



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

WELFARE REFORM COMMITTEE

Tuesday 10 November 2015

Session 4

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CONTENTS

FUTURE DELIVERY OF SOCIAL SECURITY IN SCOTLAND	Col. 1
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WELFARE REFORM COMMITTEE
20th Meeting 2015, Session 4

CONVENER

*Hugh Henry (Renfrewshire South) (Lab)

DEPUTY CONVENER

*Clare Adamson (Central Scotland) (SNP)

COMMITTEE MEMBERS

Neil Findlay (Lothian) (Lab)

*John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)

*Joan McAlpine (South Scotland) (SNP)

*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Eiser (University of Stirling)

Roz Hampson (Maternity Action)

John McAllion (Scottish Pensioners Forum)

Professor Nicola McEwen (University of Edinburgh)

Professor Paul Spicker

Fraser Sutherland (Citizens Advice Scotland)

Nicola Sutherland (Perth and Kinross Council)

Professor Alan Trench

Mark Willis (Child Poverty Action Group in Scotland)

Derek Young (Age Scotland)

CLERK TO THE COMMITTEE

Simon Watkins

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Welfare Reform Committee

Tuesday 10 November 2015

[The Convener opened the meeting at 10:00]

Future Delivery of Social Security in Scotland

The Convener (Hugh Henry): Good morning and welcome to the 20th meeting in 2015 of the Welfare Reform Committee. Everyone should ensure that their mobile phones and other electronic devices are either silent or switched to aeroplane mode.

Agenda item 1 is an evidence-taking session on the future delivery of social security in Scotland. The session will be split into two parts. With our first panel, we will discuss the regulated social fund and with our second, we will discuss wider practical issues around the devolution of certain benefits.

I welcome to the meeting Roz Hampson, advice officer, Maternity Action; John McAllion, formerly of this parish, who is from the executive committee of the Scottish Pensioners Forum—you are welcome, John; Fraser Sutherland, policy officer, Citizens Advice Scotland; Nicola Sutherland, team leader, welfare rights and welfare fund, Perth and Kinross Council; Mark Willis, welfare rights officer, Child Poverty Action Group in Scotland; and Derek Young, policy officer, Age Scotland.

As no one has indicated that they wish to make any introductory comments, we will move to questions. What do you and your organisations think should be the fundamental principles for any new welfare system in Scotland? Clearly a lot of people are unhappy about what is happening at Westminster and believe that we should have more responsibility for setting benefits. However, responsibilities are attached to that. If you were going to set out what you thought the system should look like, what would your fundamental principles be?

John McAllion (Scottish Pensioners Forum): One of the most basic principles that the Scottish Pensioners Forum would put forward would be that existing universal benefits such as the winter fuel payment should be defended. We understand those who argue that such benefits should be targeted on those in greatest need, but it is certainly our position that means testing, instead of targeting benefits on those in greatest need, often deters those people. For example, more than a third of the people who are entitled to pension

credits in the pension credits system do not claim them.

Therefore, we defend the universality of benefits and think that that is very important for the way ahead. We also think that benefits should allow people, whether in retirement or on any other basis, to have a decent standard of living.

The Convener: So all benefits should be universal.

John McAllion: We realise that we are talking about a utopia.

The Convener: But do you think, in principle, that all benefits should be universal?

John McAllion: I certainly see no problem with that.

The Convener: Right. What about housing benefit? Should everyone who rents a house get housing benefit?

John McAllion: No. I was thinking about wider benefits such as out-of-work benefits. I do not think that the Scottish Pensioners Forum has an official position on the matter, but my position relates to the cost of housing and the fact that housing benefit goes mainly to landlords instead of to the individuals who receive it. That issue should be tackled in the future by the Scottish Parliament.

The Convener: I am not talking about that. When I got married, my first house was a Scottish Special Housing Association house. My wife and I both worked. Should we have got full housing benefit?

John McAllion: No, I do not think so.

The Convener: You have said that you want all benefits to be universal.

John McAllion: I was thinking strictly of the general benefits system. Out-of-work benefits and so on should be set at a level that everybody who is out of work should be entitled to. That was the kind of thing that I was thinking about.

The Convener: A lot of people who are in work would, however, be entitled to the benefits that you have mentioned. When you were an elected member, you would, like me, have been entitled to the winter fuel payment. That is not an out-of-work benefit.

John McAllion: Actually, I see nothing wrong with that at all.

The Convener: I am not clear what you are saying, John.

John McAllion: One great problem with means testing, which is what we are really speaking about, is that benefits that are devised solely for poor people inevitably turn out to be poor benefits.

The middle classes and so on have to buy in to welfare systems. The classic example in that respect is the national health service. Everyone in this country, irrespective of their actual income, is entitled to free medical care; that is why the NHS is a success. It would be less of a success if it were means tested or if people had to pay some other way.

The Convener: You said that out-of-work benefits should not be means tested, and then you said that certain benefits that are available to people who are in work should not be means tested, either. Which benefits should and should not be means tested? Maybe you should stick with the ones that should be means tested.

John McAllion: Housing benefit, in its present state, should be means tested. The problem is not the people who are on housing benefit, but the cost of housing and the fact that most people cannot afford decent housing. When you and I were young, there used to be the housing support grant and the rate support grant, which enabled local authorities to provide affordable public housing to the vast bulk of the country. That is no longer the case. With the withdrawal of those subsidies, housing is now beyond the reach of many people, and it has become necessary to provide housing benefit so that people can afford their rent.

The Convener: You think that universality should apply to most benefits. Are there any cost restrictions in that respect? How would you pay for all the benefits? What is your prescription for finding the money once the responsibility has been devolved? Should it be found through general taxation?

John McAllion: I have no problem with raising taxes. The fact that people with very high incomes are able to access universal benefits should be balanced by their being taxed on the basis of their income. In that sense, they should pay for those benefits in the longer term.

A big problem faced by not just Scotland but the UK and many western countries is the aversion to paying tax that has developed over the past decades. People forget that Mrs Thatcher, who was no socialist, had a top tax rate of 60p in the pound for nine of the 11 years in which she was in power. Back then, it was normal to pay higher taxes. Nobody would ever accuse Mrs Thatcher of feather-bedding the poor, but I do not think that any party has committed to bringing taxes back up to the level at which she had them when she was in power.

The Convener: And that is what the pensioners forum is committing to.

John McAllion: We are not in power. We just represent the views of—

The Convener: Your organisation would like that level of tax to be brought back.

John McAllion: I would like it to be brought back. Progressive taxation is a fundamental building block of any decent civilised society.

Nicola Sutherland (Perth and Kinross Council): I take John McAllion's point about universalism, but I would prefer a targeted approach to the benefits system. It should be automated where it can be automated, and it should be rights based. The barrier that people face with regard to Department for Work and Pensions benefits is that they have to ask the right question to get the right answer. A more holistic approach should be taken. There should be a person-centred approach to advice, which should be as accessible and readily available as possible.

The Convener: In other evidence sessions, we have heard about the tension between a national system and local decision making. Most people have a very strong view about—indeed, I would call it an antipathy towards—what is described as the postcode lottery for healthcare, benefits and so on; the view is that everybody across the country should have the same entitlement. However, some people have also told us that they would like a national system of benefits service and delivery with local decision making. How do you reconcile that? If local people are not responsible for the budget and for signing off whatever they want, how can that tension be resolved?

Nicola Sutherland: We already have an example of that with regard to council tax reduction, which although it is a national scheme with national eligibility criteria is delivered by local authorities. I am probably not the best person to ask, but there must be some way of reconciling budgets. Perhaps, if we are talking about an entitlement rather than a demand-led budget, that can be done after the financial year ends.

Derek Young (Age Scotland): An example that we can look at—indeed, the committee considered it a year or so ago—is the welfare funds legislation. Although the Scottish welfare fund operates nationally and the criteria are set out in legislation as well as in regulations and guidance, it is administered by local authorities. A provision that was considered and then added was a national appeals mechanism. It is possible that, as the Scottish Public Services Ombudsman makes decisions and builds up a case load of decisions that are available for local authority decision makers to look at, there will start to be greater consistency, even though local authorities are administering the fund. That was certainly the hope that we and other organisations that gave evidence at that time had.

On the more general point about national consistency versus local decision making, I note that there are dozens of volumes of decision-maker manuals that people who work in the jobcentres and make decisions about benefits have to apply. Those manuals set out in detail the criteria that are applied; if different people are making decisions, they might apply the criteria in different ways, and having an appeals mechanism that allows decisions to be re-examined and then tested against the criteria along with national understandings and national case law affords the ability to have the consistency that you are looking for.

The problem that we perceive—and other organisations might have said something similar—lies not so much with local decision making but with a culture in the agencies in which decision makers seem to want to suppress the amount of social security payments that are made. In some senses, there might be individuals working there who are almost expected to limit pay-outs or who might even be rewarded for their success in doing so. The problem in that respect lies not with the people who make the decisions, but with the culture that surrounds them and the atmosphere in which they make those decisions.

The Convener: Should those local decision makers be employees of a national agency, or is that work best left to councils?

Derek Young: That is a fundamental matter on which the Scottish institutions will have to decide. It was assumed when the Smith commission was making its decisions that an argument would be made for having a transitional period in which the DWP and Jobcentre Plus as institutions would act as agents on behalf of the Scottish Government and continue to administer payments. However, as we have looked at things—and the winter fuel payment is a good example of this—we have seen that their data systems are not set up in a way that would make it easy to tweak things in response to a policy change that the Scottish Government or Scottish Parliament might decide upon, and administering that might incur a large and impractical administrative cost. Under the Smith arrangements, as I understand them, the cost of that administrative change would then be borne by the Scottish Government, and that might prohibit such changes. It is therefore clear that, in the medium to long term, we will be looking for a Scottish solution.

As far as I know, the only welfare powers that at present are handled by local authorities are housing benefit and the welfare funds, so there would certainly be a great increase if local authorities were made primarily responsible. That extra administrative burden would have to be resourced, and there would have to be training,

regulation and all of that. Equally, however, it might be prohibitively expensive to set up a brand new agency. In the longer term, if the Scottish Government wants to effectively implement discretion around policy, it will have to come up with a working system, but I do not know exactly what that will look like.

Kevin Stewart (Aberdeen Central) (SNP): I have some questions about funeral costs and the funeral grant, which a number of you have commented on in your submissions. Many smaller companies and possibly some of the local authorities in Scotland benchmark themselves against companies such as Dignity and the Co-operative. We are told that, for Dignity, the underlying operating profit from crematoria rose by 46 per cent from £19.9 million in 2010 to £29.1 million in 2014 and profits from funeral services in the same period increased by 34 per cent from £49.3 million to £66.3 million.

10:15

Obviously, there have been difficulties with funeral costs, and that has been backed up by the submissions. We are about to embark on our consideration of the Burial and Cremation (Scotland) Bill, but when we questioned officers at last week's meeting of the Local Government and Regeneration Committee, they said that we would be unable to do anything about those costs in that bill, because areas such as consumer protection are reserved under schedule 5 of the Scotland Act 1998. Do you think that, in order to tackle some of those costs and to deal with the issue of the funeral grant by, for example, capping what companies and local authorities—or, I should say, burial authorities—can charge, we should take control of those powers to get this absolutely right and ensure that folk do not end up worrying about funeral costs?

I will ask Mr Sutherland to go first, please, as Citizens Advice Scotland had a fair amount to say on the issue in its submission.

Fraser Sutherland (Citizens Advice Scotland): You have set out quite clearly the point that I wanted to make. You could look at increasing the funeral grant so that it meets the basic cost of a funeral, but all that would do is increase the costs in the bill.

One problem is that year on year the price of funerals is increasing well above inflation. Last year, for example, burial charges in Scotland increased by an average of 10 per cent; indeed, in one year alone, Aberdeenshire Council increased its fees by 42 per cent. I will repeat that: when we compare one year with the next, we find a 42 per cent increase in the cost of burying a loved one. That is a huge increase for families. Cremation

charges do not increase by quite as much, but they still increase by about 5 per cent a year.

The other side of funeral costs is the funeral directors, whose fees also increase year on year. Their charges vary widely; indeed, the charge for exactly the same service can vary by thousands of pounds. It might just be a question of finding the best deal, but given the situation in which those who are organising a funeral find themselves, they are not thinking, "I'll just shop around the different funeral directors and get the cheapest for my granny's funeral." They are just not going to do that, because they are not in that state of mind. Quite often, we find that people's loyalty lies with a particular funeral director whom the family has already used, but that funeral director might not offer the best deal for them.

Kevin Stewart: Indeed, in a smaller place, that funeral director might be the only one.

Fraser Sutherland: That is absolutely right. There might be only one in a more rural setting.

Unfortunately, some of the bigger organisations have bought up the smaller, independent funeral directors but continue to trade under the small, independent director's name. To a certain extent, that can hide what is going on in the sector. People have a lot of brand loyalty, and they might not realise that a funeral director is now owned by a much larger, even multinational company.

I hope that control of funeral costs will be looked at as part of the Burial and Cremation (Scotland) Bill, because those costs have spiralled. As you have pointed out, local authority cremation costs have absolutely gone up in comparison with costs in the private sector; for example, Perth and Kinross Council charges more than what half of the private crematoria in Scotland charge. On the other hand, in some areas, such as around Dundee, only the private crematorium option is available, which means that people do not have the option of going to a cheaper, local authority crematorium. There is a whole load of issues with regard to the consumer choice that people who are organising a funeral do not have that they have in other sectors.

The convener mentioned the postcode lottery for benefits, but there is also a huge postcode lottery for burial and cremation charges. When we compare the most costly burials in Scotland with the cheapest, we find that the variance is £2,000. That is £2,000 that a family in East Dunbartonshire, which has the most costly, has to find that a family in the Western Isles, which has the cheapest, does not have to. There is a massive difference based on what local authority area people live in, and the families have to find that money.

Kevin Stewart: Do you think, therefore, that it would be wise for us to legislate on those consumer protection issues and for the Burial and Cremation (Scotland) Bill to be dealt with as an all-encompassing piece of legislation that covers all aspects of that area?

Fraser Sutherland: We already have powers to deal with the local authority costs, so something can be done about those. I would be quite keen for the minister to change the bill in order to control those costs, and we could also look at what could be done to regulate funeral directors. I know that the bill covers licensing schemes for funeral directors and so on and that that issue will be consulted on, and that sort of approach could be welcomed.

Kevin Stewart: Mr McAllion, do you wish to respond?

John McAllion: I come from Dundee, where there is no choice. Dignity plc runs the crematorium, which I think has the second-highest cremation fee in Scotland.

It is fine to talk about controlling local authorities, but one of the pressures on them is the massive cuts that they are facing. For example, Dundee City Council has to find £28 million of cuts over the next two years. That would put pressure on any administration to look for ways of maximising its income, and cremation fees might be one of the ways in which Dundee City Council tries to do that. Local authority funding is the underlying problem. Age Scotland's proposal for standardised cremation and burial fees is very good and should be implemented, no matter whether the power to do so is devolved or reserved.

Funeral provision in this country is like the wild west. Dignity is a big business and owns dozens of crematoria and funeral businesses across the United Kingdom. It makes big money and takes advantage of a situation in which nobody, either in Scotland or at UK level, seems to want to control the business. The Scottish Pensioners Forum wants the business to be controlled, with standardised charges introduced. Something needs to be done about funeral grants, too, because the situation with them is almost as chaotic as the situation with rising costs.

Kevin Stewart: Would you like the Scottish Parliament to have the power to do all of that?

John McAllion: Whoever has the power, somebody should be doing it.

Kevin Stewart: If the funeral grant were to rise, would businesses such as Dignity not simply raise their charges in areas such as Dundee, where Dignity itself seems to have a monopoly?

John McAllion: Businesses would always raise their charges if allowed to, and the Parliament would have to try to stop them doing so. It has been suggested that there be a limit on charges for anyone in receipt of a funeral grant to stop companies such as Dignity from taking advantage of higher grant rates.

Derek Young: I am not sure whether it is legally clear that schedule 5 to the Scotland Act 1998 can be amended with regard to consumer protection to try to achieve the ambition that Mr McAllion has set out. I note, however, that the majority of care home providers are independent private companies, but there is still national regulation of what they can charge for a care home place. That is provided for through Scottish Government regulations every year and a national care home contract that is agreed by providers, the local authorities and the Scottish Government. As a result, there might be more straightforward ways of controlling charges without necessarily doing any constitutional tinkering.

I am very pleased that John McAllion has made my point for me. Because of the wide variation between one local authority and another, with charges in one area being four times those in another, the local authority element of burial and cremation charges can at least be looked at and made much fairer.

The Convener: There are two separate issues. First, the difference between burial costs and care home fees is that a large element of the care home fee is paid by local authorities or through the Scottish Government. Burial costs involve a private market that deals with private individuals.

Secondly, the suggestion from Fraser Sutherland, which Derek Young touched on, is that the power to set charges should be removed from councils and centralised. John McAllion will remember, as I do, the discussion ahead of the Scottish Parliament's creation in which we were assured that the Parliament would not suck powers from local decision makers into Edinburgh.

There is a crying need for a not-for-profit organisation—a social enterprise that is set up by a number of charities to provide an affordable service that is not driven by profit. That would almost be like taking the service into public ownership, rather than leaving it at the mercy of those who seek to maximise profits.

How does Fraser Sutherland answer the point about the erosion of local decision making and more decisions being made in Edinburgh?

Fraser Sutherland: John McAllion mentioned that some councils have said in their budget papers that they are increasing funeral charges to offset costs in other budget areas. Councils are struggling to meet costs because of their funding

situations. The question that I throw back to you is whether it is fair that bereaved families should meet that shortfall. I am not entirely sure that it is appropriate essentially to tax bereaved families by increasing their costs. It is not entirely fair that those people are left to foot the bill for shortfalls elsewhere.

From the clients we see at citizens advice bureaux, we are aware of a load of situations. People's grief can be much more complicated and difficult to deal with if a massive debt hangs over them from their loved one's funeral. They have had to bury or cremate their loved one, and for years a debt might be hanging over their head because they could not afford to pay for the funeral.

We can ask who should make the decision. However, we might be talking about four times the difference in price. There is clearly something wrong with local decision making if it allows one local authority to charge four times what another does for exactly the same service.

The Convener: You could say that in relation to any decision that a local authority makes. My constituency covers two local authority areas and I can point to differences in charging in those local authorities, even though there is just a matter of miles between them. That happens across the board.

A bigger problem, which Kevin Stewart and others have identified, is the outrageous cost of burials. Fraser Sutherland accurately made the point that, when someone is dealing with a funeral for a loved one, they are not going to shop around for the best deal—they just want to get it done with the minimum of fuss and the maximum of dignity and respect.

Clare Adamson (Central Scotland) (SNP): I will return to a previous point. We talked about having universal services as opposed to means testing. One of the great benefits of universal services is that they are, by nature, available to everyone. Mr Young talked about some of the costs that are associated with minor tweaks in information technology systems and about unintended costs that can arise when some sort of means testing is introduced.

The committee visited Highland Council, which is a pilot authority for universal credit. One of the council's concerns was about underclaiming, particularly of council tax reduction. Ms Sutherland mentioned council tax reduction. Do you have any figures for the underclaiming of that entitlement?

Nicola Sutherland: Unfortunately, I have no figures to hand. However, we know that there has been a steady decline in the use of the council tax benefit scheme across Scotland since 2013.

Clare Adamson: Is underclaiming of benefits a concern to any of the other witnesses?

John McAllion: We do a lot of meetings at pensioner clubs and other places across Scotland where older people get together for various purposes. We go there to talk about pensions and benefits and so on. When we come on to means testing, we can sense the change in the atmosphere. Some of the people in the room will be on means-tested benefits, and they will go quiet and become withdrawn. Other people, who are just above the supplementary level, will become agitated and angry about those who receive means-tested benefits.

The means-testing system is socially divisive. We believe that, as far as possible, it should be ended in this country.

The Convener: Before we go on, I say that I should have put in apologies for Neil Findlay. I neglected to do that earlier.

Let us go back to means testing. As far as I recall, John McAllion was an MP when pension credit was introduced. That is probably the single most effective measure to take poor pensioners out of poverty that this country has ever seen. Are you suggesting that that measure should not have been implemented?

John McAllion: It could have been done better—for example, more than a third of those who are entitled to claim it do not do so. I do not see that as a success, but perhaps you do.

The Convener: No, but the figures—

John McAllion: People have always had a problem with means-tested benefits. I think that Nye Bevan spent most of his political life trying to eliminate means testing. He resigned over a one shilling and sixpence charge for prescriptions or whatever it was.

The principle of universality was in the welfare state when it began back in the 1940s, in the post-war period, but it has gradually been eroded ever since. Pension credits might have done good for those who are in receipt of them but, for the more than a third who do not claim them, the situation is even worse than it would have been otherwise. That is not the kind of system that we want to be perpetuated in Scotland.

10:30

Nicola Sutherland: On pension credit, Derek Young mentioned that the approach that the Benefits Agency took involved seeking out people who would be entitled. A completely different approach was taken, and the pension service changed the terminology from claimant to customer. There is no capital limit for pensioners

who claim pension credit, which often encourages people to take up a benefit, but there is still a means test. The DWP has actively sought people out. People are visited, and the range of services is completely different from that for people of working age who claim benefits. Perhaps Scotland should adopt that proactive and preventative approach to delivering benefits through any new agencies.

Derek Young: This is the first time that the Scottish Parliament and the Scottish Government will have had to consider universalism as a broad principle. We would like benefits to be effective, and means testing is a challenge to effectiveness. That does not mean that it is always unjustifiable, because benefits also have to be affordable, but it challenges their effectiveness.

Some of the points have already been made. Human dynamics are in operation, because people do not like to disclose their financial details to a public authority unless that is absolutely necessary. Universalism places everyone on a level playing field and it has a preventative effect, because people automatically receive, for example, the winter fuel payment even if they do not know that it exists. If someone is in receipt of a qualifying benefit, such as the state pension, the winter fuel payment comes to them automatically.

Nicola Sutherland made a point about the pension service, which certainly seems to have far less difficulty with the perception of how it administers the benefits for which it is responsible. That belies the culture point that was made previously.

Kevin Stewart: I come back to Nicola Sutherland's point. There was a pilot in Aberdeen whereby the DWP put one guy into an area to find out exactly what folk's entitlements were. In a very short period—a couple of months—he found more than £2 million of additional income for people. That service was, of course, withdrawn.

The reality is that such additional income stops folk slipping into crisis and calling on other services, because they have the income to deal with certain things. Do the panellists think that taking that progressive and preventative approach can save the state huge amounts of money? Beyond that, given that we know that any form of means testing adds to the bureaucratic load and costs a lot of money, should we create a universal element when that is possible?

Roz Hampson (Maternity Action): From a maternity point of view, it is very important that the maternity grant stays, on the ground that it plugs a gap. A family in which a woman is on maternity leave lose income, because of the level of maternity pay, and their costs increase because they are having a baby.

It is helpful to have people who can identify pots of money, such as sure start maternity grants, that can be used to help families to manage what is essentially a one-off in their working lives. That might help women not to have to go back to work so soon after maternity leave and to give back to the economy by working in the longer term. As a specialist advice service, we would love women and families in Scotland to get across-the-board advice at the time of a child's birth to ensure that they do not miss out on their entitlements and can plug gaps through as many forms of support as possible—particularly the maternity grant for families, which is a one-off sum of money that they can spend on whatever they need.

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): Good morning. I am sorry that I am running a bit late—the traffic and the weather were against me. A key theme that has run through all the evidence that has been produced—including the evidence today and the evidence that we have had on many other aspects of the welfare reforms and on a possible new social security system for Scotland—is good decision making. That ties into what Kevin Stewart said and raises the question of how we make the best out of a system that does not make the best out of the money that it has.

The Child Poverty Action Group's early-warning system suggests that about 40 per cent of welfare-related cases involve delay and error rather than substantive changes to conditionality or eligibility. How do we make the system work better? We all know that there will not be any extra money, so how do we work with what we have and make the best decisions? That is about making the best decisions not just on the area that we are discussing but on personal independence payments and work capability assessments.

The number of cases that are overturned on appeal is huge—it is more than 50 per cent. How do we design a system that ensures that we make the right and best decisions at the very start of the process? For me, that is the key element to preventative spend.

Mark Willis (Child Poverty Action Group in Scotland): That comes back to the first question about the basic principles of the social security system. We need to put compassion and dignity at the heart of the system. The idea should be that the system is there for what it is needed for rather than being under the constant pressure of reducing expenditure, which filters through all decision-making levels.

The system also needs to be simplified, because a lot of the issues are due to the system's complexity. The other side of that is that welfare rights services are needed. As has been mentioned, their job is to go out and increase

income and take-up. That money is then used in local communities—it is not wasted—for what it is needed for and to protect people from poverty. The system needs to be simplified, but the role of welfare rights services involves checks and balances, which will always be needed to some extent in the system.

The Convener: We have heard contradictory evidence on winter fuel payments and cold weather payments. Some people have suggested that they should be merged; others have said that winter fuel payment eligibility should be extended. Age Scotland said that any changes to winter payments would need

“to be sanctioned by older people themselves”

and Rights Advice Scotland said that cold weather payments should be abolished. How should the issues around the system to help people through the vagaries of the Scottish winter be addressed?

Derek Young: As you alluded to, our additional submission gave quite detailed evidence and statistics about how both payments are used. In principle, we do not agree that cold weather payments should be abolished, because a greater need to spend on heating costs when ambient temperatures fall is clearly identifiable. There is a legitimate argument about whether the qualifying period should be shorter than seven days or whether the temperature should be less or more than zero. As far as I can see, those are technical aspects.

A previous witness talked about taking into account the wind-chill factor. Temperature is a statistical fact—it is recorded by meteorological stations around the country—but wind chill seems to be much more subjective or subject to interpretation. A benefit of how the cold weather payment system operates is that the criteria are clear, fair and understandable. If they were tweaked, that would be fine, but we would want to retain those elements. In particular, we have called for the cash payment to be retained. A number of properties are off grid, and people who heat their homes through peat, bottled gas, oil or coal could not have a fuel bill discount in the same way as others could.

The cold weather payment seems to work well and is certainly popular among the people who we know receive it. It is not a major element of spend. In the past year, because we had a milder winter, only tens of thousands of pounds were spent.

On the broader point about the winter fuel payment, it is understandable—as we pointed out and as John McAllion alluded to—that that payment is the most significant element of the regulated social fund spend, at £186 million per year. Given that not a lot of additional resources will be available, as Ms McKelvie pointed out, and

given that not a lot of flexibility is built into the system in the suite of benefits that will come under the Scotland Bill arrangements, it is not surprising that the Scottish Government is looking at whether that level of investment could achieve more.

If the Government were to try to design a system that emphasised prevention by improving people's insulation and heating systems to save money and which perhaps also addressed climate change by reducing heat leakage, it would have to do so in such a way that people did not feel that they were losing out, if they were the sort of people whom the benefit was designed to help in the first place. Heating costs are a large element of household bills, and they have been increasing although household incomes have remained fairly static—particularly for pensioners, whose incomes are fixed.

John McAllion: I agree that cold weather payments should be retained, but I wonder about the evidence base for picking seven days of zero or below-zero temperatures. Is that based on any medical or scientific criteria or on a look back at how many such seven-day periods there have been in Scotland's weather statistics? That does not seem to be based on anything; it is just an arbitrary figure that was pulled out of the air. Perhaps somebody could do some work to find out about that.

The committee has to remember that the value of winter fuel payments has been dreadfully eroded since they were frozen in 2001. Since then, heating costs have doubled, but the winter fuel payment has stayed the same. Moreover, the qualifying age for the payment, which was 60 when the scheme was introduced in 1997, is now 63 and is about to go up to 65, and it will go up again to 66 then 67. The Westminster Parliament has offered a five-yearly review of the retirement age, so at some point people might have to be 70 before they qualify for the payment. The cost of the payments is therefore coming down, simply because the criteria for eligibility to receive them are being changed.

I was interested in what Age Scotland said about the changes being sanctioned by older people. How do older people sanction a proposal by the Government? Will there be a ballot of the over-63s to see whether they support it? I think not.

Perhaps using older people's organisations as a sounding board for any proposed changes would be a good idea. We at the Scottish Pensioners Forum are autonomous and would take our own position, but there are other older people's groups, such as the Scottish Seniors Alliance, the National Pensioners Convention Scotland and the Scottish older people's assembly, which should be involved in discussions to decide their views on any

changes that the Government proposes. They should certainly be involved; it would be a mistake not to do that.

The Convener: At what age do you suggest the winter fuel payment should start? Are you also suggesting that the Scottish Government should increase its value?

John McAllion: Any kind of change should be in that direction. If we went back to 60, for example—that was the age to begin with—there would be cost implications. If we stayed where we are, at 63, the situation would carry on much the same as it is. However, if the value of the payment is not increased—from £100, £200 or £300—the payment's value to the person who receives it gets eroded year on year, particularly as heating costs are going up well above inflation and the payment is staying the same.

There are cost implications, and we cannot just wave a magic wand and let everybody get the payment, but you have to find a way of making the system better and of ensuring that people who need access to the payments get them and that the payments make a difference to those people's ability to heat their homes. There was a big increase in excess winter deaths in the past year, and I know that there are all kinds of reasons why that might have happened, but the weather must have been a factor.

Joan McAlpine (South Scotland) (SNP): I return to fuel poverty and whether it is worth diverting money towards making homes warmer. I can see difficulties in that, because I sit on the Economy, Energy and Tourism Committee. Under the schemes that we currently have for alleviating fuel poverty, it can be difficult to deal with the people who are at the extreme end, because quite a blanket approach has been taken. Can you reflect on that and say whether you think there is a trade-off that can be made, or whether it would be too much of a challenge?

10:45

Derek Young: I think that you are right. The point that we make in our submission is that the ambition to eradicate fuel poverty in Scotland by the end of next year had already been stated in legislation. However, it is clear that that will not happen and that we are not on track to meet that target; in fact, we are going in the wrong direction, in some respects.

The benefit of the winter fuel payment is that it offsets some of the increased cost. It is also nearly universal, with 96 per cent of people who are entitled to it getting it automatically, because they receive another qualifying benefit or their state pension. If you were to replace one element of it with a more preventative approach—there is a

credible argument for doing that—you would have to phase it in such that the people who need it most do not lose out. That is, essentially, the principle that we are trying to think about, but it is not easy because, as has been suggested, the green deal and warm deal schemes are already in place to try to improve people's insulation or heating systems, but take-up rates of both those schemes has not been as high as people wanted when the schemes were introduced.

There could be renewed focus on increasing take-up rates for those schemes or on improved public information in order to spread public awareness, but if you simply say to people, "We're going to stop the winter fuel payment or cut it drastically, and although a better boiler or insulation is available, you're not going to get it", you will be giving the individual concerned a very poor deal. That is the principal concern that we are trying to articulate, and we are thinking about whether a way of addressing that concern can be built into whatever system is designed.

Mark Willis: There might be room to link the programmes a bit. We have the home energy efficiency programme, the cold weather payment and the winter fuel payment; obviously there are different criteria for those different benefits. The home energy efficiency programme extends to low-income families who include a child under 16, but the cold weather payment is for families that include a child under five. We believe that the system should be more consistent; of course, we would say that making it more consistent would mean extending payments rather than cutting them. It is very confusing for people: they wonder what they are eligible for. Perhaps, like the winter fuel payment, the cold weather payment should be made automatically.

Joan McAlpine: It is perhaps worth pointing out that in the evidence that we took on fuel poverty at last week's Economy, Energy and Tourism Committee we heard that bills do not necessarily come down even with the most successful schemes in which houses are properly insulated. They just mean that, for the money that people are spending, they are not freezing. Even in the most successful cases, individuals are not necessarily saving any money.

The Convener: John—were you suggesting that the cold weather payment be extended to everyone who is in receipt of winter fuel payments?

John McAllion: No. I was simply suggesting that there should be some evidential basis for the 70p rate, which has, it seems to me, just been pulled out of the air.

The fact is that putting a new heating system into someone's house does not necessarily solve

fuel poverty. I remember that, when I was an MSP, we took evidence in the first session from many groups that represented poor people. At that time, there was a scheme to put in new heating systems, but we were told that the problem was that people could not afford to run them, because the bills were too high, so they simply turned them off. We have to get down to that level of understanding of the people who are in fuel poverty. What do they want? They want enough money to pay the bills that are coming through the doors and they want to keep their heating on. As for the proposal to take money away from the winter fuel payment to invest in energy efficiency, how much energy efficiency are you going to get for a part of £186 million a year? Not a lot, I suggest—and you would put a lot of people at risk by removing or reducing that payment.

The Convener: Why do you not support extension of the cold weather payment to all those who are in receipt of the winter fuel payment? You said earlier that you are against means testing.

John McAllion: It is a question of cost. Of course I would like to see it done, but I have to be realistic. The Scottish Parliament is not suddenly going to be given extra millions of pounds in its budget from Westminster; it is going to have to work within the budget that it gets. Moreover, you are all looking to get re-elected in 2016: I am sure that very few of you will go to the polls arguing for higher taxes from everyone to fund a new utopian welfare system that you will bring in. Realistically, there would be a cost attached to extending the schemes, so if you are going to do it, you will really have to do your sums and find out where the money will come from in the first place.

Kevin Stewart: I want to change the topic, if I can, and refer to CPAG's submission with regard to the work programme, the "policy and operation" of which it says will be "restricted by" the UK sanctions regime. It then gives a very good example of a person on the work programme being restricted from going into a one-year apprenticeship. Can you tell us more about CPAG's view on that matter?

Mark Willis: Yes. The sanctions regime is probably part of jobseekers allowance, but it is also part of employment and support allowance and income support, which are reserved and are not being devolved. People still have to meet the required conditions and if they are deemed not to be meeting them, obviously they can be sanctioned. Having powers over the work programme might change that to some extent, but the final decision about whether to impose a sanction would still ultimately be with the DWP. As we have seen, sanctions are imposed quite unfairly in many cases and a lot of sanctions decisions are overturned. There are huge

concerns and much evidence of inappropriate use of sanctions.

Kevin Stewart: You highlighted a case in which a person was offered a one-year apprenticeship, to allow them to come off JSA, through the Glasgow City Council Commonwealth jobs fund. However, the jobcentre said that the person could not do that because they had to stay in the work programme for two years. That is somewhat illogical to me because an apprenticeship normally leads to greater opportunity, and we have seen from evidence that we have received in the past few weeks that in the vast bulk of cases the work programme does not lead to greater opportunity. Does that example strike you as being completely illogical? Is it illogical for Westminster to devolve the work programme but to keep the sanctions regime so that we cannot take decisions and bring common sense into play?

Mark Willis: Ultimately, yes it is. I dealt with that case, in which it seemed that the bureaucracy had just taken over. The jobcentre was saying, "You have to do this and you have to complete this", and did not look at anything else. The individual had found something that they wanted to do, but was left with a choice of just walking away from the jobcentre and saying "I'm going to do it anyway" and running the risk of future sanctions if they came back. Eventually, the person who was helping to arrange the apprenticeship talked to the person at the jobcentre and used, as Kevin Stewart mentioned, some common sense. Such difficulties are surmountable, but they are part of the current climate. The pressures on DWP and jobcentre staff are so great that there is very little room for common sense. However, perhaps the other way of looking at it is that the system could be improved.

Kevin Stewart: The system could be improved even more if the conditionality aspects were also devolved, so that we could put in place a system that is more logical than the current one.

Mark Willis: That could be one way of doing it.

Kevin Stewart: Thank you.

The Convener: Whatever the benefit agency is in Scotland, if you perceive that a benefit sanction from the DWP is inappropriate, should the Scottish Government use its powers to recompense the person who has lost benefit?

Mark Willis: That would be one way to do it, but it might not be very satisfactory. The crisis grant, as it is at the moment under the Scottish welfare fund, can step in for very short periods. The other way of dealing with such situations would be to try to change the UK-wide programme of sanctions and the rules around them, which is obviously not directly in our power here in Scotland. Sanctions

are often inappropriate and it would be better to use a carrot than to use a stick.

The Convener: Yes. We have heard evidence that sanctions are inappropriate, that they seem to be target driven and that they are quite cruel in their effects. I wonder whether we should, if we perceive that anyone is losing out unfairly, use our new powers to ensure that the person suffers no loss of income as a result.

Mark Willis: Yes—that seems to be a good idea.

Clare Adamson: I am interested in your comments. We recently had an informal discussion with Priti Patel, who told us that the system is person centred and that the DWP is absolutely focused on the individual. However, you talked about the pressures on DWP staff. We are constantly told that there are no targets. Can Mark Willis and the other panel members explain to us what they understand the pressures to be?

Mark Willis: Whether there are formal targets or not, the aim is to get people off jobseekers allowance in one way or another in order to reduce the numbers. However, that does not necessarily mean that people will go into work. It seems that people often slip through the net. We certainly hear that a lot of people with significant health problems are now claiming jobseekers allowance because they have not met the criteria for employment and support allowance, and they often find that their health problems are not properly taken into account, and that if they have not been able to do something because of their health problems, they are not adequately protected.

There should be some protection in the policy and the regulations if people look at them closely and know them well but, as you mentioned, there are volumes of guidance for DWP staff, among whom there is quite high turnover and who often move to different areas of responsibility. There are pressures, whether they are political or just related to workload—the staff are very busy and people may be new to certain areas—and a sanction might seem to be an easier option than sitting down and trying to talk to someone a bit more to find out about their personal issues.

Nicola Sutherland: We had in Perth and Kinross a case of a chap who had been sanctioned for three years who approached the Scottish welfare fund. A welfare rights person interviewed him and it turned out that he had high-functioning autism and should not have been on jobseekers allowance in the first place. Obviously, we put steps in place. We challenged the decision under mandatory reconsideration and it was overturned. We got him on the right benefit, which was employment and support allowance.

Mark Willis made the point really well. In our office, we call it sanction limbo. It affects people who cannot meet the conditions for jobseekers allowance but are not ill enough to pass the test for employment and support allowance. They ping-pong between us and the Scottish welfare fund for crisis grant, they are sanctioned and they are refused employment and support allowance. There is nowhere for those people, because they do not fit.

Clare Adamson: Despite the reassurances that we have a person-centred approach, we have sanction limbo.

Nicola Sutherland: In that case, yes.

The Convener: You mentioned a man who was sanctioned for three years. That is unbelievable. How did he survive during that period?

Nicola Sutherland: That was the decision that had been made: he had not actually been on a sanction for three years. His jobseekers allowance was stopped, and the decision was that it would be stopped for three years.

The Convener: The decision was to suspend for three years.

Nicola Sutherland: Yes.

The Convener: Dear God.

Nicola Sutherland: Since October 2012, when the sanctions regime changed, there have been 79 three-year sanctions in Scotland.

The Convener: Okay.

Mark Willis: The three-year sanction is the maximum and it is used when someone has done something wrong repeatedly—usually three times. There are hardship payments, which are set at 60 per cent of the basic allowance. However, people have to know about them and ask for them, so some people are left with nothing.

Christina McKelvie: That leads to my question, which is directed at Mark Willis. The written evidence from the Child Poverty Action Group in Scotland talks about people who are caught in limbo between JSA and ESA, who then go through the appeal process. It mentions a

“Client looking for medical evidence for ESA appeal”

and it states:

“The medical council in South Lanarkshire have told GPs not to provide letters for patients for benefit purposes.”

Is that still the case?

Mark Willis: I do not know whether that is still the case in that area, but it is certainly common for the situation to vary a lot, even among general practices. Some will charge for providing letters and some will not provide them unless the DWP or

the tribunal requests it. I think that that is what was said in that case—that the practice would do it only if it was requested by the DWP or the tribunal, but not in response to a request from the individual or an advice agency.

Christina McKelvie: That backs up the evidence that I received when I went on a visit for the committee to Amina—the Muslim Women’s Resource Centre. Some of the women there said that their GP would give them a letter, some said that their GP would charge £40 and others said that their GP would not do it at all. That inconsistency exists, but we are talking about the most vulnerable people.

Mark Willis: Yes, and the medical evidence could be vital for a number of reasons. It could be related to getting a claimant commitment about taking their condition into account when they are job seeking, or it could be about disability benefits, employment and support allowance and meeting the basic entitlement conditions.

Christina McKelvie: Okay. Thank you.

11:00

The Convener: I will leave the last word to our panel members.

Derek Young: I want to speak about the question that has been raised about sanctions and conditionality. Sanctions apply in the main to working-age benefits, as they are defined. One thing to note—John McAllion mentioned this—is that as the state pension age is increasing, the age that is defined by “working age” is also increasing. In our original written submission, we said that the work programme’s outcomes for older jobseekers are considerably worse than its outcomes for others. There is not much expertise to help a 62, 63 or 64-year-old back into work. The benefits and social security regime used to have an element of understanding of the issue of older jobseekers, but that seems to have been reducing with the effect of the 2012 welfare reforms.

Sanctions can have the effect of dissuading people from applying for benefits, as they fear that sanctions will operate in their case. Paradoxically, funeral payments are an example of that. The claim form for funeral payments makes it very clear that if someone provides information that turns out to be untrue, their payment could be reclaimed. I am sorry; I cannot quantify this, but people could be dissuaded from applying for benefits to which they may be entitled because they believe that there will be negative consequences for them in the future.

The Convener: Does anybody else have a last comment?

Nicola Sutherland: I would like to make a point about the sure start maternity grant, because there have not been any questions about that. The Scottish welfare fund has significant overlaps with the sure start maternity grant. We have had occasions when new mums have applied to the Scottish welfare fund because the window for applications to the sure start maternity grant is too short and they found out about the grant too late. They then go without the £500—like winter fuel payments, the grant has not been increased since 2002, but has remained static at £500. We often make Scottish welfare fund awards for cots, buggies and prams because of that short window. I argue that the grant should not be universal. In Scotland, 57,000 children are born a year, and only 10 per cent of mothers would qualify for a sure start maternity grant. There is a 52 per cent success rate for applications. We do not know why the remainder are refused; it could be that applications are made too late.

Delivery of the sure start maternity grant would probably be best placed with local authorities. It would be part of a range of support that we offer on things that might be part of the customer's journey at that point, including housing support, council tax support, the work on nursery places for workless households and so on. That is something for the committee to consider.

The Convener: My goodness. For a last comment, that was a really challenging one that could open up a huge debate. Unfortunately we have another panel waiting to come in, so I will stop the discussion there.

Kevin Stewart: One point that has been made, which we must be specific about—

The Convener: Kevin, I am convening the meeting. Nicola Sutherland had the last word. The panel has made a number of pertinent points and has left us with a lot to reflect on—certainly a very challenging last comment—but unfortunately we have another panel waiting to come in. I thank panel members for their contributions.

11:03

Meeting suspended.

11:08

On resuming—

The Convener: I welcome our new panel. David Eiser is a research fellow at the University of Stirling; Professor Nicola McEwen is professor of politics and associate director of the centre on constitutional change, the University of Edinburgh; Professor Paul Spicker is professor of public policy; and Professor Alan Trench is from the Institute for Public Policy Research.

We have heard conflicting views about how a new benefits or welfare system in Scotland should be delivered. There are tensions between those who believe that it should be organised and delivered nationally and those who believe that there should be local decision making. There are differences of opinion on whether there should be a system that applies universally across the country. Some people suggest that some benefits should be targeted.

Of course, in the past few weeks, there has also been a concentration on what powers the Scottish Government will have to offset any decisions made by Westminster that are perceived to be unfair or not appropriate to the Scottish scene. Do you think that the changes being made at Westminster will put us in a position where we can make decisions that are different from those that relate to a UK benefit framework and where we can use our own powers and budgets to protect people in a way that we feel to be appropriate? How will the new powers be used to deliver what a number of observers and contributors to our sessions have called the fundamental elements of fairness, dignity and respect?

Professor Alan Trench: I will speak from my own point of view, convener—and, at this point, it might be worth emphasising that, although I am not strictly able to speak for the Institute for Public Policy Research, I was one of the co-authors of its report “Devo more and welfare: Devolving benefits and policy for a stronger union”, which outlined many of the key elements of welfare devolution that manifested themselves in the Smith commission report.

Looking at the Scotland Bill in the form that it was in before yesterday's report stage—I admit that I might be slightly out of date, because I am not quite sure which amendments were and were not accepted, but let us assume that the Government amendments and no others were agreed to—I think that it broadly does what you have suggested and broadly delivers the model of what we called in our report “supplemental welfare”. However, it has one material and fairly significant shortcoming, which is the gap between the power in clause 21 to top up existing benefits and the power in clause 23 to introduce new discretionary benefits, which is limited to short-term payments. Our vision in the work that we did was that such a power should be broad and general and therefore not necessarily limited to either existing benefits or short-term arrangements. It could well be used for substantial long-term arrangements for new categories of claimants.

I have the advantage of having listened to much of the previous evidence session, and I have a concern lurking behind all this about the great deal

of talk I am hearing about finding ways of adjusting an existing UK regime. Part of the objective that we were seeking to achieve was to enable Scotland in significant ways to have, if it wanted, a different regime that would sit alongside and, in a sense, on top of the UK-wide regime.

The Convener: Did you wish to respond, Professor McEwen?

Professor Nicola McEwen (University of Edinburgh): Yes, convener. I do not think that there are any constitutional barriers to doing things differently in those areas that are devolved—the specific devolved benefits such as disability benefits and so on—except at the edges, and I am sure that we will have the opportunity to discuss disability benefits a bit more later. Clearly there are financial barriers; after all, the resources in the Scottish budgets are finite, and it will therefore all come down to an issue of priorities for whoever is in government.

On your first point about bureaucracy and delivery, I think that deciding that it would be better for delivery to happen on a UK-wide basis would be a barrier to redesigning the benefits in question. I do not think that there is a right or wrong answer to the question whether there should be uniform systems of delivery or whether they should be Scotland specific—there are strengths and weaknesses in both approaches—but a weakness of having a UK-wide system is that it constrains the ability of a Scottish Government and the Scottish Parliament to design policies that would diverge significantly from UK-wide policies, because the system simply could not cope with that.

Of course, one of the weaknesses of doing it separately and differently is that you do not have the bureaucracy; you would have to build it or strengthen the capacity of local government to deliver those services. That would be costly in the short term, for sure, but in the long term it would open up scope to do things differently.

11:15

Professor Paul Spicker: You asked a fairly broad question and there are some fairly broad answers to it. In political and economic terms, it might be exceedingly difficult for Scotland to vary the terms on which benefits are delivered. We have the precedents of the Irish Republic and Northern Ireland, which has had substantial devolved competence since before the formation of the Irish Free State.

Despite the formalities, substantial constraints in practice are experienced in Northern Ireland. Currently, Northern Ireland is in effect being fined by the Treasury for failing to make changes that are deemed putatively to save money, even

though the savings might be in question. That is a sign that, regardless of what the legal powers say, the practical and economic constraints might be used substantially to limit what Scotland can do.

The legal powers in the new Scotland Bill are circumscribed at many points. There are qualifications to ensure that what is being devolved is not the power to make benefits but the benefits themselves in their current form. At each point, there will be points of friction at which it might be desirable and appropriate to start to think about things differently, but you will be unable to do so because the competences are explicitly limited.

We start with the position in the Scotland Act 1998, in which all benefits are reserved unless they are specifically excepted. In the Scotland Bill, we move to a position at which there is a range of exceptions, often obscurely worded, and sometimes there are exceptions to the exceptions. We therefore have to read the tea leaves, as it were, to work out what it will be legally possible to do.

Taken together, those barriers—the question of competence and the question of what is permitted by the Treasury and the Department for Work and Pensions—are substantial and will take a great deal of ingenuity and willingness to overcome.

The Convener: On the issue of competence and practicality and the controversy of the past few weeks about tax credits, will we have the power to compensate those who lose out because of UK Government decisions?

Professor Spicker: That would be excessively difficult to do, in lots of ways. One of them is clearly the sheer cost.

The Convener: Leaving the cost aside, will we have the power to do it if we so wish?

Professor Spicker: The practical difficulty with it is that tax credits are based on the assessment of income, which is a fluctuating condition that is accumulated over long periods of time. Extensive amounts of information are required. The only way in which a restoration of the system would be possible would be by piggybacking on to the existing HMRC computer system. Realistically, I cannot see a way in which that can effectively be done in any practical sense.

Top-ups cannot meaningfully be done in the way that housing benefit is done. Housing benefit was very distinctive. It was managed by local authorities and we could pay the local authorities to make up the difference and keep things as they were. I do not think that we will see that in relation to many, if any, other benefits. To top up tax credits, we will need in effect to create something that can best be described as a new benefit that is

conditional on receipt of the previous benefit. I see that as the only practical way of delivering top-ups in many circumstances.

Professor McEwen: The new clause that was introduced at the report stage is potentially quite significant and far reaching—I think that it is clause 26. If we leave aside the issue of sanctions, because I think that that is specifically written into the clause as not being applicable, if the UK Government decided to restrict benefit entitlement—for example, housing benefit for under-21s—my understanding is that the new clause would give the Scottish Parliament the competence to introduce a new benefit that served the purpose that had been vacated by the UK Government. We would then have the two Parliaments operating in the same space for the same purpose, which is quite new.

That might mean that, if a different UK Government in the future decided to reinstate those benefits for under-21s, there would be an issue and the two Governments would have to talk to each other, but that would not remove the competence that the Scottish Parliament had. Over the longer term, we might see the emergence of two distinct welfare systems that would do similar things in some cases. Clearly, that would involve practical and financial issues, but I think that it would open up the scope constitutionally.

David Eiser (University of Stirling): Just to pick up on the point about tax credits and the extent to which the Scotland Bill will enable the Scottish Government to mitigate those, it is worth saying that there is of course a timing issue in that the tax credits cuts will start to happen before the new powers come to Scotland.

As they were first set out, the Smith commission proposals envisaged the Scottish Government being able to top up benefit rates—that is to say, in the language of the tax credits, eligible amounts. However, in relation to tax credits and tax credit cuts it is the work allowances and the taper rates that are critical. In fact, around £4 billion of the UK Government's £10 billion-worth of envisaged savings from tax credit cuts comes from freezing the eligible rates and £6 billion comes from reducing the work allowances and increasing the taper; that is to say, reducing the amount of income that people can earn before their tax credits are withdrawn and increasing the speed at which the tax credits are withdrawn.

It is not clear to me from the way in which the legislation is set out to what extent the Scottish Government will be able to top up the eligible rates only, with the work allowance and the taper still being reserved. There could be some interesting implications for benefit topping up, work incentives and so on. It is not clear to me to what extent the

new powers will, in theory, enable the Scottish Government to undo the full effect of the cuts, taking into account the eligible rates, the work allowances and the taper.

However, even if in theory the Scottish Government could do that, there would be, of course, huge practical issues around the administration of it. At the moment, tax credits are of course an HMRC issue, but by the time the new powers come to Scotland, we will probably have moved into a universal credit world in which that benefit will be administered by the DWP. There is therefore a huge set of issues around how we identify the people in Scotland who have been affected and how we administer the top-ups.

Professor Trench: If I might, I will say a very wee word, convener. I would take the view that legally there is a power within the framework of the bill to top up tax credits, but the practical difficulties that Professor Spicker and David Eiser started to elaborate seem to me to make it hugely difficult, if not actually impossible, to accomplish that.

Christina McKelvie: Thank you all very much for your evidence. Very specifically, I refer to clause 21 on top-up benefits and clause 23 on short-term benefits.

I will raise an issue that David Eiser touched on. We must realise that a tax credit is almost a tax allowance, whereas benefits are benefits that are defined by their different aspects. If there is the possibility of the administration of the tax credit moving over to the DWP, some of the data sharing issues might be alleviated, so fair enough. However, what bothers me is the issue, which was touched on by Professor Trench, of topping up a benefit or the tax credit allowance. What would happen if the Scottish Government wanted to do that? I was a total anorak and watched most of last night's debate, but no one could get an answer out of the UK Government. If a person is eligible for that tax credit and we top it up because they have lost it, will the amount get clawed back pound for pound by the UK Government because it is seen as additional income above the levels—the tapers that David Eiser talked about—that people are allowed to earn? Will we give to Peter only for him to be robbed by Paul?

Professor Spicker: The Smith commission specifically addressed that issue and said that that should not be what happens. Clearly, there must be a legislative agreement to avoid benefits reacting to each other iteratively to produce an effect.

In some ways, how the clauses to which you referred have been expressed has been based on a misunderstanding about something that is quite important to benefits administration. They are both headed with the word “discretionary”. Clause 23 is

discretionary in the way in which the social fund was and the Scottish welfare fund now is. However, we have long-standing precedent in social security law relating to discretionary benefits. “Discretionary” simply means that it is within the power of the Government to say whether they are established.

The supplementary benefits commission had an extensive system of rule-based discretion. Those of us who are longest in the tooth may remember exceptional circumstances additions and exceptional needs payments, which existed prior to 1980. Those were not exceptional in the sense of not having rules; rather, they were exceptional in the sense that differentiations were being made for particular claimants. Therefore, the force of what we have here allows for top-ups to be made on the basis of a rule rather than being one-off, unusual or ad hoc payments, as the DWP documentation seems to think that it must mean.

There is enough space in the law to act; the big issue is the practicalities. How does one get to know that somebody is fully entitled to a benefit so that that benefit can be topped up? That relies, at every point, on either co-operation or some form of certification or passporting.

Professor McEwen: The answer depends on how the no-detriment principles are interpreted and applied. I do not think that that comes within the legislation, but it will, one assumes, come within whatever fiscal framework agreement is reached.

If the situation that Christina McKelvie mentioned were to be permissible, I cannot see that it would be sustainable, because it would undermine the autonomy that the bill grants. I am not any more privy to the negotiations on the fiscal framework than anyone else, but it will be interesting to see how they resolve that issue. Applying the no-detriment principles is fraught with difficulty and enormously complex. Both Governments will probably look for a minimalist rule-based application, but that is exactly the type of issue that would have to be addressed within that.

Professor Trench: To answer Ms McKelvie’s question, it is fairly clear that tax credits are indeed a benefit for the purposes of the Scotland Act 1998 at least. There is a legal peculiarity here. Briefly, when tax credits were introduced in 1999, they were defined as replacing certain benefits. The Tax Credits Act 1999, in its entirety, was repealed by the Tax Credits Act 2002, which created the system of tax credits that we have today. That system completely replaced the previous one. Legally, the acts are quite different creatures, even though they happen to share the same name. That can create ambiguity about what their status is. However, the framing of what

benefits are, for the purpose of the reservation in head F of part II of schedule 5 to the Scotland Act 1998, is sufficiently broad that I am fairly clear in my mind that it includes tax credits. Tax credits constitute a benefit for those purposes, even if the 2002 act is unclear—and it is not perhaps the most pellucid piece of drafting that one has ever seen.

11:30

It is equally clear that, in principle, there should not be any clawback in the circumstances that you suggested. I think that the legislation delivers that, but it is framed in a very complex way. More broadly, a wider concern that I would have about the current state of the Scotland Bill is that it has approached welfare devolution by creating a set of exceptions to the reservation. You have a general grant of powers to the Parliament under the 1998 act. You then have a reservation of specific functions in relation to social security, exceptions to that reservation, and exceptions to those exceptions to preserve reservations in certain areas. That is a highly complex way of doing it. There would have been at least two alternative ways of addressing the issue in the framing of the legislation and it is matter of regret—

Christina McKelvie: Devolve the lot.

Professor Trench: One would have been to reframe head F in its entirety, so that you reserve specific areas of benefit activity and grant the rest to the Parliament. The other is the suggestion that you do not use reservation as the mechanism legally to accomplish that but you use creating an exception, and therefore you move those provisions from schedule 5 to the 1998 act to schedule 4, and you preserve the legislation that relates to the UK-wide benefits that will be preserved. That does not deal with the practical questions of how you then administer benefits, nor with the questions of how you fund them, but it does deal with the legal questions.

Christina McKelvie: On eligibility, one of the biggest issues that we all face with the timescale for the new powers is that, come April, 80,000 families in Scotland will be hit by a tax credits cut. We will not have some of the new powers until 2017 or 2018 at the earliest. Can the gap be filled and have you any ideas on how we can fill it? Once eligibility is lost, can we restate it?

Professor Spicker: The difficulty is that that is not all that is happening; there are many more changes. In effect, it becomes a question of priorities. With the best will in the world, the Scottish Government cannot possibly hope to mitigate and fill in all the cuts that are taking place across the piece.

I am afraid that there have to be greater priorities. Within the ESA, for example, I would point to the effect of the assessment and reassessment process and, in particular, to the problems of sanctions, which have led to something in excess of a fifth of all unemployed people having their income stopped altogether for extended periods. There are things that can be done about that, and there are things that can be done now within the scope of the existing powers. I would be happy to elaborate, if given the opportunity. However, we need seriously to determine where the priorities are.

Christina McKelvie: Is it your view that top-up benefits cannot be used to replace sanctioned benefits?

Professor Spicker: It is my view that top-up benefits cannot be used—

Christina McKelvie: Cannot be used?

Professor Spicker: That point is largely clear, although there are some weasel words coming through in clause 23 of the Scotland Bill as it currently stands. What is happening with sanctions is of questionable legality in other ways. The case has been made most strongly recently by Michael Adler, who is an emeritus professor, in a posting in which he questions the legality in administrative law of a system in which punishment precedes hearing. There are certainly grounds to challenge that system within the existing scope of Scottish law.

Christina McKelvie: Is it your view that the Scotland Bill in its current form does not allow us to use top-up benefits to replace sanctions?

Professor Spicker: That is my understanding of the bill, but I point to the wording of clause 23, which says:

“unless ... the requirement for it also arises from some exceptional event or exceptional circumstances”.

I have already commented on the language and the references to exceptionality, and it seems to me that any point at which the administration departs from the accepted canons of natural justice and administrative law could be considered exceptional.

The Convener: You referred to the emeritus professor's comment about punishment preceding hearing and the suggestion that there is no basis for that in Scots law. Was the professor referring simply to Scotland or was he reflecting on the UK? Could we in effect have a different legal challenge in Scotland from the rest of the UK?

Professor Spicker: You should invite Professor Adler in to allow him to put his argument for himself, but he was not referring only to Scots law. However, in my submission to the committee I

highlighted issues of accessibility to justice. Why are we not seeing a bombardment of legal cases for judicial review of administrative action? There are, of course, a number of reasons for that. The process is expensive, complex and extremely expert and inaccessible. That said, there is a powerful case to be made for taking such cases forward.

There are further barriers such as the anti-test case rule, which is a House of Lords decision from the 1990s that effectively means that, even if it is shown that this is illegal, there will be no redress for the vast majority of claimants who have suffered it. That, again, must be within legislative competence as far as administrative law is concerned, but I would pass that to Professor Trench for a response.

Professor Trench: I am not quite sure about that, but I cannot see that, as far as the principles of administrative law are concerned, there will be any meaningful difference between Scots law and laws in other parts of the UK. Indeed, I point members to article XIX of the treaty of union, which provides that the public law in all parts of the United Kingdom shall be the same.

Joan McAlpine: Returning to the practicalities of the matter, I know that responsibility for tax credits, which currently lies with HMRC, will move to the DWP. I also know that HMRC will charge us a good whack for administering the Scottish rate of income tax. I do not know how the complexity of the tax credits system in Scotland will be administered, but with regard to the fact that tax credits are moving over to the DWP, I simply note the huge amount of evidence that the committee has taken on the DWP's current administrative problems, including the length of time for PIP assessments and the delays to universal credit. How on earth will the DWP be able to administer a separate system for Scotland? Do you think that it is feasible that it will even agree to such a proposal?

Professor Trench: I am sorry—was that question directed at me?

Joan McAlpine: To whoever.

Professor Trench: It is feasible. Indeed, I believe that the former UK cabinet secretary Lord O'Donnell suggested that the way forward would be through what he called service level agreements between the DWP and the Scottish Government.

I share Ms McAlpine's concerns, and I think that, quite apart from the question of how it will deal with the administrative costs, the DWP is likely to have grave difficulties coping with something additional. It looks, therefore, as though quite a strong argument can start to be made for creating a Scottish agency to deliver this and to

take advantage of the bill's provisions on the sharing of data and information about claimants between the two Governments to provide at least a basis of information about what is going on and who is entitled to what.

The Convener: Earlier, Christina McKelvie raised some questions about local authorities being able to share data that they have taken from clients and use it as a single point of entry. Would the protocol—or whatever it is—on data sharing apply to an arrangement between the Scottish Government and local authorities as well as to an arrangement between the two Governments?

Professor Trench: That is an interesting and complicated question, which I will not try to answer straight away. Clause 29 of the Scotland Bill deals with data sharing and provides for a fairly comprehensive interchange of information between “the Secretary of State”—in this case it will be the UK Secretary of State for Work and Pensions, but it could be other secretaries of state—and the Scottish ministers. It is worth noting that there is a legal fiction that, in UK legislation, “the Secretary of State” means any secretary of state, whereas in fact it is one indivisible office held by a multiplicity of individuals. Clearly, there is a power to share information between the UK Government and Scottish ministers. Whether the Scottish ministers have power to share that data with local authorities is another question, which I would want to think about very hard.

Joan McAlpine: I return to my original point, which is simple but important and which the folk out there who will be the customers will be interested in. The DWP cannot answer letters and it has a 15-month waiting time for assessments. It is currently not fit for purpose. Do you think that the DWP is capable of delivering this further adjustment to the already complicated tax credits system in Scotland? If so, how much will it charge us for doing so?

Professor Spicker: There are a large number of benefits that are currently too complex to be administered. What they typically have in common is that they have a number of moving parts, all of which have to be moved into alignment in order for things to work. A simple example of something that is being devolved to Scotland is funeral payments, which have several moving parts. We need to know about the personal status and income of the claimant, the personal status and relationships of the deceased, the resources that are available to the estate, the arrangements that have been made for the funeral and the reason why the individual in question is making the claim rather than somebody else. We end up with a 36-page form for what should be a perfectly simple process. There are too many questions and too many elements.

Look at the series of administrative failures that there have been in the past: housing benefit; child support; tax credits, which the Parliamentary and Health Services Ombudsman condemned as being fundamentally unsuited to the needs of low-income families; and now universal credit. They had in common a presumption that we can process the information but it simply cannot be done. We find that claimants are being asked questions that they cannot reasonably answer. An example of a simple question is asking someone whether they are disabled. We know from surveys that fully three quarters of people with disabilities say either that they are not disabled or that they are disabled sometimes. They do not know the answer. We are asking systems to cope with complex human problems by using mechanical processes. I am afraid that that cannot be done. The only way that we will get round the problem is by seeking to get a range of simpler and more direct benefits.

Professor McEwen: On universal credit, the legislation places an obligation on the DWP to accommodate differences within the areas of competence. That means differences at the margins in respect of delivery, how frequently the benefit is paid and to whom, and the housing component. I appreciate that the experience has been difficult for claimants, but the information technology system that is at the heart of universal credit was designed to accommodate those minor differences. However, I am not at all confident that it could accommodate bigger differences were the DWP to be asked to enter into the sort of service level agreement that has been mentioned, nor am I confident that it would want to—it certainly would not be obligated to.

Joan McAlpine: I am sorry to interrupt, but I take it that you are saying that reversing tax credit cuts would be a very significant change and that that is not what the system was designed for.

11:45

Professor McEwen: I agree that that is not what the system was designed for. I suspect that, were the legal opinion to determine that that was within competence anyway, perhaps within the new broader clause, it would be more likely to be a matter for the Scottish Government to invest in the means to deliver its new policy priorities. It may be open to do something differently through intergovernmental negotiation, but that certainly could not happen quickly.

Joan McAlpine: Your point is that, as well the massive cuts to tax credits having to be made good, there will be a huge administrative burden.

Professor McEwen: Yes.

David Eiser: The main barrier to varying the benefits system is not political will or even financial resources but administration. We hope that, when the fiscal framework is published, it will set out protocols on how the administrative cost of making some of the variations might be arrived at.

Another cost that may need to be factored in is for knock-on, no-detriment issues. If the Scottish Government were to make changes to the existing benefits system, and the UK Government were to feel that those changes had implications for its budget, how would the costs be estimated and arrived at? We hope that the fiscal framework, which is being developed at the moment, will provide guidance.

Joan McAlpine: You are saying that the fiscal framework is not just an abstract but is very important. It could result in Scotland losing huge amounts of money, if we are charged unfairly for the administration of these benefits.

David Eiser: The financial implications go both ways. The fiscal framework will be critical in determining how the new powers influence Scotland's block grant, how the Scottish resource will change in respect of other devolved powers that do not involve a change to the block grant specifically, how the no-detriment costs are arrived at and the levels of borrowing that the Scottish Government will have available.

There is a set of critical issues that the fiscal framework will have to look at, which sit below the Scotland Bill. That is not to say that they are below in terms of importance. The bill has had a lot of coverage and we wait to see what the fiscal framework will look like.

Kevin Stewart: I am glad that, during this part of the session, we have concluded that the Scotland Bill specifically states that we cannot top up benefits to address any sanctions. We were going in the wrong direction in the previous part of the session and I wanted to correct that. I am glad that Professor Spicker has confirmed that point.

The financing and the fiscal governance of the changes have not been discussed to any great degree. The powers have been debated, and we are where we are this morning after yesterday's debacle. Witnesses have said that the reality is that some things might not be possible anyway, because of practicalities or because the Scottish Government might not have the money to implement them.

Mr Eiser's submission covers future indexation of devolved benefits to the block grant. What would happen if a future UK Government, or even the current UK Government, decided that it would not pay out on, for example, PIP? If Scotland decided to keep PIP, what would the impact be on the block grant?

David Eiser: The Smith commission was fairly clear that the sensible starting point on Scotland's block grant is the status quo—the Barnett formula—and that, for the first year when the new welfare powers are devolved, we will add to Scotland's block grant the level of resource that is equivalent to the spending on those devolved benefits in that year. Subsequently, the addition to the block grant has to be indexed to UK Government spending on those benefits.

That indexation serves two main purposes. First, it acts to estimate what the UK Government would have spent on the devolved benefits in Scotland had they not been devolved, which goes back to the no-detriment idea. The second objective is in effect to protect Scotland from UK-wide fluctuations in benefit expenditure. However, it clearly means that the part of the grant to the Scottish Government to pay for the devolved welfare benefits is inextricably linked to what the UK Government spends on those benefits in the rest of the UK.

The detail of the indexation is still to be resolved. It might be done on the basis of total spending on the devolved benefits or of spending per capita. Both those options—there are potentially more—have implications in the long run for the level of resource that the Scottish Government will have to resource the benefits, in addition to its other revenues, of course. In the hypothetical scenario that you talk about in which PIP is no more, and if we assume that it was not to be replaced by any other benefit for people with disabilities or sickness, that would have an implication for the Scottish grant.

Kevin Stewart: So in the extreme case of a future UK Government taking the axe to a particular benefit that we chose to keep, the money would not follow for us to retain that benefit. A policy decision that the UK Government took would have a financial implication here.

David Eiser: Yes, in the same way as there would be an implication for the Scottish Government's block grant if the UK Government was to drastically cut NHS spending. The way in which the Barnett formula works is based on changes rather than absolute spending, which complicates matters slightly. However, there is a link between UK Government spending and the Scottish Government block grant.

Kevin Stewart: Your paper states that,

"Over the period to 2020/1, the spending forecasts of the UK Government suggest that the level of resources transferred to the Scottish Government ... will decline in real terms"

when it comes to welfare.

David Eiser: On the basis of its spending review, the UK Government is aiming to make

significant savings from the transfer from DLA to PIP. It also envisages a reduction in spending on winter fuel payments, largely because of the increase in the state pension age. On average, over the current Parliament, the UK Government expects to reduce spending in real terms on the benefits that are being transferred to Scotland. As I said, the detail of how the indexation happens is yet to be worked out but, on that basis, we would not expect the addition to Scotland's block grant to increase drastically over time from the existing expenditure of £2.5 billion.

There are probably a number of caveats. One is that spending plans often do not meet with spending reality. If the UK Government did not meet its spending plans for those benefits and spending increased in the UK, the grant to the Scottish Government would increase as well.

Kevin Stewart: Basically, it is fair to say that, at the same time as the powers transfer here, we will see reductions in what can be spent on those areas, so Scotland will get power over those areas but with less money for that.

David Eiser: On the basis of the UK Government's forecasts, we do not expect the transfer to increase year on year from £2.5 billion over the course of this UK Parliament.

Professor Spicker: There is a precedent from what has happened in Northern Ireland. I point you particularly to the estimates in relation to PIP. The UK Government believes that PIP ought to save money, because one of the bands has been removed. However, the Government has not taken account of two things. One is that the assessments have not taken place at the rate that was intended, so savings are not necessarily being made. Beyond that, more generous provision has been made for dealing with fluctuating and psychiatric conditions, which had been problematic under DLA. The obvious question is whether PIP will deliver the savings that it is meant to deliver.

Regardless of that, the Northern Ireland Assembly has been fined. It is now being fined monthly, and one of the principal reasons for that is its refusal to introduce PIP.

Kevin Stewart: You have studied this a fair bit. Is that having a major effect in other areas of the budget in the north of Ireland?

Professor Spicker: Yes.

Kevin Stewart: In particular, large-scale cuts are being talked about for health and social care.

Professor Spicker: That is a separate issue from the one that I pointed to; I pointed you to the fact that the issue is about the forecasts. If the forecasts say that money will be saved, the cuts will be implemented regardless. That is quite apart

from cuts that will happen in other circumstances, come what may.

Kevin Stewart: Administrative costs are extremely important. A future Scottish Parliament could take a policy decision to introduce something and find the money to do that, but the entire thing could have the rug pulled out from under it because of excessive administrative costs, if current systems had to be adapted greatly to cope. Is that a possibility, particularly with the changes that there have been to IT systems?

David Eiser: If you are talking about the benefits that are being fully devolved to Scotland, the administrative costs of designing, administering and delivering that system—

Kevin Stewart: I am talking about what would happen if we wanted to do something with universal credit and create an adaptation. The system that is being developed to deal with universal credit is running late and is well over budget, and it might not be as adaptable as folk have thought that it would be. What would happen with that?

David Eiser: We have touched on the significant administrative issues in the implementation and roll-out of universal credit. It is not clear to what extent the DWP will be in a position administratively to adapt that in Scotland. That is likely to depend on how far the Scottish Government would want to deviate from the existing design of universal credit.

Doing anything beyond small adaptations would mean big administrative challenges and could have a large fiscal implication. However, until the fiscal framework is published, we will not know how the cost estimates will be made and what scope there will be for negotiation on them.

Kevin Stewart: Could the intention of a future Scottish Parliament, which had passed a policy and found the money to implement it, be scuppered by the costs of administration, which might be governed elsewhere?

12:00

Professor McEwen: The costs of implementation include the costs of administration. There is a limit to what could be done with a distinctive policy that was administered at the UK level. There would have to be a time lag; one assumes that it would not be a priority at the UK level to introduce a devolved policy.

What will be demanded is a consideration of new welfare powers alongside new tax powers. I appreciate that this is the Welfare Reform Committee, but the broader debate has probably concentrated more on the welfare clauses than on the tax clauses. There are restrictions on what is

possible with taxes because of the way in which the legislation has been designed.

I would have been more comfortable with a lower level of income tax devolution if that had meant a broader basket of taxes on which to draw. The heavy reliance on income tax revenue places a huge responsibility on the Scottish Government without necessarily giving it the flexibility to offset changes in one tax with changes in another, which is what the chancellor can do.

Kevin Stewart: I do not want to stray into that territory; the convener would stop me anyway.

I return to the costs of adapting something that is already there. We were told the other week that if we wanted to do something with tax credits, for example, each transaction with HMRC would cost £9.49, and each case would involve four transactions a year, which altogether would cost tens of millions of pounds. Would similar figures be charged if anything that related to universal credit systems were to be adapted?

Professor Spicker: I am going to give you a contradictory answer on universal credit, because I have received contradictory information about it. On the one hand, we have the global cost of universal credit, which is estimated for administrative purposes to reach £15.84 billion by 2021. That is a staggering figure that is quite out of proportion to what it has been costing, as it has been running under budget. Any amount that was in any sense proportionate to that figure would almost certainly be beyond the Scottish Parliament's reach.

However, at a conference in February, I was told by James Wolfe, who is deputy director of universal credit policy at the DWP, that there is absolutely no reason why rates could not be simply and immediately varied within the computer system, given its design. The system was modelled to allow for certain predictable changes. If a change that is within the class of predictable changes was wanted, it could be done, but if it was outside the predictable changes, it would cost a prohibitive amount. I cannot tell you which is which.

Kevin Stewart: That goes to prove that it is a bit daft to carry out lots of legislative changes without putting the finances and the fiscal framework behind them, but there we go.

The Convener: Professor Spicker, will you clarify something? Kevin Stewart said that this panel had ruled out the idea that any compensation could be given to those who were affected by sanctions, but you mentioned that there could be exceptions.

Professor Spicker: Again, I might be working on outdated wording—this time of clause 23 of the

Scotland Bill. I apologise for having to hunt for it now. It said:

“this exception does not except providing assistance where the requirement for it arises from reduction, non-payability or suspension of a benefit as a result of an individual's conduct”.

That seems to exclude sanctions flatly. However, it carries on:

“unless the need for it arises from some exceptional event or exceptional circumstances, and the need is immediate as well as short term”.

I am looking at the word “unless” and wondering whether those weasel words provide an avenue. I would not be confident that they do and, until a case got into a court, we would never know.

The Convener: Yes—that remains to be seen.

Clare Adamson: I was interested to hear what Professor Spicker said about reassurances on the DWP computing system. I will look at where we are now and the experience that the committee has had in looking into where the roll-out of universal credit is.

When we took evidence in Inverness, we heard that the system has no flexibility whatsoever. The example was given of when an exception is made for someone who might have a chaotic lifestyle and an arrangement is made for their housing benefit to be paid directly to their landlord because of exceptional circumstances. The system for that is completely manual on the local authority's part. The DWP system does not give the flexibility to deliver the benefit, and the cost of that is being absorbed by the local authority. Because of that manual process, there are also huge capacity issues with increasing the roll-out.

We heard about the increase in rent arrears from people who are on universal benefit. There is a direct correlation between that and rent arrears, particularly for those who are in temporary accommodation, where the levels are exceptionally high. Will the fiscal framework be able to identify the hidden costs to local authorities that have arisen from the roll-out in addition to any other changes?

Professor Spicker: The situation that you have described in relation to universal credit is not supposed to remain for ever. The roll-out of the system—which is intended in principle to be agile but has been anything but agile—has involved initial claimants who fall within a narrowly specified category of need. When their personal circumstances have changed, it has been necessary to do things by hand and to find workarounds. The DWP is well practised in that—it started with computers back in the 1990s. It has processors, but it clearly needs to develop the computer system a lot further before it will be able

to deal with the circumstances that you are talking about.

That also means that, if we wish to create a systematic exception, it will involve creating a new set of routines. In some cases, however, we might be looking for systematic exceptions of a different sort. As I said earlier, if we were trying to top up a benefit, it would make more sense if we talked about a different sort of benefit. We have a benefit apparatus in place with the Scottish welfare fund, which has been developing expertise at speed.

There are systems through which money can be distributed. That could be particularly important to the earliest part of a claim for universal credit, for example, when there is a long delay in the receipt of benefits. I do not know how the process would work in practice, but that money should be recoverable under the no-detriment principle; whether that can be done in practice remains to be seen.

Clare Adamson: Are you comfortable that the capacity issues at local authority level will be visible to the fiscal framework when the assessment about no detriment is made?

Professor Spicker: I find it difficult to relate that to the fiscal framework. Local authorities have been doing remarkable things under conditions of considerable constraint and there has to be a capacity issue. We have to avoid creating a system to deal with exceptions and emergencies that becomes routine because of the inadequacies of the overall system. That has happened again and again in benefits systems. The better we can make things work, the less need there will be to do such things, but we have a long way to go. I cannot resist adding that I do not think that universal credit will ever be able to deliver such a system.

The Convener: In your submission, you suggested that it would be open to the Scottish Government to increase the value of child benefit, which is often regarded as a good mechanism for targeting money to families with children. You also suggested that it would be open to the Scottish Government to extend the taxation of that child benefit.

Professor Spicker: As I have explained, the mechanism is about meeting certain conditions. In relation to topping up benefits, we have identified a difficulty, which is the interaction of benefits. Child benefit is one of the benefits that do not interact, which saves us from that difficulty. It would not be open to the Scottish Government to take away people's child benefit, because that would be not topping up benefit but directly breaching the terms under which the topping-up regime could conceivably work. If the aim was systematically supplementing, that could be done

in a differential way. The practical way to do that would be to make child benefit subject to tax.

I have suggested that simply as the sort of thing that it might be possible to do if we thought about things differently. The main objection would be whether proceeding extensively in that way was still discretionary. However, I have already given the argument that discretion consists of the character of the Scottish Parliament's judgment, although that does not mean that there cannot be rules.

The Convener: Before I conclude the session, does any panel member have any final comments to make?

Professor McEwen: The no-detriment principle would not apply to the costs that local authorities incur at delivery because—however interpreted—that is purely a result of devolution to the Scottish Government. There is not a no-detriment principle in the relationship between the UK Government and local authorities—perhaps there ought to be, but there is not.

We have been discussing flexibility. My understanding is that the issue is about flexibility not at the point of delivery but at the core. However, we should not underestimate how long it will take to implement even changes that appear relatively simple. That is why there is legislative provision for the secretary of state to postpone the date of implementation to changes in universal credit, if he or she thinks that it would be appropriate to do so or impractical to follow the date of implementation that the Scottish Parliament set.

The Convener: I thank you for your contributions. You have certainly given us a lot to think about. As is usual with a learned panel of witnesses, you probably leave us with as many questions as answers.

12:12

Meeting continued in private until 12:41.

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