OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 3 September 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 3 September 2019

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ECONOMY, ENERGY AND FAIR WORK COMMITTEE
23rd Meeting 2019, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Angela Constance (Almond Valley) (SNP)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Dean Lockhart (Mid Scotland and Fife) (Con)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sharon Bell (StepChange Debt Charity)
Mike Holmyard (Citizens Advice Scotland)
Karen Hurst (Association of British Credit Unions)
Angela Kazmierczak (Aberdeen City Council)
Yvonne MacDermid (Money Advice Scotland)
Alan McIntosh (Inverclyde Council)
David Menzies (Institute of Chartered Accountants of Scotland)
Dermot O'Neill (Scottish League of Credit Unions)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 3 September 2019

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Welcome to the 23rd meeting in 2019 of the Economy, Energy and Fair Work Committee. I ask everyone in the gallery to turn off electrical devices, so that they do not interfere with proceedings.

Agenda item 1 is a decision on whether to take in private item 4. Do we agree to take that item in private?

Members *indicated agreement.*

European Union (Withdrawal) Act 2018

European Grouping of Territorial Cooperation (EU Exit) Regulations 2019

10:01

The Convener: Under agenda item 2, the committee will consider the Scottish Government's notification to the Scottish Parliament of the European Grouping of Territorial Cooperation (EU Exit) Regulations 2019. The regulations set out the procedure for approving United Kingdom public entities' participation in EGTCs after European Union exit.

At its meeting on 25 June, the committee agreed to seek further information on the regulations. That information is contained in members' papers. Is the committee content for the issues in the regulations to be dealt with by statutory instrument laid at Westminster?

Members *indicated agreement.*

The Convener: I will write to the minister to notify him of the committee's decision.

Subordinate Legislation

Debt Arrangement Scheme (Scotland) Amendment Regulations 2019 [Draft]

10:02

The Convener: Agenda item 3 is consideration of the draft Debt Arrangement Scheme (Scotland) Amendment Regulations 2019. A number of witnesses are joining us for this session: Alan McIntosh, senior money adviser, Inverclyde Council; Yvonne MacDermid, chief executive, Money Advice Scotland; Mike Holmyard, financial health policy manager, Citizens Advice Scotland; Angela Kazmierczak, financial inclusion team leader, Aberdeen City Council; and Sharon Bell, head of StepChange Scotland Debt Charity. I welcome you all to the committee.

If you have not appeared before the committee previously, you should note that the sound system will be operated via the sound desk, so there is no need to press any buttons. If you want to come into the discussion at any point, please indicate that to me by motioning with your hand. I will try to bring you in, as time and the session permits.

I will start with a general question about the draft regulations. In their submissions, some respondents highlighted that there is a crisis in money advice funding. Do you agree that there is such a crisis, or is that a slight exaggeration? Will the regulations help to deal with the debt advice situation?

Yvonne MacDermid (Money Advice Scotland): Is there a crisis? Yes. I have been involved in debt advice for 30 years, so I have lived through different economic cycles, but I have not seen things as bad as they are now. We are losing a lot of advisers, so we are not retaining the advice that they give and the quality of that advice, which is really important.

We need to see a step change towards a system that is better funded than the one that we have at present. The regulations might go some way towards that, but there is a much wider debate to be had. That should not be about one particular issue; we need to have a debt advice levy for Scotland that looks at all the statutory solutions. For me and the organisation that I represent, that is very important.

The Convener: Certain points about the regulations were raised in the various submissions to the committee. Do you agree that the regulations are a step in the right direction and that, if they were come into force, further improvements could be discussed and introduced afterwards? Some people might say that we could discuss things for ever but that we have to start somewhere. Do you have a view on whether it would be suitable to bring the regulations into force now and to allow the discussion to carry on?

Yvonne MacDermid: Yes. The short-term financial crisis payment break is definitely a good thing, because people's lives are not linear; they have cycles during which they are able to cope. A debt arrangement scheme or debt payment programme requires a longer period of time than other statutory solutions, so it is quite hard for someone to keep to it. The automatic approval process should help advisers, too; it should lift administrative burdens from them. At the moment, they are suffering from compassion fatigue. We have done research and have found that the welfare of advisers is definitely on the way down, not up.

The regulations might not go far enough in some respects, but they are certainly a step in the right direction. We need to protect debtors who are in vulnerable situations and who would particularly benefit from short-term financial crisis payment breaks, which might be crucial for them.

Alan McIntosh (Inverclyde Council): I concur with Yvonne MacDermid: we are in a crisis. In my submission, I described it as being an existential crisis for some agencies. Last year, we lost a couple of agencies—citizens advice bureaux and law centres. By the end of this financial year, we will have lost another couple. Although many other agencies might survive, their capacity will be further reduced.

The Improvement Service, which has been monitoring money advice funding since 2014 has provided figures and has reported that, between then and 2017, such funding provided by local authorities—which are by far the largest providers, through not just their own services but citizens advice bureaux—reduced by 45 per cent. The Money and Pensions Service—or its predecessor, the Money Advice Service—stated that Scotland's capacity for free money advice is 50 per cent under what it should be. Therefore, there is objective evidence to support what we are seeing on the ground.

Let me give the example of my own organisation, which I believe to be typical. Inverclyde Council has four money advisers who currently cover the debt arrangement scheme. Funding for two of them is from an external source—the Big Lottery Fund—and that funding will come to an end next year. The council is in the same position as every other council across Scotland, in that funding is becoming scarce and it is having to use its reserves. We are facing the prospect that our capacity might be reduced by another 50 per cent by the end of next year.

I believe that the regulations are a step in the right direction. I was on the DAS 2018 regulatory review working group throughout its discussion process. There was general agreement among creditors and the money advice and insolvency industry that creditors have to pay more. The chair of the Money and Pensions Service has recently called for the Financial Conduct Authority debt advice levy to be increased by 100 per cent, to £100 million. Although the regulations are underpinned by such principles, and they go in the right direction, we must appreciate that they could radically change the money advice landscape in Scotland—and not necessarily for the better. They could easily be fixed through redrafting, which would help to improve the service. However, as they stand at the moment, I feel that the regulations are not fit for purpose.

Mike Holmyard (Citizens Advice Scotland): I agree with my colleagues about the funding crisis. As Alan McIntosh alluded to, we have had to shut down some services in the citizens advice bureaux network because they were no longer funded.

The regulations will not really fix the problem, as they deal with one debt solution. It is quite common for our citizens advice bureaux to deal with a number of other debt solutions, such as standard repayment plans, which are not funded in the same way.

We are setting up an artificial choice between a repayment plan, in which nobody gets funding, a debt arrangement scheme, in which somebody—a payments distributor and, potentially, a money adviser—gets funding, and protected trust deeds, in which trustees benefit from fees. All we are doing is mixing things up, rather than approaching the core issue, which is the funding of the free debt advice sector.

The regulations will probably benefit a few commercial providers that have the resources to grow to meet the demand. That is fine, in that it will help people—and we are all about helping people—but, on the face of it, the regulations will not do a lot for the free advice sector. They will certainly not do a lot for the CABx network.

The Convener: Are you saying that they are a step, but only a step, in the right direction?

Mike Holmyard: They are a step in the right direction, but the funding of the free advice sector through the regulations is not set out in the regulations. There is a big black hole in terms of our understanding of how we are to be paid. The Accountant in Bankruptcy talks of a market of payments distributors, whereby an adviser in one of the CABx would have a choice of a series of commercial payments distributors and the AIB to use as payments distributor.

There is a lot of extra work being created by the regulations. The point of them was to simplify the debt arrangement scheme, but for the free advice sector, which does not have payment distribution facilities, they will cause more problems.

The Convener: We will move on to John Mason, whose questions follow on from that point.

John Mason (Glasgow Shettleston) (SNP): On the question of funding the free advice sector, a number of people who submitted evidence talked about whether the AIB will distribute some of the money when it becomes a payments distributor, how much money it will distribute and whether that is regulated enough. I am interested in your comments on that. Is what is proposed for the AIB satisfactory? Is it transparent enough, or should there be more detail?

Alan McIntosh: I was on the regulatory working group on that issue with Mike Holmyard—I think that Sharon Bell was on it, too. We were in the middle of a consultation on returning fees to the free advice sector when the regulations were laid, which came as a bit of a surprise. We thought that we were still having that conversation with the Accountant in Bankruptcy, but suddenly the regulations were laid and there was no provision in them for money to go back to the free sector.

I have commented on the fee structure and how it gives all the money to the payments distributor and does not seem to recognise the role that the money adviser plays. There are three service providers in the debt arrangement scheme: the payments distributor, the Accountant in Bankruptcy and the money adviser. There is a payment distribution fee and an Accountant in Bankruptcy or debt arrangement scheme administrative fee, but there is no money adviser fee. That surprised me. It is totally different from the model that has been suggested by the United Kingdom Government for the breathing space scheme, which is a more commonsense model, as there is a fee for each sector. It surprised me—I think that it shocked everyone.

John Mason: I will play devil's advocate. Some people might say that the normal payments distributors might be out for themselves but the Accountant in Bankruptcy will take an overall view and will be more supportive of your sector.

Alan McIntosh: I will come to that point.

At first, there was no costing and we did not know how much we would get or how we would get the money back. We put on a bit of pressure and, since then, costings have been produced. It is suggested that we should get back 15 per cent of the 20 per cent, which I think is correct. At the moment, there are a number of payments distributors that do it for less than 5 per cent, so I have no complaints about the amount that has been proposed. My concern is that it is not in the regulations and it is only fixed for three years before it can be reviewed.

I noticed that StepChange's submission suggested that the Accountant in Bankruptcy could not do it for 5 per cent, because that would be too cheap. I found that quite surprising, because three of the four payments distributors currently do it for less than that rate. I would like the regulations to cover that point.

10:15

StepChange suggests that the AIB should withdraw the proposal and that money advisers should pass cases to it, in which case we would not get back the 15 per cent. I find that quite surprising, too. I feel that the fee level should go into the regulations, because we need to safeguard people.

John Mason: Right, okay. Ms Bell, your organisation was mentioned there. Would you like to come in?

Sharon Bell (StepChange Debt Charity): Yes, thank you. Just for clarity, I point out that StepChange is a free-to-client money adviser. However, it is also a continuing money adviser that is a payments distributor. It is therefore the only payments distributor organisation on the panel and giving evidence to the committee today. At present, under the tender arrangements, we charge 8 per cent for payment distribution, which covers our costs for that. None of it covers our money advice costs.

I agree with my colleagues on the panel that there is a crisis in the funding of money advice services—not just in Scotland but UK-wide. Our charity has seen a significant change in the field. In our submission, I commented that, from the information provided by the Accountant in Bankruptcy, I was not clear that it could evidence that it could provide a payment distribution function for a fee of just 5 per cent, at least in the initial years as it built up its numbers. It had not had clarification of the number of cases that it would get, it did not know how many staff it would need to undertake the process and it did not understand how much it would actually get back—it was working on averages. My concern was that if it was not able to cover its costs for a fee of 5 per cent, the public purse would have to cover that, which would seem to go against the concept of the regulations.

John Mason: Is it your experience of the Accountant in Bankruptcy to date that it is good at controlling its costs? There has been evidence that other people thought that perhaps it was not.

Sharon Bell: At present, the difficulty is that it just does not have enough information to clarify those costs. I think that the majority of the panellists would agree that it is not clear what the costs are. Generally speaking, the Accountant in Bankruptcy works within the budgets that it is allocated by the Government and, on the whole, stays within its costs. It has also just introduced a new information technology system that it hopes will bring some savings into the process. However, that system has had some difficulties in its first few weeks; it has also caused a significant increase in our costs. Therefore, we are not necessarily comfortable that the AIB is certain of its costings.

John Mason: Thank you. Would any of the other panellists like to come in? Perhaps Mr Holmyard would like to do so.

Mike Holmyard: We have no issue with the AIB being a payments distributor. As Alan McIntosh has said, the issue comes back to the lack of detail on how that process is carried out.

The citizens advice bureaux network does not particularly want to enter into commercial arrangements with anybody else to do payment distribution work for us, but the impact of the regulations will be to open up a market in payment distribution. If we were to have the Accountant in Bankruptcy as our payments distributor, that would deal with the issues of independence and impartiality, which we want to preserve for the citizens advice bureaux network.

John Mason: Okay. Thank you. If no other panellist wants to come in, I will move on to my second point.

Some people have suggested that there has been too much growth in protected trust deeds. One of the aims of the regulations is to swing the balance back towards DAS. I am interested in panellists' thoughts on that. Is that growth a problem? Will the regulations swing that balance too much, or do we just not know the answer to that question?

Alan McIntosh: Everyone is looking at me to answer that. I thought for a moment that I was going to be rescued by my colleagues.

There has been a growth in protected trust deeds, and we have seen the commercialisation of the market for them. I would be very surprised if the credit union representatives did not want to speak about that issue, because it is very close to their hearts. Money Advice Scotland's submission states that, as money advisers, nowadays, we spend a lot of time fixing other people's cases rather than dealing with new cases, and some of those cases involve trust deeds. There has been a problem with that.

However, as Mike Holmyard from Money Advice Scotland touched on, the danger is that the regulations will incentivise people to missell debt arrangement schemes. We do not solve the problem of trust deeds by incentivising people—by giving them 20 per cent if they sell the debt arrangement scheme. Bad advice is bad advice. Although the debt arrangement scheme is a good solution, as are trust deeds, when it is applied to people in the wrong cases, it can cause consumer harm.

As Mike Holmyard touched on, you will be saying to people, "Go and sell debt arrangement schemes now, and we will give you 20 per cent." Lead generators will get into that market in the same way as they got into the trust deed market and the payment protection insurance market. The debt arrangement scheme will be sold like a financial product, with all the risks of misselling that that brings, and it will lead to consumer harm. My personal view is that we need to deal with the trust deed problem but the solution is not to create another problem.

Yvonne MacDermid: I concur with Alan McIntosh. We must be careful not to create any perverse incentive. The debt arrangement scheme is good, and it has been improved over time. Like others around the table, I was there at the beginning of DAS, and we have had some changes made, such as the interest being frozen and the payment breaks and variations, so it is a good product. However, we must make sure that it is the right thing for the person and that it is not pushing them down a route because that will generate income. It is important to separate things to ensure that there is no perverse incentive and that people are given solutions. The Financial Conduct Authority requires advisers to give debt counselling and look at a recommendation for an individual that is based on the information that they have given about their income and expenditure as well as what their future holds. We must be careful not to try and fix that problem over there, because the DAS product is good. Let us not change it in a way that will create a perverse incentive.

John Mason: I take your point that you do not want to skew the balance too far in favour of the debt arrangement scheme. However, if the balance has already been skewed too far in favour of protected trust deeds, would that not make for a more level playing field?

Yvonne MacDermid: The way to deal with the situation is to change the protected trust deed. There will be unintended consequences that we have not yet thought about. It is important that we deal with the protected trust deed on its own but also as part of a package of statutory debt solutions.

Mike Holmyard: I was going to say the same thing. We need to look at the package of debt solutions as a whole. We cannot make adjustments to one and then another and hope that it will even out. We must look at everything in the round.

Angela Constance (Almond Valley) (SNP): We have strayed into territory that I am interested in: how we guard against perverse incentives to use DAS when it is not in the client's best interests. If any other members of the panel have anything to add to what Mike Holmyard, Yvonne MacDermid and others have said, I am willing to hear it.

Given Mr Holmyard's most recent remark, do panel members feel that, over and above regulations that are specific to DAS, we require a whole-system approach with examination and reform of debt advice and Money Advice Scotland?

Mike Holmyard: Absolutely.

Angela Kazmierczak (Aberdeen City Council): I agree that we must look at debt advice as a whole. With debt advice, considering options is probably the easiest part of the process. The most important part is getting the financial statement accurate and sustainable. Once the adviser knows what the client can afford and what their future holds, considering options is the easiest part.

I agree with the point that has been made. Time and again, when people who have gone into a protected trust deed come to us and we sit down and do a proper financial statement, we find that there is no way that they should have gone into a protected trust deed. Those people might have been paying contributions for a year, but, when they get out of the protected trust deed, they end up getting back all their debt because none of the money that they have paid in that year has gone towards their debt. In my opinion, protected trust deeds benefit no one apart from people who cannot enter bankruptcy for employment reasons. We see them being missold time and time again.

There is a wider issue. We have to look at how front-line money advice is funded to ensure that everyone is presented with all viable options, so that clients can make informed decisions. When people are looking at individual options and there is incentivisation through fees, some companies will push them towards certain options, but that is not what money advice should be about. It should be about getting the right option for the client, so that they can get out of debt and retain control of their finances in a way that means that they do not get back into debt. At the moment, however, that is not what happens, and there is a particular issue around protected trust deeds. I work for a local authority, and we see lots of people coming in because of rent arrears. They get back into rent arrears straight away because they have not been left with enough money to live on while paying their contribution to the trust deed.

I would welcome full consideration of all the debt options, including how they are funded, not just specific debt options.

Angela Constance: What would be the best vehicle to take that whole-system review forward?

Angela Kazmierczak: The Financial Conduct Authority's debt advice levy has now been devolved to us. Some of my colleagues have also suggested that there should be a statutory debt option levy. What figure has been suggested for that, Alan?

Alan McIntosh: At the moment, the figure that is paid to creditors is £74 million, and the suggestion involves a percentage of that.

The idea is to create a Scottish debt advice levy to complement the Financial Conduct Authority's debt advice levy. That amount would be levied on formal debt solutions at a percentage. I believe that, last year, £74 million was distributed to creditors through formal debt solutions—that was after the Accountant in Bankruptcy, private solvency practitioners and payment distributors took tens of millions of pounds in fees. The free money advice sector plays a huge role in delivering solutions and helping people who are involved in those solutions when things go wrong, but we took nothing from that figure—we got zero while the insolvency practitioners and the Accountant in Bankruptcy took tens of millions of pounds. It is ironic that we are suffering a major funding crisis when £74 million is being paid to creditors.

The idea behind the alternative solution is that, rather than have a levy on one solution, which could create perverse results through incentivisation, as Yvonne MacDermid suggested, we should put a levy on all solutions so that funding can be given to advice services. That could be done through the same body that is administering the Financial Conduct Authority's levy for the Scottish Government, which, I believe, is the consumer unit of the Scottish Government. That money could be given to advice agencies, which would then get that money regardless of whether they are doing protected trust deeds, bankruptcies, debt arrangement schemes or whatever. Regardless of the demographics of their area, they would get the money because they are helping people in that area and are providing the right options.

Angela Constance: Does Yvonne MacDermid or Mike Holmyard have anything to add?

Yvonne MacDermid: We are supportive of the Scottish debt levy because what we have in the system at the minute is not enough. As Alan McIntosh pointed out, when the former Money Advice Service examined the figures, it found that 50 per cent more people need advice than are able to seek it. That is even after all the work that has been done by other agencies to upskill their staff. For example, StepChange has invested in a transformational programme and is still not reaching the right levels.

We are at the beginning of a journey, in a way. Things are going to get worse. There is nothing to suggest that they are going to get any better any time soon. We need to address that, quickly, so that we are able to respond to the issues while we still have the expertise in the sector. Many people have left due to fatigue. We are concerned about the wellbeing of the money advisers because, if they do not stay well, they cannot possibly give good debt advice. We need to think about a much wider issue than just the delivery of the service, by which I mean the issue of the people who deliver the service.

10:30

Angela Constance: Mr Holmyard, you touched on the need for a wider system approach.

Mike Holmyard: Yes. I agree with everything that my colleagues have said about needing to look at the funding. We are going through a funding crisis in our network. We have how the service is delivered and then we have the set of options that are available to be used. Some of the options are not fit for the modern economy either. The income of people who work in the gig economy, for example, goes up and down; most of our debt solutions are based on somebody having a standard financial statement with a set outcome—a constant outcome—and that is just no longer the case for a lot of people.

We need to look at all the debt solutions to see whether they are fit for purpose and who they should be aimed at. As an advice community, we need to have a bit of input into that rather than, for example, the Accountant in Bankruptcy—as it currently does—coming up with a set of changes and then changing one thing at a time.

Jackie Baillie (Dumbarton) (Lab): I will stick with the Financial Conduct Authority's levy for a minute, because responsibility for the distribution of that money was devolved to Scotland last year. Do you know how much money will be distributed in Scotland?

Alan McIntosh: The figure will vary from year to year, but I believe that the current figure is £3.96 million. It was going to be £4.6 million, but it is £3.96 million for this year. I do not know what the figure will be next year.

Jackie Baillie: Recommendations about that money were made by the tackling problem debt group. Have we decided what is to happen with that money?

Alan McIntosh: Sorry—I am jumping in. Yvonne MacDermid could answer that question as well. I believe that, in September, the money will be given to the Scottish Legal Aid Board, which currently provides funding to the free sector. Previously, the money from the debt advice levy went to the Money Advice Service and it gave the money to SLAB to distribute to the free sector. I believe that it is now with the consumer protection unit at the Scottish Government, which will give it to SLAB. However, I believe that SLAB is currently rewriting the eligibility criteria for who can get the funding and what it will be used for. Those criteria will be announced this month. I believe that the Scottish Government is planning to announce a Scottish debt road map this month as well. I just hope that it will not be a road to nowhere.

Jackie Baillie: Do not start me singing. It sounds like a very complicated set of arrangements for what is just under £4 million.

Yvonne MacDermid: I agree, but it is probably better than what we had before, because at least it is now one grant agreement and not a whole series of grant agreements. Great efforts have gone into trying to consolidate it, and it is easier from that point of view.

We are very hopeful that there will be three-year agreements, because one-year agreements—or, in some cases, six-month agreements—just do not work. You need to have a sense of longevity, which you do not have when you are operating on one-year agreements, because people go into post, set up a project and then vacate the post.

In the tackling problem debt group, there has been a lot of discussion around the workforce strategy in particular, and we have been asked to deliver two pieces of research that we hope will inform that strategy. We are in the midst of that work at the minute, and we hope to have the research ready by the autumn. We believe that that research should greatly inform how things should move forward, alongside the road map that Alan McIntosh mentioned.

Jackie Baillie: I have a question for StepChange, in particular. It has been suggested that the proposals in the draft regulations could lead to consolidation of DAS provision with a few big providers. What will be the likely consequence for StepChange?

Sharon Bell: Predominantly, we applied to become a payments distributor so that we could support our clients right through the process—we give advice to our clients, we support them right through the payments distribution process and we continue to give them advice. Initially, when StepChange started to offer DAS to our clients, we had to pass our clients on to another payments distributor, which caused confusion. From our perspective, the ability to take the client from the start right through to the end, and to support them through the whole process, is helpful. That is what is good about being a continuing money adviser.

At the moment, there are four providers under the current tender, and one of those providers is not taking any new cases, so only three providers are able to provide payment distribution for the whole sector in Scotland. That is done on a taxi-rank basis, so when one of the money advice organisations, whether it be the CAB or local authority money adviser, submits its case, the payments distributor that is next in line is automatically selected. A case would come to us if we were next in line, but we retain all our own clients' cases.

Jackie Baillie: Okay, but is it the case that, instead of an 8 per cent fee, you will now receive a 20 per cent fee?

Sharon Bell: We will.

Jackie Baillie: Also, the pipeline of people coming to your organisation is generated by people who work for free.

Sharon Bell: That is not necessarily so, because, at the moment, the client or the money advice organisation could select us or any payments distributor. They could choose the Accountant in Bankruptcy as their default option, if they so wished.

Jackie Baillie: It is therefore not a taxi rank; people can choose.

Sharon Bell: Yes, the proposal is that people will be able to select. At the moment, the process is a taxi rank because it is a tendering process.

Jackie Baillie: Is it reasonable to leave it to chance or a negotiation whether you pass any of the 20 per cent fee to the free money advice sector?

Sharon Bell: From my perspective, for moral reasons and because we are a charity, we would pass part of the contribution back to the money advice sector.

Jackie Baillie: I appreciate that you are saying that, but are the other distributors governed by the same morals and ethics?

Sharon Bell: No, they are not. The regulations are not clear on that; although it is implied in the explanatory notes that the payments distributor could pay some of its fee back to the money advice organisation, it is not explicit.

Jackie Baillie: I am a great believer that, if that is what you want, it should be on the face of the legislation.

Sharon Bell: I am not disputing that.

Mike Holmyard: That is the issue for the citizens advice bureau network. One CAB did 87 DAS cases last year, but others did only one. The rate that the bureau that did 87 cases might get back from a payment distributor would be different to the rate that a bureau that did only one would get, because there are obviously commercial interests. You give me more cases; I give you more commission. It sounds like commission, does it not? That sits uncomfortably with us.

As a network, we do not want to be in the position of having to negotiate with StepChange and/or the other payments distributors about what we are going to get back.

Furthermore, the payment distributor does not actually have to take on the case: it is a commercial decision. We could have some low-value debt payment plans and we would have to look around for a payment distributor that was willing to take them on at a reasonable rate.

Apart from that, we also have to enter a discussion with the client to say, "Here is the choice of payment distributors and, by the way, this one's paying us 10 per cent and this one is paying us 15 per cent, so which one do you want to choose?" That choice does not actually mean anything to the client, however, because they will still pay the same amount—they will still have to pay back 100 per cent of their debt. It is we who will benefit, not the clients.

We are really uncomfortable with that set of choices because of our independence and impartiality. As far as we are concerned, the current system—the taxi-rank system—works quite well for us, in that we have no choice. We would be happy to continue with that.

Jackie Baillie: Just to be clear, I say that the committee cannot amend the regulations. Many respondents have in their evidence called for a separate fee for that free money advice to be set out in regulations. To do that, you are calling for the draft regulations to be withdrawn. Is that correct?

Alan McIntosh: I am calling for that, but it is with some reluctance because I do not know how long it will take to review the regulations and bring them back.

Like Yvonne MacDermid, I have been involved with the debt arrangement scheme from the beginning. Since it was introduced, we have had regulations in 2004, 2007, 2009—those were withdrawn—2011, 2013, 2014, 2015 and 2018. Now we are going for regulations in 2019, and some people are suggesting that, although we know that there are lots of things wrong with them and there will be lots of unintended consequences, we should just bring them in anyway. That will mean that we will be back here in 2021.

We are trying to run a service, but the Government is constantly changing the regulations. Unintended consequences keep arising from the regulations, and the Government keeps coming back to them. If the draft regulations are not fit for purpose or are badly drafted, they should not be introduced. We have to stop doing that—we cannot keep changing or adapting to new regulations all the time.

Jackie Baillie: Is that the view of everybody on the panel?

Sharon Bell: No.

Jackie Baillie: I would like to hear StepChange's view.

Sharon Bell: From our perspective, the regulations will benefit clients and help them when they are in difficulty. I appreciate that payment distribution is an issue, but the other changes in the regulations will maintain people in payment programmes and allow them to continue with their programmes. Currently, about a quarter of our clients will fail at some point within the lifetime of their debt payment programme, because they will miss payments. The regulations will support sustainability.

Jackie Baillie: In fairness, I note that the other panel members have acknowledged that from the outset.

Sharon Bell: I know, and I acknowledged their point, too.

Jackie Baillie: I just want to push this a little. Will the regulations resolve the issue of payment for free debt advice?

Sharon Bell: At present, free debt advice providers do not get any money from creditors at all.

Jackie Baillie: Those providers will not get anything under the regulations.

Sharon Bell: At present, they get nothing. In the new process, in theory, if the Accountant in Bankruptcy is the payments distributor, they will get some money back.

Jackie Baillie: There is nothing in the regulations that says that.

Sharon Bell: I know, but that is because that issue is being dealt with in a separate consultation.

Jackie Baillie: That consultation has not been completed.

Sharon Bell: That consultation finished on 16 August, but the results have not formally been made available yet. I understand the issue. From our perspective, we are a winner from the regulations. The process will allow StepChange Debt Charity to fund the money advice element of the service that we provide for our clients. It will also enable that to happen for other organisations. However, I agree that the regulations certainly do not make it clear that the free advice sector will get money back.

The Convener: If the regulations come into force, should they apply to current cases as well as to new ones, or should they apply just to cases that start after the regulations come into force?

Alan McIntosh: I will come in on that first, because I raised the issue. Currently, about 7,000 cases are being administered by free sector money advisers, which means citizens advice bureaux, local authorities and independent advice centres. On average, those return between £15 million and £20 million a year to creditors. I believe that StepChange has an existing case load of about 3,500, but it is getting only 8 per cent, which it says is not enough to cover its costs. If we apply the fees, it is imperative not that the legislation is retrospective—obviously, we cannot charge for things that have been done in the past—but that it applies to existing and future cases. Those cases return money to creditors. If we want to safeguard those cases, fulfil our duty of care to our clients and ensure that they continue to get money advice services and to return money to creditors, the cases have to be funded.

As I said, the reality is that the money is not there in the money advice service: we do not have the capacity that we had four or five years ago. If we want that £15 million or £20 million to continue to go back to creditors, and those 7,000 cases to continue to complete successfully, that has to be funded, and one way of doing that is to apply fees.

Some people might raise the question whether that is fair to creditors, because it is a change to the terms and conditions. In 2007, the interest on charges in the debt arrangement scheme was frozen, and that was applied to all existing cases. At that point, we used a variation process, which we could also use for this situation, in which we would change the terms and conditions through a variation. The creditors get an option to agree or disagree, after which it goes to a test of whether it is fair and reasonable. They also have a right to appeal to the court on the point of law. There is a process that would allow terms and conditions and the fees in existing cases to be changed. There is also a precedent in the form of the freeze in interest and charges in the debt arrangement scheme.

10:45

The Convener: Is this a make or break issue for you?

Alan McIntosh: It is for me, because everything is make or break at the moment. I cannot express strongly enough how serious the situation in which the free debt advice sector in Scotland is. We are on our knees. I do not think that we will break by the end of this financial year, but it is coming. This is a life or death issue for the free sector. We need funding.

The Convener: So, the regulations being put into force would help you on that level.

Alan McIntosh: Yes. As I said in my submission, it is not my preference, but I will take anything I can get. If the regulations involved the conditions being applied to current cases, I would take them. It is not my ideal solution, but I will accept it if that is all that is available at the moment. My preference would be a Scottish debt advice levy.

The Convener: What if that applied to new cases but not to old cases?

Alan McIntosh: I would reject that approach in the current format. I ask that the regulations be rejected at the moment, because I think that there will be unintended consequences and mis-selling.

The Convener: I understand that, but if the regulations are put into force for future cases, would that assist financially?

Alan McIntosh: No. We do not have the funding that other organisations have. With the number of cases that we have, it would take us years to generate meaningful income. If the regulations are applied, at the moment the fee will be absolutely meaningless to us. It would also take years for any individual citizens advice bureau to build up enough revenue from the fee.

The Convener: I see others nodding. Would any other panel member like to comment?

Angela Kazmierczak: I concur with my colleague Alan McIntosh. DAS is one of the options that my service offers, because it can be great solution in the right circumstance. However, not everybody has disposable income that can pay back their debts in a reasonable period of time, which is required for the client to be able to enter the DAS. A lot of our clients do not have enough money to do that and have to consider insolvency.

At the moment, we have about 55 active DAS cases. Most of our work is in negotiating write-offs or bankruptcies, and just trying to keep people maintaining their priority debts, such as their rent and council tax, in order that they can keep the roof over their heads.

There are lots of great things in the draft regulations. The issue is just that the payments distribution fee does not contain a money advice fee. Maybe we need to take a step back and look at the wider funding of all debt advice, because I am concerned about incentivising. We know what is happening with the protected trust deed. If we are trying to get things right for clients, we need to make sure that there is enough funding so that options are presented in a holistic way, and that the client chooses the right option for them. If fees are attached to certain options, some organisations will push clients towards those, which is not what money advice is, or should be, all about.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Concern has been expressed about the additional work that is placed on advisers in having to support a client to choose a payments distributor. Is that a valid concern? Do you share it? Can you elaborate on the issue?

Mike Holmyard: I will jump in. As a citizens advice network, we value our independence and impartiality. Therefore, if we have a number of payments distributors from which our clients can choose, we have to tell them about that, but we will also need to tell them about how we will benefit from the process. If one payments distributor is paying us back, we will need to declare that. As an independent network, there is no way that we could not tell people that important bit of information, so that they can make an informed choice about what they will do.

We are creating a step that we currently do not have to take. As Sharon Bell mentioned, the system works like a taxi rank. When we apply for a case, a payments distributor is appointed automatically. What is proposed now is that we will talk a client through a series of payments distributors, after having gone through a long process of giving them debt advice. We will have got them to the point at which they have chosen the debt arrangement scheme, and we will then say, “Oh, by the way, you have another choice to make now. It’s a choice that won’t affect you but it will affect us; it will affect how much money we get back. Here’s the list of payments distributors, and here’s the likelihood that they will accept you, given the level of payment you’re making. Which one do you want to choose?” At that point, they will choose. We might then approach the payments distributor and find out that they are not prepared to take on the case, because it is not commercially viable for them. That sounds like a lot of extra work.

Colin Beattie: Are you saying that you will have to maintain a database of other providers, so that you are able to provide that comparison?

Mike Holmyard: Yes, absolutely. The Accountant in Bankruptcy said to us that it would maintain a list of payments distributors on its website, but we will have to go beyond that and consider the commercial arrangements.

Apart from anything else, we are not in a good place to make commercial arrangements with anyone. CAS is a small provider of the debt arrangement scheme, although the numbers are significant enough to make it count. We are never going to get the best deals from commercial payments distributors.

From our point of view, the current system works well, with the Accountant in Bankruptcy appointing the payments distributor. I would be quite happy if the Accountant in Bankruptcy were to continue to do that with the increased funding that it is talking about, and to make the commercial arrangements with all the other payments distributors for the funding to go back to the money advice sector. That would be a smooth process: we would be dealing with the Accountant in Bankruptcy rather than with multiple payments distributors. That would simplify things for us.

Colin Beattie: Do any panel members have other views?

Yvonne MacDermid: I concur with Mike Holmyard. When people come for debt advice, they are vulnerable. As Angela Kazmierczak said, going through a person's income and expenditure is a long process. The person has to tell us things that they probably have not told other people, so an emotional attachment is created when people are in the debt advice process. Trying to keep things as simple as possible for them, rather than getting into nuances of commercialism and what different payments distributors provide, should produce a better result. It is really important that we keep things simple for people who are already under a lot of stress.

Sharon Bell: That is also true from StepChange's perspective as a payments distributor. If we are providing a service for a citizens advice bureau in the Highlands, we will potentially have a contract with that bureau. Will we then have another contract with a union in Glasgow or with another bureau? We could end up with contracts or agreements with multiple agencies. More than 70 organisations, I think, provide DAS at the moment, so we could end up with 70 different agreements or contracts to enable organisations to use us as a payments distributor. We could have a set rate or a rate that varies for different organisations, as could every other payments distributor who became available. That aspect of the proposed change could cause us difficulties.

Alan McIntosh: If we were to do what Mike Holmyard suggested, legislative change would be required, because the regulations say that it is the consumer who chooses the payments distributor. The payments distributor works for the consumer, and at the moment they have to use a tendering process. If the regulations come into force, I assume that the consumer will have to be given the choice about who the payments distributor will be. If we want to change that, we will have to change the regulations.

In her submission, Sharon Bell talked about the cost of a procurement process. I represent a local authority. Will we, to be fair and equal, have to go through a tendering process for payments distributors, although technically we are not a procurement service, because it will be the consumer who is procuring the service? It is messy, and we could end up with multiple procurement exercises rather than just one. I think that legislative change will be needed, because at the moment the payments distributor works for the consumer.

Colin Beattie: Given the multiple choices that the consumer will have to make—I presume that you will have to take a neutral stand and just make the information available, leaving it up to the consumer to decide—how easy will it be for the consumer to decide? Are payments distributors easily comparable?

Mike Holmyard: Consumers will just see a list of names. Some are not household names, although a few of them are—StepChange Debt Charity is well known. There might be other players, such as Christians Against Poverty. People will make decisions based on their biases—they will think, "I like the sound of that, rather than that." The CAB does not want to point anybody in any particular direction, because we do not want to undermine our impartiality.

Colin Beattie: Based on the information that you are making available to them, how easy will it be for consumers to make an informed choice?

Mike Holmyard: It will not be that easy. Apart from anything else, the choice will not be meaningful for them, because they will pay back the same amount anyway. The service that consumers will get is the same. They will pay back 100 per cent of their debt. The difference is what comes back to the advice agency.

Alan McIntosh: Just as an amusing aside, the problem exists because the regulations were changed in 2013 to say that the payments distributor works for the money adviser or the payments distributor works for the client. The regulations were changed because it was realised that the payment distribution service was vatable. Therefore, it was believed that, if the regulations were changed to say that the payments distributor worked for the client, that would be exempt from VAT, because debt management plans are generally exempt from VAT. I do not think that it worked out that way. That is an example of the unintended consequences of tweaking legislation. We are in this situation because the Government changed it in 2013 to get round that.

Colin Beattie: Do you have concerns about conflicts of interest if the Accountant in Bankruptcy, given its multiple hats, acts as a payments distributor?

Alan McIntosh: I keep speaking, but I feel passionate about this.

The obvious conflict of interest is that the Accountant in Bankruptcy is also the regulator of payments distributors. How does the Accountant in Bankruptcy go to companies such as StepChange, Carrington Dean and Think Link and say, “You’re not meeting your key performance indicators,” if the AIB is not meeting its KPIs? Those payments distributors would say, “You’re one to talk, because you’re not meeting your KPIs.” When it is in that market, competing with those people and not meeting its own targets, it is hard for the regulator to tell another company that it is not meeting its targets.

Colin Beattie: Do you believe that there is a conflict of interest?

Alan McIntosh: Absolutely, yes.

Colin Beattie: Some of the areas that have been highlighted in the AIB’s role are: provider, regulator, policy generator and Government adviser. On the surface, the role seems to include areas that could overlap and cause difficulties. I am interested in your views on that.

Yvonne MacDermid: In any of those roles, it is important that the Chinese walls are set out clearly. In the AIB, there is supervision and enforcement. We must ensure that those roles are separated. If that is done correctly, that should avoid the conflict of interest. I do not disagree with the principle of what Alan McIntosh said about the AIB being the regulator and a payments distributor. However, it would probably be a payments distributor of last resort.

People will make choices. If they go to StepChange, it is likely that they will use StepChange. The same goes for other providers, if they come along. It is important that the roles—as a regulator and a payments distributor—are set out clearly.

Colin Beattie: Can I take it that those roles are not adequately set out at the moment and that the Chinese walls are not in place?

Yvonne MacDermid: At the moment, the AIB is not a payments distributor, so it has a system in which companies tender to get the contract and are appointed on the basis of fitness with regard to a number of aspects of their business, to make sure that they can deliver the service well.

Earlier, Alan McIntosh mentioned a payments distributor not taking any more cases. A couple of years ago, one of the companies folded. That was a big issue when it came to having payments distribution in place. It is important that we have a failsafe that is not commercial, because the rest are either commercial or charitable.

11:00

Mike Holmyard: I agree. As the payments distributor of last resort, the AIB will be crucial with regard to ensuring that people have an independent option. I totally accept that there are issues about how the AIB does that work, and that there could be a conflict of interest. There is a precedent in that regard in a couple of bits of legislation. For example, the AIB can review the decisions that it makes in relation to the debt arrangement scheme and bankruptcy. That is the first point that you would go to if you disagreed with a decision—you have to go through the review process first—but what backs that up is a process whereby, if you are unhappy with the review decision, you can go to the sheriff court to have the issue explored there.

Currently, there is a system of Chinese walls within the AIB so that it can process the work as well as review its own decisions. That system exists, but I do not think that I can make any comments about the fitness of that, because I have no personal experience of it.

Sharon Bell: From our perspective, the payments distributor has to be regulated by the FCA, so the client has another recourse. They can complain to the FCA, which can investigate anything that we are doing as a payments distributor. That is one of the conditions, under the legislation, for any new payments distributor. However, there has been no guidance or instruction yet from the AIB on what that would look like. As our colleagues on the panel have said, at present, under the tender, we are required to provide evidence of what we do and we have to comply with certain conditions in order to ensure that payments are met and distributed in a timely manner. We have to report on that regularly to the AIB. However, we are not yet clear what would happen if a client went to the AIB as a payments distributor—who would they complain to and what recourse would they have?

Alan McIntosh: I noticed that point in Sharon Bell's submission. I was quite surprised by that because, as she is a former head of policy for the Accountant in Bankruptcy, I thought that she would have known that a client in that position would go to the Scottish Public Services Ombudsman, which has previously made and published decisions about payments distribution.

Andy Wightman (Lothian) (Green): The draft regulations introduce a number of administrative changes that, arguably, make it easier to administer the DAS, such as the proposal to approve an application if less than 10 per cent of creditors object and the short-term crisis payments that have been mentioned. Do you broadly agree with those changes, or would you like to put other issues on the table in relation to those provisions?

Yvonne MacDermid: We certainly support the introduction of the short-term financial crisis payment, which we think is hugely positive. As I mentioned earlier, people's lives are not linear—they will have peaks and troughs—and we need to be able to accommodate that swiftly. Going through an administrative system takes time, and people might have to go for a payday loan because they have not been able to access affordable credit before the crisis has passed.

The automatic approval process will go some way towards alleviating the administrative burden that we have talked about a lot today in relation to the advisers and the amount of work that they have to do. Anything that we can do to make things happen more quickly and easily means that the advisers will be able to see more clients. That will help to reduce the burden on people and improve the supply of debt advice, which will avoid people getting tangled up in administrative burdens.

Andy Wightman: As Jackie Baillie and a number of my colleagues have mentioned, there are many things in the regulations that are good, although some things are problematic, and there are different views about that among various stakeholders. As Jackie Baillie said, the regulations are subordinate legislation, which means that we cannot amend them; we can only invite the Government to withdraw the regulations or formally recommend that Parliament approve or reject them. Obviously, we will reflect on the evidence that we have heard and come to a view on what we wish to recommend to Parliament, or, indeed, on whether we wish to engage further with ministers. However, if you were in our shoes, would you recommend that Parliament approve or reject the regulations?

Yvonne MacDermid: I would recommend that you approve them, as they will be for the benefit of consumers in Scotland, who are already suffering as a result of their overindebtedness. The regulations are not perfect by any means, but they offer a break in a short-term financial crisis, and the lifting of the administrative burden will go some way to help—if not the whole way. If we lose the regulations, we could be throwing the baby out with the bath water, which would put us back.

I acknowledge what Alan McIntosh said about all the different changes, but those have been attempts to get it right. The regulations are not perfect, but at least this is the start of a discussion about the funding of debt advice, which we have not had in a constructive way for an awfully long time and would certainly get everyone thinking. I would be concerned if the regulations were rejected.

Andy Wightman: I should have added that we can go back to the minister and make suggestions for some fairly modest changes, invite the Government to agree to them and re-lay the regulations. It is not an absolute question of rejecting them. We have some flexibility in that regard.

Alan McIntosh: In my submission, I made the suggestion that if the regulations were to be approved, the changes that would have to be made should be applied to existing cases, there should be a money adviser fee and there should be more transparency in the fee structure. Those are the changes that would make the regulations acceptable and palatable to me. Without them, I would reject the regulations.

We should not reward bad behaviour. Do not pass bad legislation, because we have had changes in 2004, 2007, 2009 and 2013—I could go on and on, and I already have. We cannot keep making mistakes, we must stop creating unintended consequences and we cannot keep unpicking this. We are tweaking things, but we need a wholesale review of advice funding. That is more important. Do not make mistakes by passing this draft legislation—I do not want to reward bad behaviour, and passing this legislation would do that.

Andy Wightman: I understand.

Mike Holmyard: It is a shame that we are at this point, given that there was a lot of support for the changes to be made. Some of us sat on the DAS regulatory review working group. However, the point that we have arrived at is that we have some draft regulations that will be helpful for consumers, as my colleagues have already said, and which will make it a lot easier to go through the DAS process.

To return to Andy Wightman's previous comment, the flexibilities that the regulations will introduce into the process and the reduction of bureaucracy are very welcome. If the Scottish Government were to resubmit the regulations with those flexibilities, I think that you would find broad acceptance from the sector. The problem is the funding and how it is derived from the DAS—that must be talked about in more depth, along with the funding of the free debt advice sector. If the regulations were resubmitted with those flexibilities, that would be welcomed.

Sharon Bell: We would support that. We completely support the other regulations—not regulation 4—because, without a shadow of a doubt, they are for the benefit of the client.

Andy Wightman: I see Angela Kazmierczak nodding her head.

Angela Kazmierczak: I agree with that. Often, clients come to us with an income shock, but applying for a payment holiday takes too long. By the time that it is done, they have missed a payment, which gets recorded in their file. The emergency payment is brilliant and I am really glad that that has been introduced.

Some of the other administrative provisions are just common sense, such as when someone is looking to increase the amount that is paid back to their creditors. That should be automatically approved—why are we waiting for a process to happen when the client just wants to start paying more to get their debts paid back?

I agree with all my colleagues here that the payments distributor fee in regulation 4 seems to be the most contentious area. It needs to be explored further to ensure that we get it right.

The Convener: Can I just be clear? There might be other things in the draft regulations that you are not entirely happy with, but if regulation 4 were amended and adjusted to take on board your points, would you all be in agreement with the regulations being approved? You are all nodding, so I take it that you all agree. Please speak now or forever hold your peace.

Gordon MacDonald (Edinburgh Pentlands) (SNP): We have talked a lot about the impact of the draft regulations on the industry and on consumers and debtors. What do you think the impact on creditors would be? Under the current scheme, 100 per cent of the debt is paid and creditors know that they will get 90 per cent of those funds over a period of, say, six or seven years. Under the draft regulations, that will drop to 78 per cent of the funds. What is the likely response of creditors to that?

Alan McIntosh: First, I want to address the point, which some people made in their submissions, that the draft regulations make the debt arrangement scheme more a type of insolvency than a debt management solution. That is not true. Let us remember that, under the new regulations, the consumer will still pay back 100p in the pound, so this is not insolvency. It just means that the creditors will have to pay a bit more towards the costs of getting their money back. This is not insolvency, as some people have suggested. I think that one of the reasons for the draft regulations and the 20 per cent is that it is quite normal for creditors to pay between 20 and 25 per cent for debt recovery anyway, so that is seen as a reasonable figure.

An effect on creditors will be that they will get less money back, but there is another potential consequence from more money going into the free sector, if it is applied to existing cases. Multiple pieces of research have shown that, for every £1 that is spent on free money advice services when they are under capacity, there is a return to creditors of between £4 and £9. If it is done properly, more money will be returned to creditors overall. They will get more money back, in the same way that the 7,000 cases that are dealt with in the free sector—by Money Advice Scotland and citizens advice bureaux—return £15 million to £20 million to creditors every year, while only about £11 million is provided in funding through local authorities. That shows that, for every £1 that is spent, creditors will get more money back.

Creditors may object to the draft regulations and say, "We'll get less money", but they will get more money back if money goes into the sector and is recycled into giving people advice.

Yvonne MacDermid: I concur with what Alan McIntosh said. We know that money advice and debt advice work. The minute that there is a trusted intermediary and a case comes from StepChange, a CAB or a local authority, many creditors will sign it off using the common financial tool. They are happy to get back at least something, even if it is not the whole lot. As Alan McIntosh said, they all build the cost of debt collection into debt purchase, as well. What would they not like about it if they get money back when they did not get anything back yesterday or in the previous months?

There is a big debate going on in the industry because of the financial services levy, and the chairman has called for an additional £100 million, so they are already under a lot of pressure to put more money into the system. However, the other side is that they know that they will get something back for that investment. That is really important.

Gordon MacDonald: We received written evidence from Christians Against Poverty, which says:

> "Creditor buy-in is key for the smooth operational running of DAS and it would be a risk that asking creditors to contribute more than 15% would lead to further disengagement from the credit industry."

What is the risk of less co-operation and of disengagement by creditors? If that happened, what impact would it have?

Alan McIntosh: Christians Against Poverty announced a couple of weeks ago that it would not see any new clients until the new year because of lack of capacity. Unfortunately, we do not get the opportunity to stop taking clients. There is a risk that we will not get creditor buy-in, but there is also a risk from services being under capacity and deciding halfway through a year that they will not see any more clients for the rest of the year.

Mike Holmyard: Again, we have to look at the matter in the round and compare the returns for a protected trust deed, which are between 10 and 15 per cent, roughly, with getting back 78 per cent. That is a lot better, and the current market is totally biased towards protected trust deeds, which are the biggest selling debt solution in Scotland. I think that you will find that many creditors will be more willing to accept 78 per cent, rather than 15 per cent.

Sharon Bell: You also need to remember that, when proposals are sent to creditors, they have the option to reject them or to make comments on the return. If a proposal is rejected, the Accountant in Bankruptcy has a fair and reasonable test, and if it is reasonable that a debt payment programme goes ahead, it will go ahead, irrespective of the personal bias or comments of a particular creditor. There is an opportunity not only for the money adviser to put forward more evidence, but for the creditor to submit further evidence as to why they think that it might not be the best proposal for them.

The Convener: As committee members have no further questions for the panel, I thank you very much for coming in.

I suspend the meeting briefly to allow a changeover of witnesses.

11:15

Meeting suspended.

11:21

On resuming—

The Convener: I welcome the members of the second panel. We have Dermot O'Neill, the chief executive of the Scottish League of Credit Unions; Karen Hurst, policy officer at the Association of British Credit Unions; and David Menzies, the director of practice of the Institute of Chartered Accountants of Scotland.

The Accountant in Bankruptcy has said that the proposed regulations should encourage the expansion of the debt arrangement scheme. Do you agree?

Dermot O'Neill (Scottish League of Credit Unions): We hope that it will do so. The challenge for credit unions is that they operate in a restrictive legislative environment in which the interest rate that they charge on loans is capped by law. By default, we operate in an artificially narrow margin of profitability. Given the increase in loan write-offs, the sustainability of credit unions is challenging. The reality is that the increase in protected trust deeds places even greater pressure on profitability and, therefore, sustainability. We support any change that would mean that, when a debt solution was required, it would return more to the creditor than is currently returned through protected trust deeds.

Karen Hurst (Association of British Credit Unions): I echo what has been said. We have always supported a debt arrangement scheme. It is a good scheme for Scotland, for creditors and for debtors for whom it is appropriate.

As Dermot O'Neill alluded to, the rise in protected trust deeds has been one of the biggest issues for our sector over the past few years. I was part of the working group that formed the proposals. I went on to the group with an open mind, and I heard feedback from colleagues in the free debt advice sector that there were challenges relating to bureaucracy and funding the debt arrangement scheme as it is, irrespective of whether it grows. For that reason, we are happy to support the proposed regulations in their current form.

The discussion that we have been having on the issue, which has been going on for a few years, has taken place alongside the discussion on reforms to protected trust deeds. We hoped that a package of reforms would be formed, because I have some scepticism about whether the proposed changes, in themselves, will make any difference. As someone on the previous panel alluded to, the level of returns for the person who handles a debt arrangement scheme is debatable, but the fees that would be taken under the proposed scheme would be 22 per cent. With protected trust deeds, sometimes up to 90 per cent goes in fees. Clearly, the drivers that are behind the rise in protected trust deeds, which is the key issue, will not necessarily be addressed by the proposed regulations. Nevertheless, we are happy to support the regulations.

David Menzies (Institute of Chartered Accountants of Scotland): We are very supportive of the Government's process to make available a range of debt management and debt relief solutions. Whether the proposed regulations, in themselves, will increase capacity for debt advice is debatable.

You heard from the previous panel about capacity in the free debt advice sector. By all accounts, it is already at or very nearly at capacity. Therefore, it seems that the additional capacity that will be brought in through the regulations will be through the payment distribution fee and the regulation 4 changes. The hope is that that will bring additional commercial capacity into the system, but we have doubts about whether that will happen in reality, because the payment distribution plan will require the payments distributor to be authorised by the FCA. That process is fairly time consuming and brings in another layer to the burden of regulation for firms that are already regulated by the AIB and the likes of ICAS.

Those who will want to provide DAS are probably already FCA regulated and are already providing DAS advice as part of a range and suite of solutions, so the notion of bringing in additional capacity is perhaps questionable—there is no evidence that that will happen. Certainly, it would take time for that capacity to come into the marketplace. It will not be an overnight panacea.

Obviously, the important question is not about whether people have access to DAS, protected trust deeds or sequestration; the ultimate thing for the creditors and the debtor is that they receive appropriate debt advice and end up in an appropriate solution that is right for them in the circumstances, whatever that solution is.

The Convener: The ICAS submission comments that

"a more fundamental and overarching review of debt management and debt relief solutions in Scotland"

should be undertaken, and there is some criticism of the fact that there have been a number of amendments to regulations over the previous eight years. However, in spite of those comments in the submission, your position is that the draft regulations are positive.

David Menzies: In overall terms, yes. The regulations are positive and a lot of things are moving in the right direction. You are correct that, in our submission, we said that it is probably time to draw a line in the sand, to take a fresh view and to look at everything in the round. We have had five sets of DAS regulations in the past eight years, in addition to all the tweaks that we have had to protected trust deeds, the changes to the bankruptcy system and all the rest of it. All that is coming together but in a slightly disjointed manner, which leads to unintended consequences. We need to ask the bigger societal question about what we want debt relief and the debt management solution to look like in Scotland. We need to consider when it is appropriate and not appropriate to have some of the solutions and what the impact is across housing policy, mental health and other health issues. Those issues have not been brought together fully. In the 20 or 30 years since the Bankruptcy (Scotland) Act 1985, we have not had an overarching view of legislative amendment and change.

Therefore, although we absolutely support much of what is in the regulations, I would like there to be a pause after this stage so that we can take a view across society in Scotland to consider what debt management and debt relief solutions should look like.

John Mason: I want to continue on that line of questioning. Clearly, different organisations and individuals are involved. We have the debtors and creditors, and we have the payments distributors and the advice givers. The Accountant in Bankruptcy seems to argue that it is more attractive for debtors to have more people in DAS than in protected trust deeds, although I am picking up from you that you are not convinced that there will be a swing because, if fees are 90 per cent at the moment and they will be 22 per cent, that is perhaps not hugely attractive. From the debtor's point of view, will the changes make much difference at all?

11:30

David Menzies: Fundamentally, from a debtor's perspective, they pay the same contribution in whatever debt management solution they end up with. That relates to a decision that Parliament took around harmonising a lot of those procedures. When you look across sequestration, bankruptcy and DAS, there is little real difference in the outcome for the debtor. They pay the same amount in contribution. The difference is to do with whether they are absolutely guaranteed a discharge of their debt. I hear what the credit unions and others say around protected trust deeds, but the reality is that, over a period of four, five, six or seven years, life changes. People do not know what is going to happen in that period of time. That means that a solution that gives a certainty of debt write-off whether they maintain their contributions or not, which they get in sequestration or a trust deed, is more attractive than the situation that they would be in with DAS whereby, if, four years down the line, they are not able to continue their contribution because of a change in personal circumstances, income shocks or whatever, they will be left with a rump of debt that they are unable to pay, which means that, although they have paid off some of their debt, they are back to square 1. That is the reality of why people will choose protected trust deeds or sequestration over DAS, and the regulations do not address that issue.

John Mason: I see that others want to come in—I will let them do so in a minute.

I should have declared that I am also a member of ICAS. That does not mean that I always agree with all its statements.

I do not know whether our panel can speak for other creditors. Clearly, we have representatives of credit unions here, but, obviously, a lot of the members of the organisations that are represented on the panel are, or work for, creditors. Would it help them to have more people doing DAS rather than protected trust deeds?

David Menzies: When you look at the whole value that is going into DAS and spread it across the creditors—the vast majority of whom are large financial institutions—the reality is that, as long as the debtor ends up with a solution that is right for them, the value of the payback is, perhaps, less important.

John Mason: Even if we were comparing 10 per cent with 78 per cent?

David Menzies: Yes. As I say, I think that you can see that in the fact that there are few objections to trust deeds, where the average value of return on a dividend is 17 per cent to 20 per cent. Creditors are not objecting to that level of return, so they are absolutely not going to object to a 78 per cent level of return. However, the point is that they accept a 17 per cent to 20 per cent return because they understand that that is the right solution for the debtor. They work with the trust deed advisers, whether that involves free debt advice or insolvency practitioners, and they accept that we provide good quality and professional advice. If that is the most appropriate solution for the debtor, that is the end result of it.

John Mason: I do not think that Karen Hurst entirely agrees with David Menzies.

Karen Hurst: I have to say that I completely disagree with his point. One difference between DAS and trust deeds is that, in DAS, there is a requirement—even under the new regulations—that the debtor has to pay back 100 per cent of the debt that they owe, whereas, in trust deeds, there is at least the ability for some debt write-off. What we are seeing increasingly is a number of cases that could involve either of those options. One case that came to my desk recently involved a single parent on a low income that they received through part-time employment and benefits. The trust deed that would gain protected status from the AIB would involve them paying back £7,000 over five years, which is a significant—one might say unrealistic—undertaking on their part. The fees that were taken by the trustee in that case came to more than £6,000. So, after five years and £7,000 of payments, the creditors were getting only £900 or so back.

If I was in the position of having to pay back £7,000, I would very much prefer it to be paid back to my creditors and not to be used to pay the fees of the trustee, who would basically be using it to advertise for more people. As someone alluded to this morning, if a person knows that they have problem debt and they need advice but they do not know where to go, the system is geared towards their ending up in a trust deed. The biggest firms in Scotland are advertising extremely aggressively through Facebook and on television, and those driving along the M8 will see a huge billboard advertisement. I do not agree at all that the current arrangements make no difference.

David Menzies made a point about the lack of scrutiny of trust deeds, which is a huge bugbear of ours. He is right to say that, at the moment, most of the creditors are larger financial organisations—they are certainly not credit unions. They are certainly not scrutinising the situation, but to say that the creditor body is happy and satisfied that the insolvency profession is handling the situation professionally and in line with the law could not be further from the truth.

John Mason: Are credit unions an unusual creditor in this whole scenario?

Karen Hurst: Yes. We tend to be a smaller creditor. We effectively do not have a vote, because our protected trust status becomes protected according to a majority vote, which is unlike DAS. It is rarely the case that the credit union has a say in such matters.

I do not know much about how the banks operate, but I understand that they appoint representatives to vote on their behalf, according to certain criteria. Basically, larger financial organisations are not scrutinising individual cases in the way that a credit union might. As Dermot O'Neill said, we do not have the margins to soak up the level of loss, which is significant at this time.

Dermot O'Neill: We agree entirely with and support Karen Hurst's position. David Menzies referenced the value of a societal review of how we manage debt management. If that was to take place, our position is that those who can be supported to pay their debts should be supported to pay their debts. Our focus as a trade body for credit unions is primarily about protecting the creditor, then the debtor, with the mechanism for the debt repayment coming last.

On Karen Hurst's point about the practices of insolvency practitioners, a representative of Carrington Dean recently turned up at Parkhead Forge, which is in the east end of Glasgow, dressed as a fluffy animal and spent the day buying people's messages, paying for products and suggesting that anyone with money worries could have 75 per cent of their debt written off if they engage with Carrington Dean's services. That is an incredibly difficult space in which to put affordable credit providers. If we are active in such communities and our ability to extend affordable credit is already squeezed, to then face an exploitative practice in which the most vulnerable people in society are preyed on by suggesting that 75 per cent of the credit that was offered with good intentions by the credit union could simply be written off by engaging an insolvency practitioner makes it incredibly difficult for credit unions to continue to be active in that space.

John Mason: Parkhead happens to be in my constituency, so it is worth mentioning that Parkhead Credit Union, which is where I had some of my savings, has closed down.

David Menzies: Obviously, we are talking about the DAS regulations and not about protected trust deed regulations, which may come further down the line.

John Mason: I think that one of my colleagues will come on to comparing the two.

David Menzies: To respond to the point about the insolvency profession, it is important that the committee understands what that landscape looks like. On the protected trust deed side of things, 69 per cent of trust deeds are taken out by three providers in the UK, none of which is regulated by ICAS.

ICAS regulates about 13 per cent of the trust deed market. I accept that there are perhaps practices that we would not necessarily support going on, but those would not be addressed by the DAS regulations.

John Mason: You are arguing for a bigger review. Do you think that we should drop the regulations in the meantime and just have a bigger review, or should we go ahead with the regulations and carry out a bigger review later?

David Menzies: A lot of what is in the regulations is to be encouraged, so I would probably support passing the regulations as they stand.

We have some concerns but broadly, those concerns are not fundamental; the concerns do not mean that the balance is wrong in the regulations. Things can be improved, but I would strongly encourage making this the last set of regulations that is considered by the Scottish Parliament until that wider review is carried out.

Angela Constance: Mr Menzies began to explore some of the pros and cons of protected trust deeds, sequestration and DAS. The committee has heard from some respondents who have a particular concern about the growing use of protected trust deeds. Do panel members feel that many debtors enter a protected trust deed who would be better, in the first instance, to go down the DAS route?

Karen Hurst: Without a doubt. Anecdotally, our members tell us that, through their relationships with their members, they believe that people are not quite aware of the consequences of entering a trust deed. It is an insolvency solution, unlike the debt arrangement scheme. As Dermot O'Neill says, you can end up in a trust deed because you want to get your messages paid. The other day, Facebook promoted an advert to me that said trust deeds were a scheme for Scottish mothers to write off all their debt. People are being brought into trust deeds in that way. I do not think that people are aware that entering a trust deed probably means that they will not be able to get a mortgage in a couple of years or be able to access credit in the same way as they have been able to do to date.

I have mentioned the difference in fees, which can range from 90 per cent in a trust deed to 10 per cent or possibly 22 per cent in DAS. In a trust deed, the fees come off first. Also, there is a particularly high failure rate in a trust deed. If you are in a trust deed for a year or two and you make payments into that trust deed but then it turns out that it is unsustainable and it fails, those payments will just pay the fees of the insolvency practitioner—you will be back to where you started. You will still owe exactly the same amount and you will have no protection under the law from your creditors, because the ban on diligence only lasts as long as the trust deed lasts.

In DAS, because the fees are much lower, you might be paying the same amount but if you can only pay into it for two years and then, two years down the line, there is some kind of life shock and you can no longer sustain payments, you will have paid off more of your actual debts. That is the big difference.

Angela Constance: Before I turn to other panel members, I will turn my question around. Is there anything in the draft regulations that would incentivise greater use of DAS over protected trust deeds, and is that always appropriate?

Karen Hurst: As I said, I am a wee bit sceptical that it would make a fundamental difference without substantial reform to trust deed legislation. On the earlier discussion about whether it is appropriate to incentivise advisers to go down a DAS route instead of recommending a solution that is not statutory, I would say that if we look at the landscape as a whole, we see that there is a clear financial incentive to get people into trust deeds. However, I am not applying that to every organisation.

In general, I agree that it should not be seen as a trade-off—as in, you will get one amount if you offer someone a DAS but a different amount if it is a trust deed. That is not ideal; I recognise that. We chose not to get involved in the recent consultation on how any money collected by the AIB as a result of these changes would be distributed because, as creditors, we want to see a well-funded free advice sector that is giving people the best possible solutions, whatever those solutions may be, without any financial incentive. I do not know what that would look like but I certainly support that overall outcome.

11:45

David Menzies: I do not accept Karen Hurst's portrayal of the insolvency sector. Certainly, the evidence for the suggestion that people are being put into trust deeds inappropriately is not there. The evidence for that just does not stack up at all.

The latest statistics that we have from the Government complaints gateway suggest that in 2018, there were 11 individual complaints around trust deeds. We should bear in mind that around 8,000 to 9,000 trust deeds are signed each year and there are approximately 25,000 live trust deeds on the go at the moment. Therefore, the complaint rate relates to less than 0.2 per cent of trust deeds. That does not suggest that there are a lot of people on the debtor side or the creditor side who believe that people have been put into trust deeds incorrectly.

Angela Constance: The point about evidence is important, but the issue is also about how to get reliable evidence. I am not sure about relying on complaints as opposed to a deep dive and a proportionate number of real case studies. I open this question up to any of the panellists. Is there evidence that is based on an appropriate audit of a proportion of cases or has more case review-type material been looked at, as opposed to relying on just a few complaints?

Dermot O'Neill: To go back a bit, we entirely support Karen Hurst's position. The context is important. ABCU supports just over 50 per cent of the credit union sector in Scotland, and we support just over 30 per cent. We also have a mandate from Glasgow Credit Union, which is the largest credit union in the UK, and Scotwest Credit Union to support the recommendations. That collective essentially means that the entire credit union sector broadly supports the proposed regulations.

On the complaints issue, context is again important. Is there a minimal level of complaints, which David Menzies highlighted, because of where potential complainers are in the pipeline? Have they experienced the consequence of entering a protected trust deed, or has that consequence still to be realised? Has the person exited the protected trust deed stage, and have they had a mortgage application or other affordable credit application rejected? If the complaints are currently low, that does not necessarily mean that there is not a problem brewing.

There is some feedback from Scotwest Credit Union from the creditor perspective. On average, it receives a 92 per cent return from DAS as opposed to around 12.5 per cent from a protected trust deed. Any move that improves the return to creditors would be supported by credit unions.

Colin Beattie: Concerns have been raised about the transparency in the process of setting the 20 per cent fee in the regulations. Do the panellists have a view on that?

Karen Hurst: When we responded to the original consultation, a couple of options were put forward, which ranged from the current 10 per cent up to 22 per cent—I think that that was the maximum. As a creditor, I did not think that there was adequate analysis of how those figures were arrived at. I thought that I was being asked to say, "What could you afford to give up?" That is a piece-of-string-type question. It depends. I was disappointed in that. Nevertheless, we still think that not an unreasonable figure has been arrived at, given all the other issues that I have alluded to.

Colin Beattie: Do the other panellists have a view on that?

Dermot O'Neill: We echo Karen Hurst's position. We think that, if the increase from 10 to 22 per cent makes the provision of debt arrangement schemes more sustainable to providers and/or increases the provision of debt arrangement schemes, that is a reasonable and necessary levy.

Colin Beattie: Would I be correct to summarise by saying that you agree that there seems to have been a lack of transparency in the process to arrive at the figure, but you are comfortable with the figure itself?

Karen Hurst: Yes.

Colin Beattie: Do you see any advantages in having a separate money advice fee set out in the regulations?

Karen Hurst: Obviously, a Scottish levy is not currently part of the regulations, and we as an organisation have not explored that with our members.

As FCA-regulated firms, for some years, credit unions have paid the FCA debt advice levy, which has been a matter of frustration. It applies to every firm that is within the FCA regime, which excludes a lot consumer credit firms—

Colin Beattie: Will you remind me of the level at which that is set?

Karen Hurst: I do not know. I think that it differs. For a number of years it did not apply to consumer credit firms, because they were not within the FCA regime, although that has now been resolved. We would welcome a discussion on that. I would be interested to know whether the levy would be an addition to the FCA levy, and the other fees that credit unions face. Would it be capped at a fair level? Would the levy be in addition to all that? Would it be wholly devolved to Scotland—both its collection and distribution?

Colin Beattie: Do other panel members have a view on the matter?

Dermot O'Neill: We do not have a formal position on it.

Colin Beattie: You have never considered it?

Dermot O'Neill: No.

Karen Hurst: It has never been on the table.

David Menzies: If I understood the question correctly, you asked whether the legislation should set out how the 20 per cent would be split between the payments distributor and the continuing money advisor. The regulations are pretty silent on that issue. One point that we made in our written evidence to the committee was that it is unclear whether there will be a second set of regulations that will govern how the payments distributor and continuing money adviser fee would be split, or whether that will be set up purely under whatever arrangement the AIB wishes to apply. The regulations provide a framework for a 20 per cent fee, but how that is split—and everything else—is unclear.

That was part of the disadvantage of the regulations being brought forward while the consultation on how the fee would be returned to the free debt advice sector was still being carried out. Those two elements need to be joined up a bit more.

Colin Beattie: Should the return process be specified?

David Menzies: It would be helpful to have transparency and accountability around that. Whether that needs to be in these regulations or another set of regulations will depend somewhat on the outcomes of the consultation on how the funds are to be returned to the free debt advice sector. For instance, one option is that effectively the surplus from the AIB could go back into central Government funding. If there is transparency on how that surplus is calculated and it is all going back to central Government, it is probably less necessary to have that specified in legislation, because what would be taken with one hand would be given back with the other through the block grant going back to the AIB.

That is why it would have been helpful if the regulations and the consultation on the return of funds to the free debt advice sector had been more conjoined.

Colin Beattie: Will we find variations in the market if there is no specification as to how the split should be made down the line, or will the market regulate itself?

David Menzies: It is likely that there will be some degree of variation, but, as with all market forces, the market will tend to come to an equilibrium. I suspect that the end consumer—the debtor—will be faced with broadly the same split of fees between continuing money advisor and payments distributor, no matter who they end up with as the payments distributor.

Gordon MacDonald: The earlier panel seemed to say that creditors will just accept getting less money because DAS is better than any other scheme that exists. What will be the impact on creditors of receiving less funds from DAS?

Dermot O'Neill: Your point is valid in that the alternative is so poor that even a reduction in the return from DAS is better. There is a reluctant acceptance that both parties benefit when an individual who has the option of a protected trust deed or DAS goes for DAS. Generally, the outcome is better for both the debtor and the creditor, because the creditor receives a better return and the debtor makes a bigger payment toward their debt. It is better to have more return from DAS, even if it is reduced, than the pittance that is returned to creditors from a protected trust deed.

Karen Hurst: I agree with that, and it is important to note the scale of it. The AIB said that, in the first three months of this year, there had been about 2,000 protected trust deeds and about 500 DAS cases, so it has not been inundated with DAS cases.

Gordon MacDonald: Do you reckon that the increase in fees might swing it the other way?

Karen Hurst: I do not necessarily agree with that—not without fundamental changes to trust deeds. At the moment, we are comfortable with what is proposed.

Gordon MacDonald: Should the increase in fees be applied to existing cases?

Karen Hurst: That is not part of the regulations and it was not consulted on, so we would need to discuss that.

Creditors were asked to vote on each of the options, which they did according to what was put to them at the time. I noted earlier the suggestion that it could be done through variations—creditors would obviously have a say in that. That is one way of doing it. It would not feel fair without at least engaging creditors in that discussion.

One of the largest protected trust deed firms in Scotland recently wrote to a number of creditors in existing trust deed cases and asked whether they would agree to an increase in the fixed fee, which can be done only through creditor agreement. The AIB's position on that is that creditors in each individual case would have to vote and, if a majority of them voted for it, it could happen. I am not sure why it would differ for DAS cases, if that was to be the case.

Jackie Baillie: ICAS, in particular, raised concerns that the fee increases that are proposed would move DAS away from being a debt management tool to become an insolvency option. Why did you say that, and what are the practical implications?

David Menzies: The basic tenor of insolvency is that it is when somebody is unable to pay their debts when they fall due. No matter what we put around them, all the schemes—whether a debt payment plan, a protected trust deed or sequestration—are insolvency solutions, one way or another. They all deal with a debtor who is unable to pay their debts when they fall due. The difference is about whether there is guaranteed debt relief and how much the creditor gets back.

When we look at the tenor of each of the debt solutions, we see that they are very similar. There is the same outcome for the debtor in terms of the amount of payment and the creditors take a hit on their recovery—they would just take a bigger hit if the draft regulations go through. They are insolvency solutions, whether we call them that or not.

Jackie Baillie: In the light of what you just said, what are the practical implications of this set of regulations?

David Menzies: We heard this morning that debtors might not understand the consequences of the various debt solutions and we heard the suggestion that DAS is better than some of the other solutions. That is far from the truth; the credit reference agencies make no distinction between DAS and sequestration. The marker that goes on a credit reference file for future mortgage consultation, for example, is exactly the same whether for DAS, a protected trust deed or sequestration.

The regulations will, I guess, reduce some of the administrative burden, so that is positive. However, I do not believe that the regulations are likely to swing somebody to decide to go into DAS rather than going into something else. The ultimate question is what the most appropriate debt solution is. That will not be determined fundamentally by the tweaks that we have in the regulations.

Jackie Baillie: Thank you.

12:00

Andy Wightman: The regulations contain some administrative changes around short payment breaks and applications for variations and so on. Those appear to be relatively uncontroversial. Do the witnesses agree?

David Menzies: Yes.

Andy Wightman: I will revisit a question that I asked the earlier panel. We are faced with a number of options in dealing with the instrument. We can recommend that Parliament rejects it. We can go back to the minister, suggest potential changes and have a negotiation. If you were in our position, what would you do with the regulations? We cannot formally amend the regulations, so it is a question of potentially playing ping-pong with the regulations or recommending to approve or reject them.

Dermot O'Neill: Earlier, David Menzies said that the regulations might not mean a fundamental change to our process. I guess that our position is that incremental marginal change is better than no change. In the absence of fundamental change, if we have a set of regulations that results in creditors receiving more of a return and in debtors contributing more to the debt, and if the regulations are likely to increase the use of DAS, then we support the regulations being laid.

Karen Hurst: We are happy with the regulations. If the committee had any means of communicating that we need some similar changes in relation to protected trust deeds, that would be beneficial for us.

Andy Wightman: Of course, that is not within our gift. It is up to the Government to introduce secondary legislation. I am sure that we will reflect on those points and perhaps relay them to the minister, although I cannot make any such commitment on the committee's behalf. That evidence has come through fairly strongly so I think that you can be reassured that we will say something about it even if it does not affect the regulations.

David Menzies: As I have said, we support the regulations. The fundamental question is obviously about regulation 4. There is a framework in the regulations, but it is not complete and the question is what assurances can be obtained from ministers and the Accountant in Bankruptcy about filling in those gap. The key issues are around transparency and accountability.

Andy Wightman: Transparency and accountability in relation to what?

David Menzies: I am talking about transparency and accountability in relation to the setting of fees or the framework and detail behind that. The framework is there for a 20 per cent fee; how that is split and managed, and how the surplus is returned, is detailed, but it is simply not in the regulations at the moment. Obviously there has been a consultation, but we do not know the outcome of that yet. The fundamental question is whether there is sufficient assurance to satisfy people about the detail of the schemes and how the framework will be applied in practice.

Andy Wightman: I have a follow-up question on that, as it is an issue that you raised earlier in the meeting. Is it your view that, ideally, the regulations should be quite specific and clear about that, and therefore quite fixed in their approach? The benefit of the current arrangements is that they leave room for quite a bit of flexibility, which is sometimes useful.

David Menzies: Flexibility is certainly sometimes useful. My concerns depend on how the scheme looks. As I said earlier, the issue is about how the surplus is calculated, before the AIB redistributes it back to the free debt advice sector. Will it go back to individual organisations or a central Government fund? If the surplus is to go back to individual organisations directly, the regulations need to be tighter. If the surplus is to go back to Government funds for debt advice generally, not much needs to be done as long as the method of calculation of the surplus is clear and there is accountability, whether it is through AIB's audit arrangements or through Audit Scotland looking at the surplus calculation. As long as there is some form of oversight, I am relatively comfortable with the proposals.

Dermot O'Neill: I would like to touch on flexibility, because I think that it is important. Our position is that the regulations seem fair and reasonable. Regulation 6, on methods of payment, gives flexibility in how payments can be made. Flexibility is also demonstrated in regulation 7, on the variation of creditor statements, and in regulation 8, on the proposal for variation. By providing flexibility, the regulations take a commonsense approach, which Alan McIntosh mentioned earlier. Regulation 9, on the change in payment breaks for cohabitees, seems fair and reasonable. The system being fair and reasonable will lead to more equitable outcomes for creditors and debtors, and that is what we want the regulations to achieve. We will not always achieve a perfect scenario for everyone, but if we take a fair and reasonable perspective, the regulations will create a framework—to use David Menzies's words—that is flexible, fair and reasonable.

I do not see the changes that have been made over time as necessarily being a problem. It is healthy to identify when something is not working at its best and then attempt to make changes and fixes. I would be concerned if the regulations were not passed because, if that happened, there would be more risks than rewards. Instead, let us make the changes to the regulations and then continue to tweak, fix and improve things when problems are identified.

The Convener: We have heard a bit about the larger cities, such as Glasgow and Edinburgh. What about other areas in Scotland, such as the Highlands and Islands, or smaller towns and cities, such as Stirling? Will the regulations have the same effect in improving accessibility for people in those areas?

Dermot O'Neill: Our experience shows that write-offs tend to occur more in urban environments than in rural environments. We conclude that that is because there tends to be less access to affordable credit in urban environments, so the propensity for repayment of credit tends to be higher and the write-off rates are therefore lower. Our more remote credit unions tend to have a lower rate of loan write-offs than there is in Glasgow, for example.

Karen Hurst: I do not think that we have done enough analysis for me to agree or disagree. However, some of our members in the Highlands have certainly been active in raising their concerns about protected trust deeds, which is a concern right across the country. I do not think that I am in a position to comment on how the proposed regulations will improve DAS access in those areas. That question is more for the money advice sector to comment on.

David Menzies: It comes back to the question of whether the proposed regulations will create additional capacity. Local authorities, the free debt advice sector and charities are at capacity. The debt advice that the commercial sector is given is pretty geographically agnostic. A lot of debt advice is given over the phone or via webchat and so on. I do not think that the regulations will affect urban and rural areas differently. I think that the effect will be the same across the board.

The Convener: It does not sound as if the issue has been looked at specifically. Is that fair to say?

David Menzies: I am not aware of it having been looked at in that context. It is probably more an issue for the AIB policy unit to look at.

The Convener: Perhaps it will be looked at, going forward.

I thank the witnesses for coming in today.

12:10

Meeting continued in private until 12:28.

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