



OFFICIAL REPORT
AITHISG OIFIGEIL

Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill Committee

Wednesday 20 September 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 20 September 2017

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WRITERS TO THE SIGNET DEPENDANTS' ANNUITY FUND AMENDMENT (SCOTLAND) BILL:

PRELIMINARY STAGE 1

**WRITERS TO THE SIGNET DEPENDANTS' ANNUITY FUND AMENDMENT
(SCOTLAND) BILL COMMITTEE
2nd Meeting 2017, Session 5**

CONVENER

*Alison Harris (Central Scotland) (Con)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Mary Fee (West Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Caroline Docherty WS (Writers to the Signet Dependants' Annuity Fund)

Simon A Mackintosh WS (Writers to the Signet Dependants' Annuity Fund)

Christine O'Neill (Brodies LLP)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill Committee

Wednesday 20 September 2017

[The Convener opened the meeting at 11:00]

Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill: Preliminary Stage

The Convener (Alison Harris): Good morning and welcome to the second meeting of the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill Committee. I remind everyone present—including members—that mobile phones must be turned off.

Today we are taking evidence from the promoters of the bill, the trustees of the writers to the signet dependants' annuity fund. I welcome Caroline Docherty WS, the deputy keeper of the signet and chairman of the trustees, Simon A Mackintosh WS, collector for the annuity fund, and Christine O'Neill, a partner at Brodies LLP. Ms Docherty, I understand that you have a short opening statement to make on behalf of the promoters.

Caroline Docherty WS (Writers to the Signet Dependants' Annuity Fund): Thank you for giving us the opportunity to answer questions that the committee might have about the bill. I appreciate that you have received briefing information, but I thought that it would be helpful if I added some explanation about who we are and the organisation that we represent.

I am deputy keeper to the signet, which means that I am, in effect, the president of the Society of Writers to Her Majesty's Signet, which is known as the WS Society. In that capacity, I chair the board of trustees of the WS dependants' annuity fund. Simon Mackintosh is collector—in other words, administrator—of that fund.

First, what is a writer to the signet? Originally, writers to the signet were exactly that: they were those who were able to write and were particularly trusted, who undertook work on behalf of the Crown. The first recorded use of the signet—in other words, the seal of the king—was in 1369, and in 1532, when James V established the system that we know today and the Court of

Session came into being, writers to the signet were included as members of the College of Justice. Eventually, those trusted clerks became what are now solicitors, and the WS Society is the professional body for writers to the signet. We are probably the oldest professional body in the world, which is quite a distinction for a relatively small group of Scottish lawyers.

What is the relevance of that history today? With the introduction of the Law Society of Scotland in 1949, the WS Society's regulatory role ceased. We had to develop our modern purposes, ensuring that the society has relevance that will allow us to continue into the future by being of interest to young lawyers.

I believe that we have been successful in doing that. The WS Society continues to grow. We are now a society of around 1,000 lawyers; more than 100 new writers to the signet have been welcomed in the past three years. They reflect the make-up of the solicitor profession in Scotland more generally, in terms of gender and ethnic background. The society now includes student members and affiliate members as well as writers to the signet, so it includes all ages, from law students to our most senior retired member, who is more than 100 years old.

What does the society do? We provide legal training, support in the form of library services in electronic and traditional paper formats, research and drafting services for our members and other lawyers, and charitable trust administration.

The society owns the iconic Signet Library on Parliament Square, and maintenance of that building and its historic and valuable treasures has become an important part of our purposes. In recent years, we opened up the building more generally to the public: Colonnades is an award-winning destination for afternoon tea, and we are building a series of cultural events that are open to the public—the new enlightenment project—which consists of lectures, discussions and performances.

All of that, combined with the history to which I have referred and the fact that becoming a WS still requires the taking of an oath before an officer of state—the keeper of the signet, who is currently Lord Mackay of Clashfern—makes the WS Society attractive to lawyers who are interested in what we represent and the focus on high standards in legal services that we promote through our purposes.

Having explained what writers to the signet and the WS Society are, I will speak briefly about the WS dependants' annuity fund, which is the separate and distinct body that is the subject of the bill. Historically, the WS Society looked after writers to the signet and their widows, who might have fallen on hard times, by making ad hoc

charitable donations. That was formalised in 1803 when the original WS widows' fund was started up—all WS at that time, of course, were men—to provide benefits to the widows of deceased writers to the signet. Over the years, the fund was changed and widened to provide support for orphans and other dependants as well, and then later to take account of the fact that women were becoming writers to the signet, from 1976, and more recently to provide benefits for the civil partners of deceased contributors to the fund.

Until 1989, membership of the WS Society brought with it membership of the dependants' annuity fund, and it was seen as one of the benefits of being a writer to the signet that you contributed to the fund. However, in 1989, in large part due to changes in the tax regime that meant that the fund would become a less attractive proposition for new members contributing to it, the fund was closed to new members. Since that date, membership of the WS Society has continued to grow, as I have explained, but those who have become WS since then are not contributors to the fund. Equally, not all the contributors remain writers to the signet; some have resigned their commission, so the two bodies are separate in that respect.

Although the society's membership is growing, the contributors to the fund are inevitably ageing. There are now no contributors to the fund who are younger than their early 50s, and the oldest is over 100. The trustees' aim is to ensure that the funds held by the dependants' annuity fund are administered in such a way that annuities—annual payments—will continue to be made to the widows and widowers of the contributors to the fund, until the death of the last of them. That has to be done in a way that represents fairness between the generations, so that the last surviving widows or widowers do not receive a disproportionate payment.

I hope that that explanation has been helpful in providing some background. We are happy to answer questions.

The Convener: In addition to the 141 annuitants, how many potential annuitants are there? Do you have a rough idea?

Simon A Mackintosh WS (Writers to the Signet Dependants' Annuity Fund): There are at present 538 contributors. Most but not all of them have a surviving spouse, so there are more than 500 potential annuitants.

The Convener: How long is it estimated that the fund will pay annuities?

Simon Mackintosh: In a way, the life of the fund depends on the life of contributors, and on when the last contributor dies leaving a surviving spouse. We have some projections from actuaries

that suggest that it could be well into the 2040s. When the last annuitant is identified, it is a question of how long he or she survives his or her spouse.

The Convener: What will happen to any residual moneys in the fund after all the dependants die?

Caroline Docherty: Because of the aim of the fund, the trustees will have to find a strategy that means there will be no residual moneys. The most likely end game for the fund is that, at some point in the future, a product will be bought from an insurance company using the remaining funds—to put it simplistically—to provide annuities for the remaining annuitants, to avoid what you have described.

Tom Arthur (Renfrewshire South) (SNP): Could you expand on and unpack some of the reasons for the decision to close the fund to new contributors in 1989?

Simon Mackintosh: None of us was directly involved at that point.

Tom Arthur: I appreciate that.

Simon Mackintosh: As Caroline Docherty has said, there were changes to the tax regime in 1988, particularly in relation to the taxation of personal pensions and the introduction of the new personal pensions regime, which made it rather less attractive to anyone joining the scheme to save in that way. The then contributors decided to close the fund to new contributors at that point. As I understand it, the decision was to do with changes to the tax regime under the Income and Corporation Taxes Act 1988.

Mary Fee (West Scotland) (Lab): I would like a bit more information about the definition of an actuary, which section 1(1) of the bill would modernise. Currently, an actuary is a fellow of the Faculty of Actuaries in Scotland or a fellow of the Institute of Actuaries. I understand that those two organisations merged in 2011, which is reflected in the proposed definition. Has the existing definition caused any difficulty since the two organisations merged? Have any views been sought from the new organisation on your proposals?

Caroline Docherty: I think it is fair to say that there have been no difficulties. What we propose is a tidying-up exercise to recognise that the change that you mentioned has taken place. We wanted to tidy up the wording to reflect the existence of the new organisation; it was not that we needed to address any difficulties that have arisen.

Christine O'Neill (Brodies LLP): My advice to the promoters is that, as a matter of law, a change to the definition would not be required. If there was ever any difficulty around the existing definition, a

court would interpret it to include the new organisation post merger. A court would take a pragmatic and sensible approach to the old definition. As Caroline Docherty indicated, the change is a tidying-up exercise. I spoke informally to the Institute and Faculty of Actuaries about the change, and it suggested that, in due course, if the bill proceeds to the next stage, it might wish to see a further additional concept of something called a fellow of the Institute and Faculty of Actuaries, which is its new title going forward. The bill would therefore achieve a further degree of future proofing.

Mary Fee: So anything that was changed in the bill would completely match whatever the Institute and Faculty of Actuaries decided to do.

Christine O'Neill: Yes, that is the intention.

Mary Fee: Thank you. That is helpful.

The Convener: What does the role of the collector entail and how onerous is it?

Simon Mackintosh: As Caroline Docherty said in her introduction, as collector, I am the administrator of the fund, which involves liaising closely with the deputy keeper as chair of the trustees and with the six other trustees. I have to maintain good relationships with the contributors and annuitants through regular communications with them and by dealing with their phone calls and e-mails. More specifically, in dealing with the contributors, I need to collect their annual contributions and keep them informed about developments in the fund, such as the latest actuarial report, which we had a couple of years ago, and about meetings to do with that. I have to give them notice of the annual general meeting and other any other general meetings to which they are invited, and any informal consultations that the trustees carry out. I deal with their general inquiries and receive notifications from them of deaths and marriages, for example.

Twice a year, I pay out the annuity to the annuitants and get correspondence from them. If an annuitant dies, I hear from their family and the annuity comes to an end. I have to broadly keep annuitants informed of any developments to do with the fund, too. That is the external side of the role.

11:15

Internally, I keep the fund records and deal with the banking arrangements. We collect income from the fund managers to fund the annuity payments. My office prepares the accounts for the fund each year. We get them audited and have them approved by the trustees and send them to the contributors. We also deal with United Kingdom tax compliance and we seek tax

repayments from other countries under double-tax treaty arrangements. That is the compliance side of things.

We also deal with the fund managers and receive their transaction reports, which go into our records for the accounts. We deal with the actuary and get their advice, which we distribute to the trustees, and we deal with the auditor of the fund so that any audit queries are dealt with in the normal way and we can have the accounts finalised. We deal with Data Protection Act 1998 registration for the fund, and we deal with the trustees meetings. We arrange the meetings, prepare the papers and the minutes, deal with follow-up actions and so on. The administration function for the fund is very broad.

Tom Arthur: That brings us nicely to the substantive element of the bill, which is the role of the collector and who can be a collector. I referred earlier to the change that was made in 1989. I appreciate that you perhaps were not there at the time, but was any consideration given then to the potential consequence of the diminishing pool of contributors for who could be a collector in the future?

Caroline Docherty: No. It is clear that consideration was not given to that at that time. If it was thought about at all in 1989, it would have seemed very far in the future.

Tom Arthur: What was done in 1989 was simply a reaction to the changes that occurred in 1988. The immediate concerns were addressed, as opposed to doing any future proofing, as the bill seeks to do.

Caroline Docherty: Yes, absolutely. That is fair.

Tom Arthur: In the journey to the introduction of the bill, was consideration given to any other courses of action, such as reopening the fund or changing the eligibility criteria?

Caroline Docherty: No. We consider that we are where we are with the fund. Leaving aside reasons such as the fact that it would still not be tax efficient to open it up, we have always taken the view that the fund is as it is, so there is no push for any other strategy for it. The current act says that the collector has to be a writer to the signet, so the only alternative, given what I have explained about the ages of the contributors, is that we remove the requirement.

Tom Arthur: I am very conscious of the rich and long-standing traditions and heritage. I notice that the collector still has to be an individual, not a company or organisation. What is the reasoning behind that?

Caroline Docherty: That came out of feedback that we sought from the current contributors. They

felt that the fund is unique and, for that reason and because of the fund's origins, they wanted there always to be a person responsible, rather than an appointed organisation. They felt that it was important that that aspect be continued so that there was an element of personal responsibility. They like the feeling, which they have always had, that there is one person who they know they can phone if they feel the need to.

Tom Arthur: I find that interesting. Although the decision to close the fund in 1989 was very much based on tax efficiencies and so on, the recent decision was made for more subjective reasons.

Christine O'Neill: I have a point to add about the change that was made in 1989 and the change that is now being anticipated. One distinction to be aware of is that it was open to the trustees at that time to close the fund in terms of the regulations that they are allowed to make under the Writers to the Signet Dependants' Annuity Fund Order Confirmation Act 1982. That was wholly in the control of the trustees. Had they wanted at that stage to make the change that is now being sought, legislation would have been required, so there would have been an extra step to take and they could not have done it in quite the same way as the closing of the fund was done.

Tom Arthur: I have a question for Simon Mackintosh. Given the range of obligations that you have in your role as collector, do you think that a professional organisation undertaking the role would provide greater flexibility and support than an individual could, or do you think that the role can be undertaken at the required level by an individual?

Simon Mackintosh: I personally do not do all the things required for the role. For example, I rely on professional colleagues in my firm for the preparation of the accounts. However, the contributors were quite clear that they wanted an individual in the role, although they recognise that a number of the functions required the support of a professional firm or professional organisation. They wish to continue with an individual in the role with overall responsibility to them as contributors and to the annuitants for the running of the fund. However, they recognise and expect that there will be professional backup. Indeed, all my predecessors in the role have been solicitors in private practice who had back-up from their professional firms. At least, that was the case for all my predecessors that I can think of.

Caroline Docherty: Yes, in living memory.

Simon Mackintosh: In living memory. It might be worth making a supplementary point about the late 1980s and early 1990s. The actuarial report shows that there were over 800 contributors in 1984. At that point 20-plus years ago, given that

number of contributors, they would not have been thinking about running out of potential collectors. In the mid-1990s, the trustees commissioned a report from their then actuaries about the various possibilities, including the potential reopening of the fund to new entrants, but they were advised very firmly against that. They were also advised against merging with another fund or winding up the fund in the near future. The decision that was taken then, based on that advice, was to continue for 20-plus years. We are now roughly at the 20-plus-year point, and the eventual wind-up date is rather further out than they thought in the mid-1990s that it would be. However, those are the possibilities that were canvassed at that point.

Mary Fee: I have a brief follow-up question on that. You said that the contributors were advised against opening up the fund or merging it with another. Was there a particular reason or set of reasons why that advice was given?

Simon Mackintosh: I can refer to the report that the trustees received from Watson Wyatt in July 1996. The actuaries advised against reopening the fund to new entrants for the following principal reasons: first, that new entrants would have to go into part 2 of the fund, which would be a tax-inefficient way of saving, and it was difficult to see what could be provided through the fund that could not as easily and probably more cheaply be provided through the mechanism of personal pensions; and, secondly, that contributions would need to rise substantially if the existing fund was not to subsidise new contributors.

The actuaries said that it would be difficult to see why the trustees or managers of another fund would be prepared to merge with the WS fund without extracting a significant price in the form of a share of surplus.

Mary Fee: That is helpful.

The Convener: Out of interest, in relation to the election and oversight of the collector, has any thought been given to updating the regulations following the passing of the bill?

Caroline Docherty: Yes, we considered updating the regulations. It is something that we have done relatively recently. It is inevitable that we may need to update the regulations. We can do that within the regular programme of meetings and the annual general meeting of the contributors and so on. If there was a need to do that, we could do it.

Mary Fee: I will continue questions on the diminishing pool of contributors. My understanding is that the collector and the elected trustees must be contributors and must be elected by the fund's contributors. How will that be done as the pool diminishes? I suppose that, eventually, you will get

to a point at which there will be a handful of people or, potentially, no one. How will that be managed?

Caroline Docherty: It is not the case that the trustees have to be contributors. Until recently, as a matter of policy, all of the trustees were contributors, but we now have one trustee who is not—he has a particular area of expertise on which we wanted to rely; he is a solicitor and a writer to the signet. Therefore, the trustees will be able to continue because there is no requirement that they be contributors. The issue arises only in relation to the collector.

Mary Fee: That is helpful. The contributors elect a collector or a trustee. What will happen if you get to the point when there are no contributors?

Caroline Docherty: When there are no contributors, we will be into the territory that I mentioned before. At that point, there will have to be some strategy. The trustees are responsible for ensuring that the purpose of paying annuities to all potential annuitants is continued and will ensure that there is a strategy, which will probably be buying a product to ensure that happens. Who knows what products might become available in the intervening years? At the moment, we assume that annuities will have been bought for the future annuitants, so the products will be in place to pay out but there will be no need for the body of trustees.

Mary Fee: You spoke about ensuring that the bill future proofed everything. I presume that, at some point, you would look ahead five or 10 years and plan so that you knew that you would have to make alternative arrangements as the pool diminished.

Caroline Docherty: Exactly. That is in the trustees' control and they are always conscious of it. At any point, they are looking five years, 10 years and further ahead and considering the various options for the fund.

Mary Fee: That is helpful. Thank you.

The Convener: I appreciate that this is already stated in the promoter's memorandum but, so that we have it on record, will you give me your reasons why legislation is required to achieve the bill's two objectives?

Christine O'Neill: Legislation is required to achieve the objectives because there is no other means by which the requirement that the collector be a contributor can be altered. It requires an amendment to primary legislation.

The Convener: Did the contributors voice any opposing views at the AGM?

Caroline Docherty: Do you mean about the proposal to remove that requirement?

The Convener: Yes.

Caroline Docherty: No, there were no opposing views.

The Convener: That is lovely. Thank you.

As there are no further questions, I thank the witnesses for coming along and answering questions so efficiently. We now move into private.

11:28

Meeting continued in private until 11:36.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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