check that to be absolutely sure about it.

Dr Murray: You say that each NDPB will be reviewed. Previously, there was what was known as the quinquennial review, but it stopped happening every five years, which I presume is why the name was dumped.

Has the Executive any idea about how the independence route—I do not want to get my SNP colleagues too excited—could be funded or managed? Has there been any financial calculation of the cost of losing NDPBs and transferring them to the independent sector?

11:15

Quentin Fisher: The reviews and their consequences for NDPBs and their charitable status are not waiting for the bill. They were kicked off at the end of 2002. Indeed, six NDPBs have already ceased to be NDPBs so that they can retain their charitable status. Each of those is quite different in nature and they each have different financial arrangements. Each organisation has to be judged on a case-by-case basis so that decisions can be made.

As far as funding goes, the line that we take in the financial memorandum is that if there is a decision to give up charitable status as an outcome of the review, and that results in a net loss of income, the Executive will consider

providing additional grant-in-aid funding to reflect that. However, the caveat is that there is also the possibility of restructuring services, which might be a possibility in some instances.

Dr Murray: From my limited experience of winding down NDPBs and institutions such as the Royal Commission on the Ancient and Historical Monuments of Scotland, I know that the position is far more complicated than initially meets the eye.

The Convener: Could Quentin Fisher let us know—not necessarily now—which six NDPBs have changed status and why they did that? Was the decision related to charitable status or were other factors at play? That information would be helpful to us.

Mr McAveety: I should plead previous on the issue, because of my ministerial role, although I was on the side of the angels then.

There is a complexity in restructuring any NDPB, whether it is being removed from Government authority, is being brought further within the control of the Executive or is affected by the principles that have come along the tramline in this charities legislation.

For a long time, I have been troubled by the lack of cumulative wisdom that has been applied to finding solutions for different policy objectives. Jane Ryder has confessed—much as I did—to her previous role on the Scottish Museums Council. Perhaps her experience could help us to find a model that allows NDPBs to retain charitable status and generate income, because there is no way in which two or three of the major developments that have taken place in the past five to 10 years would have happened without grant giving or gift donation.

There is something else that we have not mentioned today but on which I would like to hear Jane Ryder's view. Have you had any discussions with the Cultural Commission, under James Boyle, about the potential impact of any recommendations that it might make to ministers? It might endorse the structure of existing NDPBs and the way in which they address income generation, because one element of the commission's remit is to consider how to allow organisations greater freedom to generate income instead of their being dependent on Government grant in aid year on year. Organisations feel that that dependency does not give them a chance to be flexible.

I am concerned that cumulative wisdom is not being applied to resolving such issues. The Finance Committee has some difficult questions to address today and I would like to hear your views on them.

Jane Ryder: I have applied my mind to the problem, but I have not come up with a solution. If I had, I would be more than happy to share it with you. There is a role for discussion with the Cultural Commission and we have noted that. However, the timing—the timetable for the bill's progress and the Cultural Commission's intended timetable—is awry.

Mr McAveety: What are the barriers? Someone such as you who has the right experience must have some idea of the possible solutions. Have you woken up one morning and thought, "I've got a solution," but found that, by noon, someone has decided that it cannot be done? I felt that I had that problem when I had my portfolio.

Jane Ryder: In discussions with others, I have had certain ideas, which the NDPBs have explored. None of the options is satisfactory because of the sums at issue. Because of my previous role, I have huge sympathy with organisations. My personal view is that it would be ironic if we were to find ourselves in a position in which the NDPBs were most at risk while other categories of organisation could at least pass the initial charity test, even if they were open to challenge in other areas. I am not sure that that was ever the policy intention of the bill.

Alasdair Morgan: I want to follow up on the last response that I got from Mr Arnott. Would it be possible for us to have copies of the letter that you wrote to the various NDPBs a few years ago and to find out what their responses were?

Richard Arnott: Yes, I am sure that we could provide that. That would probably have been dealt with through the NDPBs' sponsor divisions in the Executive.

Alasdair Morgan: That would be helpful. Even if NDPBs responded fully on what they thought would be the result of the loss of charitable status, they will not have dealt with the issue that is mentioned in paragraph 4.3 in the submission from the Royal Botanic Garden Edinburgh—namely, the fact that such bodies' counterpart organisations south of the border will not lose charitable status. That is a significant issue. The RBGE makes the point that because the major capital projects that those English organisations are running will continue to attract charitable donations, many donors who might previously have supported the projects of the relevant Scottish body will turn to the English organisations instead. The NDPBs would never have thought of raising that issue in their submissions. I am suggesting that even those organisations that answered your question fully would have underestimated the potential loss.

Richard Arnott: You might well be right. At that time, they would not have predicted the changes,

but I am not sure that that is something that we would expect to consider as part of our examination of the bill's financial implications.

Alasdair Morgan: There is a financial implication for those bodies.

Richard Arnott: It is not necessarily an implication of the bill; it is an implication of existing charity legislation.

Jane Ryder: It is the result of a displacement effect—in other words, it is an indirect rather than a direct financial consequence.

The Convener: The issue is crucial, so I will let in another few members. My understanding is that the Communities Committee will take evidence from a number of NDPBs this week. Our committee might like to send a representative along to that meeting.

Mr Brocklebank: I might or might not be expressing the concerns of other members, but my feeling is that the bill is a very big hammer to crack a relatively small nut. That view has only grown as I have listened to the evidence this morning.

I find it difficult to understand what is being said. The Royal Botanic Garden Edinburgh gives chapter and verse on the bill's financial implications—it describes how giving to the RBGE will be affected, for example. It says that it had believed that the national cultural institutions would not be affected by the bill, but it is obvious that that is not the case. The RBGE claims that there has been little consultation on the matter. How does the panel respond to that?

Richard Arnott: I am surprised, because I thought that the consultation paper that the Executive issued on the draft bill in June last year made clear the potential implications and set out the Executive's position on public bodies and the conflict with charitable status. I would need to check, but I imagine that the RBGE was one of the bodies that responded to that consultation.

Mr Brocklebank: Did you go directly to the NDPBs? Who did you approach to ask for the financial information?

Richard Arnott: When the original statement was made in 2002, I believe that the Executive went to the NDPBs' sponsor divisions, which in turn went to the bodies themselves.

Mr Brocklebank: You believe that that was the case. Does that seem adequate? I am not sure that it does.

Richard Arnott: In 2004, we consulted the sector and ensured that each of the affected non-departmental public bodies received copies of the consultation. I am pretty sure that we got responses from all of them.

I have attended meetings with some of the steering groups that are examining the reviews of the NDPBs to ensure that they understand the implications of the legislation. The Scottish Executive has ensured that those considering the bodies' position are aware of the implications of the bill.

I know that my colleagues in the culture division are still considering solutions. I understand that one of the methods that they are considering is the example of the museums in Sheffield. There, it has been established that ownership of the assets remains with the local council—I think that that is who owns them—and the museums look after the assets under a contract or a funding agreement, thereby maintaining their independence. I do not know whether that is a potential solution, but I know that it is being considered.

Mr Brocklebank: As things stand, we are saying that our great cultural institutions, such as the art galleries and the Royal Botanic Garden Edinburgh could be put at a very significant competitive disadvantage compared to similar bodies south of the border, such as the Royal Botanic Gardens at Kew, the British Museum, the National Gallery and the British Library. As a result of the proposals that we are discussing, all those great philanthropic national bodies will have a competitive advantage over the Royal Botanic Garden Edinburgh and other bodies in Scotland.

Richard Arnott: That could be the case, if ministers decide that they should continue to be NDPBs.

The Convener: The solution might create other problems, though. If the bodies were to become independent, there would presumably be an issue of control and accountability. The problems replicate themselves and the solutions might generate other problems.

Richard Arnott: Obviously, the solutions would have to be considered in their widest sense.

John Swinburne: What analysis and investigation was made to quantify the extent of the existing financial problem prior to setting up the legislation? How much money was being pilfered out of the charities compared to what it is costing to implement this legislation? Are we, as Ted Brocklebank suggests, using a sledgehammer to crack a nut?

Richard Arnott: I will introduce the answer to that question before handing over to Jane Ryder, who has figures for individual cases.

It is important to emphasise that the reason for having the bill relates to the fact that, as Lucy McTernan said earlier, the sector has been calling for a regulatory system for around 10 years. That is the main basis for the bill, but it has to be said

that there was an increased impetus for the call for legislation as a result of a small number of high-profile cases.

Jane Ryder: The two catalysts for the bill were the Breast Cancer Research (Scotland) and Moonbeams Children's Cancer Charity cases in 2003. The indicative figures that we have been able to pull out show that, over five years, the two organisations raised just under £17 million between them and used just over £2 million on direct charitable expenditure. At the point at which the Scottish Charities Office intervened against the charities, a sum of not less than £14 million was not expended. That is an extremely significant sum.

As an executive agency, OSCR can develop a proactive monitoring scheme. Lucy McTernan talked about how we are proposing to phase that in. We hope that that will enable us to identify problems on that scale at an early stage. The bill also gives us significant additional powers that would enable us to intervene at an earlier stage and to do so against subsidiary companies and agents, which were significant factors in the 2003 cases.

I would also like to echo Richard Arnott's point. The two primary objectives of the bill are to build public confidence through an appropriate regulatory scheme and to emphasise the accountability of charities in return for the benefits of charitable status. That is something that we have been emphasising. There are valuable aspects of the bill that, both through the regulator and directly, will make charities more accountable and transparent to the wider public and the stakeholders. I would not want to lose sight of that.

11:30

Jeremy Purvis: I want to follow that by asking about the anticipated costs in future years. Table 4.3 in your submission is helpful, as it shows the anticipated cost up until 2009-10, when it is expected to be more than double the current expenditure. Can you give us some more detail on the figures? The table shows a cost of £453,000 in 2006-07 for charitable status and further costs of £245,000 and £381,000 for registration and monitoring, respectively. The cost against the heading of "Charitable status" will go up to £500,000 by 2009-10—what does that heading refer to?

Jane Ryder: That heading covers the processing of new applications for charitable status. At the moment, the Inland Revenue receives in the order of 1,300 new applications a year. The heading also covers the rolling programme of the review of charitable status, which we will institute. Section 30 requires us to

remove a charity from the register if it does not meet the charity test, which is a provision that we will introduce over time. A lot of work in the initial stages is associated with the development of the guidance for the charity test, with putting in place everything that we need to assess new applications immediately and with phasing in the programme.

The charities register has been referred to. We currently publish the Inland Revenue information on live charities, of which there are about 18,500. However, our estimate of the total number of charities that will need to appear on the register is approximately 30,000 including the live charities, a number of organisations whose activities are currently unknown, English charities that might have to register and an increasing number of new charities. Work will also have to be done to keep the register up to date because, under the bill, charities are required to notify us of certain changes of detail.

We are developing a proactive monitoring scheme, which we piloted on 300 charities in the summer. We have produced a comprehensive report that is at the printers even as we speak and which will be published in the early spring. As has been mentioned, we plan to phase in that scheme gradually over 2005. It will be light and proportionate. The two thirds of charities that have an income of less than £25,000 were only ever intended—and are intended—to fill in a simple annual return to be returned to us with their accounts for us to do the rest of the work. We are asking the remaining approximately 8,000 charities to supply more information because they have it and know that the figures are accurate and because that will relieve us of some of the processing load. By April 2006, when the bill comes into effect, both the regulator and the charities will be familiar with the anticipated requirements.

Jeremy Purvis: I understand that explanation but, with regard to charitable status and the other categories, on the basis of the number of applications that you say that the Inland Revenue receives at the moment, it seems that you would be looking at £400 per registration—that is very much a ball-park figure—with any associated queries on the back of that and perhaps monitoring and investigations. You are not building in any efficiencies. You are not saying that you will become more efficient over the first five years of your life. Do you anticipate that greater numbers will come through, which will produce efficiencies?

Jane Ryder: It is precisely that—greater numbers will come through. The figures also cover dealing with the new regime for Scottish charitable incorporated organisations and a fairly extensive consent regime. The overall figures also absorb a

five-tier system of appeals, under which we will have to conduct an internal review on request, after which cases can go up to the appeals panel and then on up to the court in—hopefully—very much decreasing numbers. Nevertheless, there are considerable costs involved in that.

Jeremy Purvis: The figures for guidance show an increase as well. I am not sure whether it is an inflationary increase. It is understandable that there will be start-up costs in order to make known the new requirements, but why is there a continuing substantial cost for guidance?

Jane Ryder: There will be a continuing need for guidance as new issues arise and new charities come on stream. The point was made in earlier submissions about OSCR striking the appropriate balance in providing general guidance. I stress that it is not OSCR's intention to offer tailored training, but it is appropriate that OSCR offer general guidance on compliance issues and on the issues of practice that come out of our monitoring and investigations, so that the sector learns from cumulative experience and individual decisions.

The bill requires us to publish the results of inquiries, so there are already some prescriptive indications about the process that we have to follow. We need some flexibility to respond to new circumstances. However, it is right that guidance, advice, training and support are on a spectrum. Some aspects will be provided by OSCR, some by the SCVO and some by other intermediaries.

We have held discussions with key umbrella organisations that advise us, such as the Institute of Chartered Accountants in Scotland. Clearly, accountants will be critical. It is not that OSCR wants to reaudit anybody's accounts, but we want to ensure that the standard of audit practice is appropriate and that the new regulations are understood.

The Convener: One suggestion for an alternative approach was that rather than putting the burden on OSCR, the nature of charity audit could be respecified and a specialist requirement could be placed on the auditing profession. Do you have any comments on that?

Jane Ryder: There is currently a specialist requirement.

The Convener: But it could be extended.

Jane Ryder: Yes. Yesterday, I had a brief discussion with the ICAS executive director of regulation and compliance about how we might approach the issue. We have not sought any additional assurances from auditors, but we want to work with ICAS and other auditors and examiners to ensure that there is a joint understanding in guidance, and possibly examine

the introduction of specialist accreditation by ICAS, which is a matter for ICAS.

Jeremy Purvis: On the figures for investigations, given that the convener rightly said that directors of charities have to observe the rules of the Inland Revenue, are you not adding an additional investigation and performing a role that the Inland Revenue would perform anyway, especially if there is non-reporting of financial activities? That is currently investigated under Inland Revenue rules, and it, not OSCR, would investigate.

Jane Ryder: Investigations would be into compliance with a whole range of the bill's requirements, including on issues of misconduct, and not purely with financial requirements. The Inland Revenue has a very limited investigatory function. The current function of the Inland Revenue to grant status is passing across to OSCR.

Jeremy Purvis: If you have a very light-touch reporting mechanism, which we understand will be the case, £400,000 to investigate basic annual returns seems rather a lot.

Jane Ryder: Perhaps I had not properly explained that. There is a light touch for two thirds of the charities—the small charities that will be providing us with an annual return and their accounts, which we can examine—and a more extensive questionnaire for other charities, which will give us information on fundraising ratios and dealings with trustees, for example, because governance issues are critically important, and we can then drill down to those. We do not anticipate for a moment that we will be investigating a substantial number of the proportion of the 30,000 charities, but the sum quoted is not a great amount. When channelled into investigations, pure and simple, it is little more than the Scottish Charities Office had prior to the establishment of OSCR, but we have a range of other functions and ways of assisting and facilitating charities to comply. There is a balance to be struck. The bill gives OSCR extensive powers of investigation and sanction but, as Richard Arnott has indicated, we envisage using those powers only in a very small number of cases. The balance of our activity following investigation will be to facilitate the charities to comply, not to take extreme intervention powers.

Jeremy Purvis: Given that that is the case, I would like to look at the headings in table 1.1. Forgive me if I am comparing apples with pears, but does table 1.1 not show the existing figures? I am looking at the reason why we are extrapolating up to more than double that by 2009-10. According to table 4.3, investigation is probably the most considerable part of the work after the registering of new charities. What would be the

equivalent under the existing figures, given that you have just said that it is continuing existing practice? Does that come under the £295,000 for operating costs, or are the headings not comparable?

Jane Ryder: I am sorry, but I—

Jeremy Purvis: Table 1.1.

Richard Arnott: Table 1.1 is the existing—

Jane Ryder: I beg your pardon.

Jeremy Purvis: You have said that the investigative role is extending what is currently the practice. Where in table 1.1 is the current budget that you originally set down for investigations?

Jane Ryder: I think that it is incorporated within salaries, training and recruitment, and specialist legal and agency support. That is—

Jeremy Purvis: Do you have that table in the same format as table 4.3?

Jane Ryder: No, we do not. Sorry. That table—

Jeremy Purvis: Are you able to do that?

Jane Ryder: With some considerable difficulty, I think, because—

Jeremy Purvis: Why?

Jane Ryder: Only because table 1.1 reflects the situation in December 2003, when OSCR was set up as an executive agency. The European Foundation for Quality Management modelling has been done by us in the course of 2004 on the basis of our first six to nine months' experience.

Jeremy Purvis: Right, okay. If meeting that request is impossible, or if it is possible but only with considerable expense, you must nevertheless have given a case to the minister for an increased budget. Did the minister not say—

Jane Ryder: We presented it not so much as a case for the increased budget but as a full analysis of what we need in light of the legislation, which allowed us so say what the difference was, rather than starting with a baseline and working upwards.

Dr Murray: On a slightly different issue, Anne Swarbrick raised the concern that when charities appeal to the appeals panel, they will not be able to recoup the cost of the appeal for such things as legal advice, even if they are successful. They will therefore have to stand those costs from the public donations that are given for the purposes of the charity. Do you want to comment on that? Could any consideration be given to helping a successful charity to meet the costs of an appeal?

11:45

Richard Arnott: The best way to answer that may be to explain our thinking. We have been

aiming to set up an independent regulator that effectively acts in the public interest. For a charity or a body to apply to OSCR and be registered, it must meet the costs of applying. The idea of having an appeals panel was to provide some independent check or quick and simple second opinion on OSCR's decisions. We would hope that the panel will be able to provide quick opinions. It is intended to offer a lower, quicker and easier test than going to court, which is what would have to happen otherwise.

We would hope that the costs will not be extensive. That is part of the reason why we did not consider it necessary to award compensation costs. We also felt that there might be an element of thinking along the lines of, "Well, I might as well appeal because I'll get my costs if I win." We are aware that if people are really unhappy with the panel's decision, the appeal can be taken to the court, which can award costs if it so chooses.

Dr Murray: Can you give us a rough estimate of the costs to an organisation of an appeal?

Quentin Fisher: We did an estimate. If we take out of the budget that we have set for the appeals panel the running costs or baseline of £80,000 per annum, that would come to about £1,300 per case. That is the cost over and above staffing costs and so on.

Richard Arnott: To clarify, that is the cost of the appeal panel.

Dr Murray: Yes—not the cost to the organisation.

Richard Arnott: You were asking about what the cost would be to a charity that was appealing. In theory, the cost to the charity would be that of writing a letter saying that it wished to appeal and to ask for a second opinion.

Quentin Fisher: We recognise that, in reality, some charities will wish to take legal advice and have legal representation present. That would cost them, although there is of course no requirement for them to have that. As Richard Arnott says, representatives of the charity can simply write a letter and then turn up on the day and argue their case.

Jim Mather: I am interested in the total sums concerned. You mentioned total donations of £240 million and total costs of £10 million. Is that the annual cost?

Richard Arnott: Yes.

Jim Mather: If we take that publicly funded administrative cost of the bill—£10 million—and add that to gift aid as a percentage of total donated income, it begins to look as though the public purse is giving its support to quite a marked extent. Given the probable impact following the

passing of the bill, with the loss of the NDPBs, it strikes me that we might find a higher percentage of the total income coming from the taxpayer. Have you mapped that out? Have you examined that and compared what will happen and what is happening in Scotland with what is happening in the rest of the United Kingdom and in other small European countries, to see whether that is reasonable?

Quentin Fisher: You mention the rest of the UK. To make a comparison between what we are proposing to do and set up and what is happening in England, the Charity Commission for England and Wales has existed for quite a while now and, when I last looked, £30 million was its—

Jane Ryder: And 600 staff.

Quentin Fisher: Yes—it has 600 staff, which is more than here. Granted, the Charity Commission has a bigger remit and a bigger constituency, and has to deal with more charities. That is certainly proportionate and relative to the existing regulatory structure in England and Wales.

Jim Mather: I hear the words, but I would like to see the numbers mapped out so that we can make a genuine benchmark comparison. At the moment, we are heading into the dark in a number of areas. However, working out the exact total cost would be a simple exercise. You have that figure. How much is the gift aid? You have that figure. How much are the total donations that are delivered to charities in Scotland? We can compare that with elsewhere, so that we can see whether we are paying over the odds in managing the charitable sector in Scotland. Is that not possible?

Quentin Fisher: Sorry, but I want to be clear about this. Are we talking about the cost of regulation rather than the cost of the benefit to the sector?

Jim Mather: I am talking about the totality of the matter. In essence, the public purse is paying for the cost of the administration and of the gift aid that would otherwise remain with the Treasury. As a result, would it not be reasonable for us to be given those data to benchmark what is happening in Scotland with what is happening elsewhere?

Richard Arnott: I am sorry—I have become confused. The £240 million per year that is donated to charities in Scotland is not just gift aid.

Jim Mather: I understand that.

Richard Arnott: I believe that although the figure includes some gift aid, that does not represent a very large proportion.

Jim Mather: But, again, we are dealing with anecdote. I am looking for some hard figures.

Richard Arnott: I am not sure that we are able to produce any harder figures.

The Convener: I suppose that Jim Mather's question centres on the amount that the taxpayer pays to support the charitable sector, after taking into account all the different categories of contribution including the underpinning of administrative costs, relief through gift aid or any other associated costs. I believe that he is also seeking a breakdown of proportionate issues at a UK and Scottish level and is wondering whether there are any useful comparators elsewhere in Europe.

Jane Ryder: There might also be what might be called set-off figures that show the amount that charities contribute back through national insurance and so on. Of course, some of those aspects relate to their status as businesses rather than as charities, which makes things difficult to disentangle. This is not an entirely one-way street.

Jim Mather: I am asking for a simple subset of the figures to find out whether we can clarify things.

As far as OSCR is concerned, Jeremy Purvis raised a concern that I share about the change in the reporting format. There has been a move away from elements such as rental, services, salaries, training and recruitment towards categories such as leadership and governance, and people management. Is it not possible to report openly, transparently and consistently?

Jane Ryder: Yes. I hope that in seeking to move to the European Foundation for Quality Management model we will make the reporting system more open and transparent than it would have been if we had maintained the position from which we started in December 2003 and simply provided indicative figures. In trying to make an extrapolation back to those initial figures, we must bear it in mind that the functions in 2003-04 are different to those that are set out in the EFQM model for OSCR 2. As a result, the issue is a bit like comparing apples with pears.

Jim Mather: Sure, but that approach leads to discontinuity in the transitional year and does not allow us even to compare apples with apples, never mind pears with pears.

I take it that the first four categories of the cost element—leadership and governance, people management, information management and resources—are all overhead rather than operational aspects.

Jane Ryder: That is correct. I should point out that those categories are standard for that model. Indeed, I have a 68-page resource impact assessment that sets out the matter in much greater detail, if members would like to see it.

Jim Mather: One of the major issues relates to the fact that other organisations, particularly those in business, tend to ensure that the overhead figure is stable or diminishing. Your forecast indicates that that figure will increase pretty much at the same rate as the direct cost. Why is that?

Jane Ryder: We have indicated some of our assumptions with regard to inflation on salary settlements and information technology replacement—that is probably a separate issue, but we have included it anyway. Our assumption of 3 per cent inflation on salary settlements is about half the normal assumption for Scottish Executive matters, which means that the figures include some efficiencies.

Jim Mather: But I have calculated that your overheads amount to 43 per cent of total cost, which is about twice the published rate for organisations such as Scottish Enterprise and Highlands and Islands Enterprise.

Jane Ryder: It is not entirely correct to classify all those costs as overheads. For instance, the appeals process comes under leadership and governance. I have sympathy with the sector, which talks about dual regulation. There are substantial costs for OSCR in complying with the requirement to be a non-ministerial department; it must comply not only with the legislation, but with the Executive's requirements. Therefore, the overheads are not purely the tangible ones; some of them are operational issues.

The Convener: I offer the witnesses the opportunity to respond to Lucy McTernan's earlier argument about training costs. It is clear that there is a substantial gap between the £150,000 to which the financial memorandum refers and the £500,000 that the SCVO indicates as a more realistic first-year cost. The SCVO argues that there should be a tapering process in subsequent years.

Quentin Fisher: The figure in the financial memorandum relates to the Scottish Executive and to the costs to the Administration, as opposed to the costs to the charities or to the sector itself. The figure of £150,000 was based on experience of a previous exercise in relation to the Protection of Children (Scotland) Act 2003, in which a section of the sector was trained to go and train others.

The Convener: Have you got any out-turn statistics for how your estimates worked through that process? That would be an interesting test.

Quentin Fisher: It would be. We did not conduct the exercise and were not directly involved in it. The exercise was conducted by the sector, but we could certainly ask about it.

We are budgeting the training cost as a cost to the Administration. We acknowledge that there will

be a cost to the sector, but we have not attached a figure to it. The SCVO has attached a figure to training, but I do not think that we have seen that figure before today; we would have to discuss that with the SCVO. However, in our thinking, we considered that the SCVO has an existing training programme. One of the members mentioned that. We envisaged that the training would somehow be accommodated within that programme.

Richard Arnott: There has been much discussion about guidance for improved governance, good practice and compliance with the regulations. In considering the financial memorandum, we wanted to stick with the training that would be required to ensure that people complied with the regulations. That is where we feel that OSCR's main role lies. It should be for OSCR, as the regulator, to provide the guidance for what is needed to comply with the regulations. I understand fully that the sector may well wish to take that guidance further and to approve the good practice operations of the voluntary sector in general, but I do not think that the cost of doing that should be attributed to the bill. However, that does not mean that I disagree that it is required.

The Convener: There is a level of truth in that that picks up on my earlier comment about the different kinds of responsibilities on charity trustees. However, it seems to me that there is an issue about your introducing a new system that, undoubtedly, will have training costs for charitable organisations that must be taken into account. You made a specific estimate of the light-touch figures versus the figures from the charities that were subjected to greater reporting requirements. Can you be a bit clearer about the criteria that are being operated to separate out the sheep and the goats and whether you have identified specific training costs for different levels of regulation?

12:00

Jane Ryder: That is an operational matter for OSCR, which we are beginning to scope out. The monitoring pilot and extensive consultation provided us with a sample from which we could identify where the greatest problems would arise and what the appropriate response to them might be. In some cases, the appropriate response will be to work with specialist advisers such as ICAS members; in others, it will be to work with the SCVO and other intermediaries.

As Richard Arnott indicated, OSCR will provide guidance to an extent but we will not provide training. As happens at the moment, OSCR staff will host our own general guidance sessions and appear at other people's presentations and seminars to provide more detail and to answer questions. A range of responses will be appropriate, depending on the issues concerned. We are beginning to develop those responses.

The Convener: Forgive me, but that is really quite imprecise. The committee has been asked to comment on a bill, but the cost of training people to meet the bill's regulatory requirements is unspecified. You have said, "We could do this and we could do that" and "We might need this and we might need that", but you have not been able to separate out what exactly will be required and what that is likely to cost. That is an issue.

Jane Ryder: I do not think that the regulator can do that. The regulator's remit, as it were, goes only so far before we get into issues about what each individual charity needs and how that can be addressed.

Richard Arnott: The answer to the convener's earlier question must be that we fill that gap by discussing with the charities and umbrella organisations such as the SCVO what is required as the bill develops.

The Convener: To an extent, our role is to specify the cost of the bill before it is implemented. You have acknowledged that substantial hidden costs are associated with the bill and that you will need to have further discussions on those costs with the various agencies that might be expected to deliver the aims of the bill.

Richard Arnott: It is more a case of our needing to have discussions with the support agencies to which we already provide significant financial support. We need to discuss with them what that support should be used for and whether some of it should be used to support the implementation of the bill.

Jeremy Purvis: Mr Arnott will be familiar with the table that follows paragraph 4.3 in OSCR's written submission. Does he agree that it is odd that OSCR's anticipated cost for providing information and guidance is way more than double the suggested cost for the 20,000 charities that are to receive that training? Should the cost to the public agencies of producing guidance be more than double what it has been estimated it will cost the charities themselves?

Richard Arnott: No. If I have understood the question correctly, the cost to which you refer is the cost to OSCR of providing information to charities and to the public. If OSCR provides the guidance, the charities should not have to pay for training as well.

Jeremy Purvis: Given that those costs will not necessarily be absorbed by the charities, should not the financial memorandum have captured the costs to the public purse of providing that training?

Richard Arnott: It should have done so only if one considers that providing information to people assists in their training.

Jeremy Purvis: You have just said that it does.

Richard Arnott: It does—sorry, I am getting myself confused. It is important that OSCR provides the sector with information on what OSCR requires and on the lessons that can be learned from OSCR's investigations. I am not sure that there is a direct cost to the sector in absorbing that information. I think that what I am saying is that part of the sector's training costs will be provided by OSCR providing information. I agree with you on that.

The Convener: We will stop the evidence-taking session at that point. I thank the witnesses for coming along and responding to our questions.

I suspend the meeting for a couple of minutes to allow the witnesses to leave. We will then have five minutes or so for committee members to reflect on what they have heard and to make any suggestions that they have to the clerk about how we should proceed on the issue.

12:05

Meeting suspended.

12:06

On resuming—

The Convener: I remind members that, because we are still meeting in public, it is probably not appropriate to discuss some of the detail of what our draft recommendations might be.

Ms Alexander: I suggest that we go into private session for five minutes or so. That would let members speak frankly about how much the matter is in our domain or in that of another committee. One of the difficulties seems to be in deciding how much the issue is ours and how much it is other committees'. To avoid trespassing on the work of other committees, there might be merit in spending five minutes in private on that.

The Convener: If members agree, I am happy for us to move into private session. Do members agree?

Jeremy Purvis: Not entirely. It is fairly clear that we discuss in public, on an agenda, whether we are going to discuss anything in private. It was not published on the agenda that we would be going into private session and I am not sure that that would be fair to witnesses that we have had. I am quite happy to put my comments on record. We have done that when we have previously discussed the remits of committees.

The Convener: There are two points to be made. Jeremy Purvis's general point is correct; however, Wendy Alexander's point is also correct.

Some of the issues that have emerged from the evidence that we have taken are policy rather than finance issues. It would perhaps be risky for us to get too heavily involved in the policy issues. My suggestion is that we seek to engage with the Communities Committee to highlight the concerns that have been expressed today and perhaps appoint a member of this committee to attend the Communities Committee meeting at which it deals with NDPB issues, so that the points that have arisen today can be raised at that meeting. That would be done separately from the consideration of our report. There is a Communities Committee meeting tomorrow at 9.30. According to the proper relationship between committees, those issues should really be dealt with by that committee, with us feeding into its considerations rather than trying to draw any preliminary conclusions here. That is my suggestion, and members seem to be in agreement with that.

Members indicated agreement.

The Convener: What we now need is a committee member to volunteer for that.

Alasdair Morgan: Jeremy Purvis and I will be catching the number 2 tram tomorrow morning. That rules us out.

Dr Murray: Some of us will be attending the Education Committee meeting tomorrow morning.

Ms Alexander: We get a wee bit jumpy when another member comes to our committee, although I am absolutely not against a member going to the Communities Committee. I was going to suggest a clerk-to-clerk letter, but in view of the time, it should be a clerk-to-clerk e-mail that makes two points. The first is that the bill designates NDPBs in Scotland as not being charities, but the financial memorandum does not touch on the impact on those bodies and the sum of money that is involved, either in grant giving to them or in individual charitable donations. Other members may have other points.

The second point that we should make is that, since the bill was first produced, it has become clear that a different approach will be taken in England. Therefore, the first point is significant not only because the bill will have an unquantified direct financial impact, but because a migration effect that is also unquantified may be created because there will be a different approach elsewhere.

Everybody is throwing up their hands and saying, "Oh God! There's no policy solution." England has a policy solution, but that issue is not for this committee to pursue. In England, some NDPBs that are regulated by the Department for Environment, Food and Rural Affairs keep their charitable status. We should send an e-mail that makes two points: first, that there is an

unquantified financial impact and, secondly, that the impact may be exaggerated because similar conditions will not pertain in England.

Mr McAveety: So we want an English solution to a Scottish problem. Can you live with that?

Ms Alexander: We should flag up to the Communities Committee the policy's financial implications and pass the matter over to that committee.

The Convener: If we cannot send a member, Wendy Alexander is right that we should get something specific down on paper. Given the timescale, we need to do that immediately. Susan Duffy is comfortable that she can express Wendy Alexander's points.

Ms Alexander: Others may have other points, but the two that I mentioned seem to be the big ones.

The Convener: We must ensure that the point about NDPBs is flagged up clearly to the appropriate committee. That does not mean that we cannot deal with it, but it would ensure that the issue is dealt with in the proper context.

Dr Murray: Unfortunately, three committee members are on the Education Committee, so it is difficult for us to go along tomorrow morning. Is the Communities Committee taking evidence only from NDPBs tomorrow? The issue is not just about NDPBs. We might want to send a member to a later meeting with Executive officials and ministers to talk about the policy decision to take a different policy stance in Scotland from that in England. It might be worth while having a member of this committee available to attend when the minister gives evidence to the Communities Committee.

The Convener: There are four panels of witnesses at the Communities Committee tomorrow, one of which is made up of representatives of NDPBs. As always, our report is scheduled to be with the Communities Committee before the minister gives evidence. We will produce our considered judgment so that it feeds into the Communities Committee's scrutiny of ministers. I hope that that answers the point.

Dr Murray: It depends on how significant our concerns are. If they are sufficiently significant, it might be appropriate for a Finance Committee member to be at that meeting.

The Convener: The best bet at this stage is to highlight our concerns as Wendy Alexander suggested. We should let the lead committee take evidence and then consider the issue. It might take a fortnight before the committee considers a draft report, but we will have the opportunity to consider our conclusions and feed them into the process.

Ms Alexander: I have one final point. In our e-mail we could also ask the lead committee to press the minister on whether the Executive will quantify the sums of money that may be involved in the differential approach. There is a wee bit of a lapse of time before the Communities Committee takes evidence from the minister, but it would be ideal if the inquiry to the minister did not come from us, but from the lead committee.

Alasdair Morgan: The Communities Committee's meeting with the minister will be after that committee gets our report anyway, so we can put the point in our report.

Ms Alexander: Yes, but we are trying to get a change of heart in advance, rather than afterwards.

Alasdair Morgan: Yes, but the meeting will be after we report.

Ms Alexander: All right. The question is whether it is appropriate for us at this stage to seek clarification of the unquantified costs and whether we should do that now at our own hand, based on what we have heard, whether we do it to inform our report or whether we ask the lead committee to consider the issue.

The Convener: The easiest thing is for us to ask for the information. If the response comes in time, it can be included in our report. Are members content with that as a route forward?

Members indicated agreement.

12:15

Meeting continued in private until 12:28.

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