OFFICIAL REPORT
AITHISG OIFIGEIL

Social Security Committee

Thursday 21 September 2017

Session 5

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SOCIAL SECURITY COMMITTEE

17th Meeting 2017, Session 5

CONVENER

*Sandra White (Glasgow Kelvin) (SNP)

DEPUTY CONVENER

*Pauline McNeill (Glasgow) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Jeremy Balfour (Lothian) (Con)
*Mark Griffin (Central Scotland) (Lab)
*Alison Johnstone (Lothian) (Green)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Ruth Maguire (Cunninghame South) (SNP)
*Adam Tomkins (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jessica Burns (Regional Tribunal Judge, Social Entitlement Chamber)
John Dickie (Child Poverty Action Group in Scotland)
Jatin Haria (Coalition for Racial Equality and Rights)
Peter Kelly (The Poverty Alliance)
Dr Jim McCormick (Joseph Rowntree Foundation)
Chris Oswald (Equality and Human Rights Commission)
Emma Ritch (Engender)
Judith Robertson (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Simon Watkins

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Security Committee

Thursday 21 September 2017

[The Convener opened the meeting at 09:15]

Subordinate Legislation

Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2017/227)

The Convener (Sandra White): Welcome to the 17th meeting in 2017 of the Social Security Committee. I remind everyone to turn off mobile phones, as they interfere with the sound system.

Agenda item 1 is the committee's further consideration of the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2017/227). Members will have seen the papers from the Delegated Powers and Law Reform Committee. Is the committee content to note the instrument, and also to write to the Scottish Government to seek responses to the issues raised in the committee's evidence session on 7 September?

Members *indicated agreement.*

Social Security (Scotland) Bill: Stage 1

09:15

The Convener: Agenda item 2 is continuation of our evidence gathering on the Social Security (Scotland) Bill at stage 1. We have two panels of witnesses. I thank our first panel for getting here so early on such a miserable day, and I welcome to the meeting Jessica Burns, regional tribunal judge on social security and child support issues; John Dickie, Child Poverty Action Group in Scotland; Peter Kelly, the Poverty Alliance; and Dr Jim McCormick, the Joseph Rowntree Foundation.

I will start with a general question that covers most of the bill. What are the panellists' thoughts on the inclusion of principles in the bill and on the seven principles that are set out in section 1 and which are intended to underpin the new social security system?

Peter Kelly (The Poverty Alliance): Thank you for the invitation to give evidence.

Given that the Poverty Alliance has worked on social security issues for many years now and has advocated the devolution of further powers to the Scottish Parliament, we are pleased with and welcome the process that this committee is part of. Like other organisations on the panel and in the voluntary sector, we have broadly welcomed the bill, its content and its principles. We have been talking about issues such as dignity and respect for many years, and it is important that those are reflected in the bill and that a human rights approach is given real meaning.

However, I suggest that there is one gap in the principles: the role of social security in preventing and tackling poverty. Perhaps that could be included.

John Dickie (Child Poverty Action Group in Scotland): We welcome the principles that the Government has set out as well as its overall language about and its approach to social security, and we support the idea of embedding the principles in the legislation.

The key challenge now is to ensure that the Government's principles and policy intentions and ambitions with regard to social security policy are translated into the detail throughout the bill. The principles should not be just a section at the start of the bill, and we are particularly keen to explore how they and the wider policy intent can be reflected in the detail of the legislation and the rules for social security.

Dr Jim McCormick (Joseph Rowntree Foundation): I welcome the bill and agree with the comments so far.

As far as the principles are concerned, the bill could say more about genuine accessibility. The Government has already made important pledges on take-up. Figures this week from the Department for Work and Pensions show huge variations in the take-up of legacy Great Britain benefits, and there is a commitment in Scotland to try to do something about that situation and to perform better. To do that, we need to talk more about accessibility, and that will lead us into a conversation not only about the different channels that people can use, but about rights to independent advocacy and advice and understanding what the landscape across Scotland looks like, in order to make sure that we can realise that principle of accessibility.

There is a lot more to say about the balance between primary and subordinate legislation and so forth, but we might come on to that.

The Convener: I think so. Jessica Burns is next.

Jessica Burns (Regional Tribunal Judge, Social Entitlement Chamber): Thank you very much for inviting me. I support what the other witnesses have said. My reservation is that the control of social security will not be entirely within Holyrood's grasp and that there might be issues with how the public perceive the two parallel systems that are going to exist. There will have to be quite a lot of detail in the regulations. I know that there are the top-up powers, but it is not at all clear how they will work or how things will work across the border. I just want to express a warning and some concern about that.

The Convener: Members have various questions about the principles and about subordinate legislation, but I note that Jessica Burns mentioned a bit of difficulty in that respect. Is your concern similar to Dr McCormick's comments about accessibility? Is it about people not just being able to access benefits, but being told which benefits they are entitled to under the devolved powers?

Jessica Burns: It is all about accessibility. It will depend a lot on the provision of advice and assistance. The plan seems to be that the Scottish social security agency will be very enabling in that role but that there will still be a role for independent advice workers to help people navigate through the system. I am not quite sure how those hand-offs will take place. There will still be conditionality around universal credit and assessments under that, but it is not clear whether there will be any sharing of information in relation to those assessments if we go on to look at the disability criteria.

The Convener: Thank you. John Dickie wants to comment, and then I will bring in Adam Tomkins.

John Dickie: I want to suggest a couple of specific ways in which the bill could be strengthened to try to ensure that people are able to access and get the assistance that they are entitled to. First, the bill sets out the principle that the Scottish Government has a "role" in making sure that people are given the social security assistance that they are eligible for. That should be strengthened so that it has a "duty" to ensure that.

Secondly, we have suggested an additional duty on ministers to devise, implement and regularly review a strategy to reduce underclaiming of devolved social security payments. There is a big issue with underclaiming, particularly in relation to disability benefits, and including a duty to produce and regularly review a strategy to ensure that we are maximising take-up of the devolved benefits would be a way of strengthening the duty and the principle of accessibility.

The Convener: If no one else on the panel wishes to comment, I will bring in Mr Tomkins.

Adam Tomkins (Glasgow) (Con): Good morning, everyone. With regard to sections 1 and 2, which relate to the general principles and the charter, I ask for your reflections on the written evidence that we have received from my colleague at the Glasgow law school, Tom Mullen, who says:

> "It is difficult to work out the intention behind section 1 of the Bill".

He also points out:

> "If the legal status ... is not clarified, citizens and their advisers may be unsure what their rights ... are".

Finally, he suggests:

> "The Parliament should press ... Ministers to (i) make clear precisely what their intentions are as to the legal status and effect of the principles, and (ii) to present amendments which clearly give effect to that intention."

Do you agree with Professor Mullen?

The Convener: Jessica, do you want to kick off on that?

Jessica Burns: The test of any legislation comes when it is in operation—that is when we can see the levels of satisfaction and delivery. I do not think that that means that there should be no principles to start off with, because legislation provides a kind of road map that regulations can pick up and deliver on. In tribunal rules, there is a very altruistic overriding objective that, although it might not always be delivered, still provides an underpinning principle. At the moment, I do not

necessarily share Tom Mullen's concerns, because any legislation is always capable of being amended to meet the principles.

The Convener: Dr McCormick, would you like to comment?

Dr McCormick: To be honest, this is well outside my area of expertise. However, with something as complex as the Social Security (Scotland) Bill—even within the limits of the powers and budgets that are coming to Scotland—there will be an element of testing the various provisions through regulations and practice. I think that ministers should be pressed by the committee and others to give an account of their thinking on the balance between the principles and values of the bill and its broad direction, and on how much should be set out in primary legislation and how much can safely be left to secondary regulations and guidance. At the moment, I think that the balance is not right, so it would be helpful to press the Government on that.

We must make sure that the provisions for administrative justice, redress, complaints and recourse to law at the end of the process are as safe and deliverable as possible at this stage, and I think that in that regard the work that Ulster University has done for the Equality and Human Rights Commission Scotland might be helpful in a comparative sense.

Adam Tomkins: I want to press you on one particular aspect. The Scottish Government has said many times that it wants to pursue a human rights-based approach to devolved social security, and that has been warmly welcomed by a number of parties. According to article 13 of our most important human rights instrument, the European convention on human rights, one of our human rights is the right to effective judicial protection of our human rights. Do any members of the panel think that, if we are serious about having a human rights approach to devolved social security, one of the elements of that approach must be the ability to take human rights-based claims to court when claimants or others are of the view that their rights to dignity, fairness and respect have not been satisfied? If you think that, do you think that the bill should reflect that?

Jessica Burns: In any social security system, there will be conditionality and a sense of grievance on the part of people who are found not to meet that conditionality. They might think that, because they have not met the criteria for receiving a certain benefit, somehow they have been disrespected and their dignity has not been promoted. There are a lot of people who make claims whose perception of their disability does not alter the fact that it just does not meet the criteria, and it would be naive to think that the bill will always be able to meet the criteria of everybody who would like to fall within its terms. The financial benefits of meeting that conditionality are highly significant, and people might make claims that cannot be allowed. That is why it is not practical to provide for a right to make a claim because someone's human rights have been infringed on the ground that the social security conditionality does not meet what they think should be their human right.

Peter Kelly: If we are to have principles and a charter that have any meaning, people need to understand that they have the ability to seek redress when they feel as though their rights have not been respected. Probably all of us have long experience of various charters set up by public bodies that individuals either have no knowledge of or feel that they are not able to enforce when levels of service do not meet the charter requirements. There needs to be some form of redress that people can seek in relation to the charter.

09:30

The Convener: John Dickie, do you want to come in on that?

John Dickie: I want to make two points. The second panel of witnesses might have more expertise to share on how we ensure that the principles of a human rights-based approach are grounded in law. It is important that they are, and that the approach is meaningful. One way of doing that is to ensure that the bill makes explicit reference to article 9 of the International Covenant on Economic, Social and Cultural Rights, so that it is clearly based in international law. There might be other mechanisms in that respect, too. As for the charter, there certainly needs to be a mechanism for ensuring that people have clear avenues if they feel that their experience of the system is not matching up to what the charter sets out.

I repeat that our expertise—and this is the area where I am quite keen to get into the detail—is on how those principles are translated throughout the specific rules set out in the bill for social security in Scotland. In many ways, that is what will make the difference with regard to whether people's rights to social security in Scotland will be enhanced by the bill.

Adam Tomkins: That is very helpful. As other members want to ask you about exactly that issue, I will leave it there. Thank you very much.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I want to come back to the principles. I have a number of questions based on what has been said already. The points that were made about accessibility have certainly come back in the feedback that we have received from current

claimants. If members of the panel would like to expand on that, I would be interested in hearing their views.

Jessica Burns, your warnings really resonated with me, as did your concerns about the realism of the situation, in that only a portion of the powers is being devolved. As far as the principles are concerned, that always needs to be borne in mind.

I have two questions. My first is on independent advocacy as a potential principle. I have some remarkable advocacy organisations in my constituency, and I know what important work they do. However, a lot of their work is based on the fact that they are dealing with the current DWP system, in which—in my view and in those of many others—there is a lack of support. Do we need to think in a nuanced way about the idea of independent advocacy, in that, if we are going to think about including a principle that is oriented around it, does it need to be much more concentrated on the specific benefits that are being devolved and that are covered in the bill, bearing in mind the hope and aspiration that the way in which the new social security system is delivered will be comprehensively different from the status quo with the DWP? That is my first question.

If you do not mind, convener, my second question relates to similar concerns about the scope of the devolved powers. Peter Kelly, in your submission, you suggested including another principle that

“Social security has a role ... in the eradication of poverty in Scotland”.

If we had a bill in which the full comprehensive powers of social security were available, I would be supportive of that. However, while my heart believes that social security, in the round, absolutely has a role in tackling poverty in Scotland, I feel that the bill cannot deliver all the social security powers that are necessary to do so. I am slightly concerned about your proposal because of that nuance and the complexity of the powers that are coming to us. I would be interested to hear your thoughts on those concerns.

Peter Kelly: I will answer the second point first and maybe come back to the other points later.

One could make the claim that the social security system in its pre-1999 state, before anything at all was devolved, had a role only in preventing and eradicating poverty. As I am sure that John Dickie and others would agree, the social security system cannot tackle poverty on its own. With regard to the principles, as Ben Macpherson said, we want to set a different direction, shall we say, with the powers that are coming to Scotland. If we want to do that, we need to be clear on the very positive role that social security, and the powers that we will have, which are not insubstantial, can play in preventing people from going into poverty and supporting people to move out of poverty.

There is no question but that the powers that the Parliament will have with respect to social security cannot solve poverty on their own. Indeed, social security overall cannot solve poverty on its own. We know that many of those who are in poverty are in in-work poverty, so we require a much broader approach to tackling the issue. The bill recognises the critical role that social security plays.

Ben Macpherson: I would be interested to hear any thoughts on my other points.

Jessica Burns: Perhaps I should talk a little about representation and advocacy, and what that means for people who are navigating quite a complex system. I would probably not support the idea that representation and advocacy should apply only to the benefits that are covered by the Social Security (Scotland) Bill. It is equally important that we take a holistic approach in dealing with someone who is claiming benefits through universal credit. At present, a lot of representative organisations are putting a lot of energy into that aspect, but support must cover the whole benefits package that might apply to that individual and their family.

In Scotland, we are blessed with good availability of representation. I am not saying that there is complete availability, and I know that there are shortages in certain areas, but it is substantially greater than is the case south of the border. For instance, representation in tribunals stands at more than 80 per cent in Scotland, in comparison with about 20 per cent south of the border. I have had experience of working in Birmingham, where it was almost impossible for appellants to access representation. That issue is very important.

There are different levels of representation, which is a more complex issue. There is the claiming, the challenging and the going along to tribunal, and there might be different approaches to those aspects. Most people in poverty or who have disabilities are vulnerable; they certainly feel disempowered by the complexity of the process. It is part of the respect and dignity agenda that they should be able to access such support.

Ben Macpherson: I am interested to know whether there is a view that there should be a principle of enabling access—a right, in effect—to independent advocacy and support in a bill that is orientated towards the devolved benefits. However, it has been suggested to us that there should be an all-encompassing right to advocacy

across the full social security system. I am asking whether that is appropriate for this bill; I am probing the complexity of that nuance.

Jessica Burns: Advocacy has a very special meaning: it provides a mouthpiece for somebody who is not confident or is not able to articulate their own position clearly. There is a bit of a conflict. In some ways, it can be patronising to say to someone that they do not have their own voice and it has to be fed through somebody else. I would be apprehensive about any suggestion that the system should require someone to access advocacy in as widespread a way as you are perhaps suggesting.

Ben Macpherson: I am just interested in what other suggestions there are. I am listening right now. Your comments were very helpful, Ms Burns.

Dr McCormick: The principle of choice is really important, because it is closely tied to realising the principle of dignity.

My understanding is that a great deal of advocacy is quite light touch and is self-arranged. It involves having someone—family and friends and neighbours—to come along with you. When there is representation even at that level, success rates at appeal are better.

What the bill can say more about is more specialised, higher-level independent advocacy. With the best will in the world, even if we are successful—as I hope we will be—in setting out a different culture with our agency and systems in Scotland, there will still be people who for many reasons, whether to do with language, learning disability, mental health difficulties or traumatic experience in the past, will struggle to achieve from the system what they ought to achieve. Therefore, it is important that people have the choice to be able to draw on such support. Without being starry eyed, we have that right enshrined through devolved mental health legislation, although we know that there is already a lot of unmet demand in the system. Demand is probably rising and resources are falling. We should start by looking at what is currently happening with mental health rights advocacy and work from there to understand what kind of provision we will need.

Jessica Burns is right. Even if we embed such a right in the provisions of the bill and the benefits that will flow from it, in reality the resource will be stretched and used for other needs, such as reserved social security and social care.

John Dickie: I echo and endorse what Jim McCormick says. We would support those who are calling for a right to independent advocacy. We must be very careful that we do not develop a system of advocacy support that is purely for the devolved system. We need to look at things holistically, as Jessica Burns said.

There is also an issue with access to independent advice and information. The potential exists to build into the bill a duty on ministers to ensure the provision of independent advice and advocacy, in order to support people in accessing and challenging decisions in relation to social security at devolved and UK levels. We currently have a system in which housing advice and money advice are underpinned by legislative backing, which means that they are to some extent protected when difficult budget decisions are made at national and local level. There is no equivalence for social security benefits advice. As well as the opportunity to look at independent advocacy issues, there is an opportunity to create a duty on ministers to ensure the provision of independent advice. Advocacy and advice are two separate but related forms of support that are needed in a well-functioning social security system.

To echo what Jim said, we do not need advocacy and advice only when social security systems are failing; they are an integral part of a well-functioning social security system. There will always be people who, for whatever reason, need additional assistance to navigate the system and need advocacy, whether formal or informal. There will always be a need for independent advice to ensure that people can understand their entitlements and seek independent support when they feel that the wrong decisions have been made.

Peter Kelly: We are part of the Scottish campaign for welfare reform, which submitted clear evidence on the importance of independent advocacy. We have also had representations from the Scottish Independent Advocacy Alliance that have reinforced the importance of independent advocacy. Nowhere have we sought to distinguish between advocacy that is related specifically only to the new powers and advocacy that is related to wider social security powers.

We can make the comparison with benefit uptake. Although benefit uptake campaigns may well target specific benefits, we hope that they will have a knock-on impact and that people will understand their entitlement to other benefits.

We also need to relate the issue of independent advocacy back to equalities issues, as others have done. Some people might be less able to claim their entitlements and might need additional support, so on that basis, too, there is an important role for independent advocacy in the system.

09:45

Ben Macpherson: Thank you very much.

Mark Griffin (Central Scotland) (Lab): I have a question about the balance of the bill, but first I will continue briefly on the point about advocacy. There seems to be a view among Government policy makers that independent advocacy is needed for people who access reserved benefits because the DWP is so terrible. That was restated in the ministerial statement on Tuesday.

However, the view that I seem to be getting from the Government is that the new agency is going to be so sensitive, caring and welcoming that independent advocacy is perhaps not so necessary. I am sorry if I am misrepresenting the Government, but do members of the panel think that that is a view that we should guard against, because of the potential for a change in Government or attitude? A new Government might come in and set a tougher assessment regime or targets to reduce the social security bill, so there will always be a need for independent advocacy in the system, regardless of how well the agency is set up initially.

The Convener: A lot of people want to come in on that, so I ask for short answers.

John Dickie: That is what I was trying to say. Access to independent advocacy is an integral part of a well-functioning social security system—it is not something that is needed only in a system that is not working well or is failing. There will always be people with particular vulnerabilities and communication barriers for whom the support—whether informal or formal—of somebody advocating on their behalf is necessary to help them to navigate even a well-designed and well-functioning system.

Peter Kelly: My view is similar to John Dickie's. I think that independent advocacy is needed to address power imbalances, which will exist regardless of the intention behind the system. It is an important and necessary function, as John said.

Mark Griffin: My next question is on the balance of the bill and whether the principles should be in primary or secondary legislation or in guidance. Some members of the panel have talked about Government commitments that they have worked hard to secure, on, for example, an uprating of benefits in line with inflation, a ban on private sector contractors or income maximisation. Where do you think that those principles that have been fought for and won should sit, and how secure do you feel with those principles not being on the face of the bill?

John Dickie: I will make a more general point about the balance between what is on the face of the bill and in primary legislation, what has been left to regulation and what has been left to guidance. There is no question but that there is a balance to be struck on what level of detail is put into the primary legislation on social security and what is left to regulations. An element of flexibility is needed to enable regulations to be changed as policy changes and people's needs change.

As it stands, we do not feel that the bill gets that balance right. In big-picture terms, the bill as it stands would enable future Governments to make fundamental changes to disability and carers assistance, for example, without the need for primary legislation. They could potentially create entirely new forms of assistance or change fundamentally the assistance that is already in place without the consultation and parliamentary scrutiny that primary legislation requires.

We think that, when more policy is developed around the types of assistance that are being devolved, that should be put in the bill and that, in relation to policies that are not yet developed, more legislation should be brought in further down the line, once those policies are developed and we have a clear idea what we want to do with the powers.

There are also issues to do with people's individual rights to social security that result from leaving such a great deal to secondary legislation and, in some cases, not even making provision for secondary legislation. For example, there are issues for individuals in relation to the fact that benefits can change at relatively short notice—security of income is of real importance to people, and the idea that those benefits could be fundamentally changed without adequate scrutiny, consultation or a period of time to consider the changes is worrying. There is also an issue about people not having primary legislation to refer to if they want to challenge decisions.

With regard to the types of assistance, policies that are developed—for example, on best-start grants—should be included in the bill and, in relation to policies that have not been developed, further primary legislation should be brought forward in due course.

It might also be helpful to talk about the administration of devolved assistance. I can give you a couple of examples of cases in which we think that leaving a great deal out of primary legislation would reduce people's rights under the new system rather than enhance them, which is clearly not the policy intent—this is about ensuring that the bill matches the Government's policy intention.

The first example—

The Convener: I am sorry, Mr Dickie, but we have other questions to ask and other witnesses to hear from. Could you maybe be a bit briefer?

John Dickie: Of course. The first example relates to applications. The bill says that applications for assistance must be made in the way that ministers require, and that those ways will be publicised. However, the problem is that there can be disputes about whether an application has been made validly—we see that in the current system. Without any provision to make regulations about what a valid application is, there will be no grounds for people to be able to challenge a decision about whether an application has been made validly. That can cause delay in people's payments and the loss of money. There is an issue about making sure that more provision is made to ensure that regulations are in place that set out what would be a valid application.

The other example concerns the recovery of overpayments. There are always situations in which, as a result of individual or agency error, overpayments are made, and it is reasonable to set out when those can be recoverable. However, that needs to be done in a way that does not cause hardship. In the bill as it stands, there is no power to make regulations about the circumstances in which it would or would not be reasonable to recover overpayments, and there is no power to set maximum deductions from people's benefits, if that is the way in which the recovery is to be made. Leaving such a great deal to discretion or guidance means that, without any regulations or anything in legislation, there are no grounds on which to appeal the decisions, which could potentially leave people in hardship.

Dr McCormick: The example of the right to cash or alternative assistance and the example of overpayments are good examples of where the balance is not right. How we answer the question about balance depends on at least two moving parts of the system in relation to which we do not yet know what will be put in place. One is the charter—we need to know how robust and enforceable the charter will be. The other is scrutiny—we need to know how much assurance we can take from whatever scrutiny arrangements are put in place in relation to secondary legislation and guidance and whether that scrutiny will be independent.

The committee heard a lot last week from Professor McKeever about the need for revisions and independent scrutiny. The answer to your question depends on understanding where the bill sits with those other parts of the jigsaw. John Dickie is absolutely right with the examples that he has chosen.

Peter Kelly: I echo the response that John Dickie has already made. You mentioned uprating, which is clearly missing from the bill. It goes to the principle of adequacy, which comes back to the principle of how the new powers will be used to address poverty. It is important for something about the uprating mechanism for benefits to be in the bill; the balance is too much towards regulations.

Ruth Maguire (Cunninghame South) (SNP): I want to ask you about scrutiny. What role do you see an elected Scottish Parliament playing in scrutiny? Is there a model that you would like to see? I return to the fact that only part of the benefit system will come here; are there any international examples of scrutiny best practice that we could learn from or follow?

The Convener: I know that Dr McCormick is an expert in that particular field.

Dr McCormick: I will say a word about where I hope that we will be at the end of the calendar year. The Minister for Social Security has asked the advisory group that I chair to establish a short-life workstream to look into scrutiny, so there will be a process, but not yet an answer. We intend that workstream to engage with this committee and with—let me get this right—the Public Audit and Post-legislative Scrutiny Committee. Those are the two appropriate places to position parliamentary engagement on scrutiny at this stage.

You also know that a role for two important existing United Kingdom scrutiny bodies that cover the bulk of social security and also industrial injuries benefit has been ruled out by the Scotland Act 2016. The question to answer in Scotland is what we want to put into that place, bearing it in mind that a lot of the secondary regulations and guidance will be quite complex and technical and that this will be the start of substantial activity. As an example, last year the Social Security Advisory Committee looked at 44 regulations, most of which were of a technical nature.

Scotland does not have a revising chamber, so there is a strong case in principle for an independent body—that is only a personal view, and is not yet the workstream's view. Such a body may be constituted differently from the SSAC, which was set up more than 30 years ago. It would need a different relationship with the Scottish Parliament than is true at Westminster and a thorough look would be needed at what functions it should take on. There is a strong case for beefing up quite quickly what should be in that scrutiny space, alongside but separate from Parliament.

Ruth Maguire: Do you have international examples of that sort of set-up, where a devolved Administration has a section of a system?

Dr McCormick: I hope that we will be able to do a bit of digging around that question. Examples of the places where we could most helpfully start are Canada, and possibly Belgium and Switzerland. I

do not know what we will find from those examples, as I genuinely do not have expertise, at this point, on what those lessons will tell us. Now is the time to look in depth and to look outwards at what we can learn quite quickly.

Ruth Maguire: Sure; thank you.

10:00

John Dickie: I want to echo everything that Jim McCormick has said. We believe that some form of independent, expert, statutory scrutiny of devolved social security regulations is vital, but that role will be complementary to the important role that Parliament will continue to play with regard to democratic accountability and the scrutiny of regulations. There is something about having that expert, independent and non-politically aligned role, which in the UK social security context is played in large part by the Social Security Advisory Committee. It is important that we take elements of that and ensure that we put in place similarly robust statutory scrutiny in Scotland.

As for international comparisons, I will be interested in seeing what comes out of that work with regard to what might be put in place to deal with the relationship between devolved and UK social security systems. After all, there is a need to look at how UK social security will interact with devolved social security.

Peter Kelly: As we have mentioned in our submission to the committee, our long-standing proposal is to have some form of scrutiny similar to that provided by the Social Security Advisory Committee, and I echo the comments made by John Dickie and Jim McCormick about the precise nature of that. Clearly there is a role for the Parliament in independent scrutiny and, at the Scottish level, we would need to complement what the Parliament was doing. Moreover, the new poverty and inequality commission, which might have some kind of statutory basis—that is all a bit unclear at the moment—could have a role in the overview of social security.

Dr McCormick: Linking back to the previous question, I think that this underlines the importance of having an appropriate amount of scrutiny at the primary stage, and it makes the case for the committee and indeed the whole Parliament being able to scrutinise as much of the primary intent as possible. That said, we must also recognise that there is a timescale to meet and a need to get going; indeed, there have been announcements this week about the new Scottish social security agency. A lot of skill will be required in striking the right balance between having a safe, long-standing and far-sighted bill and ensuring that enough scrutiny takes place at the primary stage so that we do not leave an unfair or unsafe burden of scrutiny to those outside the Parliament further down the line.

Jeremy Balfour (Lothian) (Con): I want to thank all four individuals on the panel. Some of the issues about how much should be covered in the bill have already been addressed, so I will leave that matter for another day.

Before I ask my questions, which are aimed at Jessica Burns, I should declare that I have sat on tribunals for 20 years now. It is interesting to learn that over 60 per cent of personal independence payment cases are successful. Is that because DWP is getting this so wrong, or is it because the tribunals are getting it so right? Why are so many people bringing successful cases? Given that you have done a lot of that work, it will be interesting to get your views.

We have also been asked to look at how we ensure that the best evidence is available with regard to someone getting or not getting an award. Again, you will have a lot of experience of general practitioners' records and other professionals' medical evidence. What, from your perspective, is the best evidence outwith that of the claimant that will help you reach the best possible decision? Do we need to do things differently from how we do them at the moment?

My final and very brief question might be seen as a bit nimbyist. The make-up of the tribunal for a PIP is different from that for employment and support allowance. Should we keep the three-person set-up, or is it better just to have a lawyer and a doctor on the tribunal?

Jessica Burns: There were a lot of questions embodied in that one question.

You asked why so many appeals are successful. There are degrees of success, as you know, because there are different grades or different awards that people can get for PIP, so not everyone is entirely satisfied even if their appeal is allowed. With appeals, essentially, we are looking at a snapshot of the healthcare professional's assessment of the person's abilities on a particular day, whereas the tribunal looks at what the person is like over a longer period, even if there is one date of decision. It is functionally based. A lot of people with mental health problems find it very difficult to convey those problems to healthcare professionals who may not have any expertise in that area. That has been quite well documented.

I do not know that tribunals always get it right, because this is a very complex area. A number of appeals that come in are very finely balanced, and tribunals are very conscious that the financial implications for someone who is not successful at appeal can be quite devastating.

As I think you are aware, we get letters from GPs expressing concern, perhaps not so much about the individual's health, but about the impact of the loss of income to the household, and the added stress that would follow. A lot of people who we see have been quite traumatised by the loss of their transport, their ability to interact with other people and their ability to pay their bills, because they have got used to that additional income. We are talking about awards of up to about £600 a month that are tax free. You can imagine how devastating it is for the individual to go from that benefit to nothing. Sometimes, the process itself impacts on the mental health of the people involved, and there is a very complex association between mental and physical disabilities that impacts, too.

On the evidence that we get, as I think you are aware, the tribunals quite often adjourn or preview cases and decide that it would be a good idea to get medical case notes, perhaps for the past year or two, in order to get some primary evidence on the diagnosis, the treatment and the reasonable range of expectation around that. That is one way of assessing how reliable the individual's perception of their condition is.

We now very rarely ask the GP to write a report to say, basically, whether they think that the person meets the criteria, because we know that that can impact on the patient and doctor relationship. I am aware that there might be difficulties around involving GPs more in the assessment process, but I understand that there are ways of getting an extract of GP computer records, which might set a baseline for somebody's entitlement and mean that it is not necessary to call them in for a face-to-face assessment.

Ultimately, however, it will depend on the secondary legislation and the criteria that are applied. Sometimes, in relation to someone's function, we cannot make a direct correlation between their contact with their GP, their treatment and their loss of function. Some people, particularly those with drug or alcohol abuse issues or mental health problems, may not want to or feel able to engage with their GP, and they may become heavily dependent on support from family, which might not be reflected in medical records.

It is such a complex area that I would like some more research and a bigger factual base of information to come before the Parliament, at least at the stage of the secondary legislation and the regulations, that captures some of those issues a bit more accurately.

The Convener: Thank you very much for that.

Does anyone else on the panel want to comment before I bring in Pauline McNeill?

John Dickie: The best way to reduce the number of appeals that are made is to get more of the decision making right from the start. Given that a new agency is being created, which brings with it the potential to create a whole new culture and a whole new approach to evidence gathering and decision making, we urge that decision makers in the new agency should take a more proactive, inquisitorial approach to gathering evidence and that they be able to make decisions based on the evidence that they have rather than ruling applications out because of the evidence that they do not have. If they were to take a more proactive and positive approach to gathering evidence and were able to make decisions based on the evidence that they had gathered, that would go a long way to ensuring that better decisions were made in the first place.

Jessica Burns: I would like to come back on that. In the vast majority of cases, the best evidence comes from the claimant, but although most claimants are reliable in the evidence that they give, they are not entirely so. The credibility of any system depends on a recognition that, sometimes, statements that individuals make might not be entirely correct.

The Convener: I want to pick up on that point. We heard evidence about notes being taken on the appearance of claimants at the appeal stage or before they went to appeal. Comments were made about people looking well, being well dressed and looking as if they looked after themselves, so they could not be ill. That is what people have faced. Therefore, it is important, as John Dickie said, that we get the new system right from the very beginning to make sure that claimants are looked at properly.

Dr McCormick: It is self-evident that getting this part of the system right and having the best possible approach to assessment is probably the single biggest challenge that faces any social security system. That is certainly the case for the system in Scotland.

It is important that we do not mix together illness and disability. Sometimes they overlap, but often they are quite distinct. Drawing on a medical approach and using the records of GPs, allied health professionals or specialist nurses might work well for the bulk of people with long-term conditions, whether stable or fluctuating, but it will not work well for lots of people with other mental and physical disabilities. We must understand the limitations as well as the importance of the use of, for example, GP records and make sure that we build a system that is based on self-assessment evidence and, for example, other routine evidence that is already in the system that we can do a better job of sharing—with patient consent. We

should ask what else is needed and build up the information in that way.

Jessica Burns: There is an issue that I want to come back on. A significant challenge in the system is presented by people who dip in and out of qualifying for benefits. Those transitions are extremely difficult. It is almost a disincentive for somebody to ever acknowledge that there has been an improvement in their condition, because they might be locked into dependence on a particular benefit and it would represent quite a reduction in their standard of living if they were to lose it. Some of the submissions considered the introduction of a lower level of daily living component of PIP and acknowledged that PIP might be too broad brush.

The Scottish Government could perhaps consider having a more graded system. If a benefit was to end, it could be tapered, so that it was not a case of suddenly falling off a cliff. That would give people the opportunity to adjust to a lower income and would go some way towards taking away some of the pain of someone whose condition had palpably improved.

10:15

Pauline McNeill (Glasgow) (Lab): Good morning. I apologise to the panel for being late.

I am interested in exploring further what should be in primary legislation in terms of support for the claimant. We have discussed a framework that would be based on dignity and human rights. There is also the question of the people on the agency front line who will administer the system face to face. Should there be a duty in primary legislation on all officials who represent ministers to ensure that they maximise entitlement to all benefits? Beyond benefits, could support for claimants be a duty to be enforced in law?

To go back to Ben Macpherson's question about advocacy, it seems that the committee will have to spend a lot of time thinking about what the term really means. As has been pointed out, it is a measure to help people who may have specific issues for which they need a professional advocate. Perhaps there needs to be a distinction between those people and others who may just need a bit of support.

A separate issue is a person's right to have someone accompany and support them throughout the process. Even for people who do not have a language or disability barrier, it is a daunting process to go through.

In order to get the social security system right, it seems that it would be helpful to have pretty much all that in the primary legislation. Have you any thoughts on that?

Jessica Burns: It is about a choice for the individual. You talk about a right for people to have someone supporting them, but such support is not excluded at present. There being such a right in legislation might give people a sense that they really ought to have somebody else with them. Advocacy could be incorporated in the literature that enables people to access the system. However, ultimately, some people will want to deal with the process on their own; we have to respect that right. The person may feel that they are dealing with very personal issues that they do not necessarily want to share, even with their family; they might want, for all sorts of reasons, to protect their family. People may find it easier, however difficult the process is, to access the system themselves.

On your point about placing an obligation on the social security agency to ensure that a person's entitlement is maximised, I am not sure how enforceable that would be. I have jotted down a note on backdating. It used to be quite well enshrined in the social security system that when there was a good reason why a person had not made a claim earlier, their case could be looked at to see whether their claim should be backdated. It may well be that consideration should be given to backdating in explicit circumstances; that would possibly ameliorate hardship for people who had been totally unaware of a benefit but caught up with it later. I know that retrospective assessments can be difficult, but sometimes the issue is very straightforward.

Dr McCormick: I want to draw a distinction with the current system. We know that in the DWP's services there is some good, some bad and some ugly stuff happening. Neighbouring jobcentres in one part of Scotland can take very different operational approaches to whether another person can cross the threshold of the office with a claimant.

That is one thing that we can change, not only throughout the premises and the workforce of the new agency, but in co-location arrangements with local government, housing offices and the national health service. The system should welcome people arranging their own support if they are able to do so, if that is a choice that they can and want to make. There should be absolute sharing of information about what people can do before they cross the threshold to access support, whether it is informal support or more formalised advocacy. We want to give the cultural signal that we welcome people bringing someone to support them, because we want to get things right first time.

The system would bear some of the responsibility for trying to achieve good decision making upstream, rather than leaving things to appeals and complaints. I am not sure what a duty

for the agency and its workforce on that would look like, but we can certainly ensure that people feel that they are embarking on a journey—whether or not they are successful in the end—and ensure that the experience is of much higher quality.

Peter Kelly: Jim McCormick used the phrase "cultural signal". There would be no clearer signal than to set out in the bill the right to be accompanied. We have discussed advocacy, which I think is linked to that. We want and expect the bill's principles around dignity and respect to be reflected in the guidance that will eventually be produced and the operational procedures for the new agency.

The other issue that Pauline McNeill raised was around ensuring that benefits are maximised. We called for a duty to ensure that everyone has their full entitlement, rather than there just being a role to play in that. Such a duty made real would be about ensuring that people have access to their full entitlement.

John Dickie: I endorse what Jim McCormick and Peter Kelly have said. It makes a lot of sense for one of the principles to be that there is a duty to ensure that people are given the social security assistance for which they are eligible. I return to the point that I made earlier: including a duty for ministers to produce, review and report on a strategy to maximise take-up and reduce underclaiming of benefits would help to ensure a real focus on making sure that people get the financial support to which they are entitled. It would help if the system were to review why that was not happening, report on it and take action to improve access and take-up.

Pauline McNeill: I have a quick question on overpayments. Do you think that the committee needs to do a little more work on what the principles should be in that regard? In some meetings that we have had the point has been made that when a claimant has been wrongly assessed the overpayment should not be their fault—there seems to be a view that such overpayments should not be clawed back. Does more work need to be done on that?

Dr McCormick: I do not want to repeat what John Dickie said, but I think that he was right. The answer to Pauline McNeill's question is yes. The bill feels as though it is based on terms that are similar to how Her Majesty's Revenue and Customs operates in respect of overpayment of tax credits, in that it has recourse to guidance rather than to statute. That means that a lot of discretion is used and that there is a lot of variation in what happens across the country. That is distinct from issues of fraud and error. Error overlaps with the issue of overpayments, but we are talking about overpayments that have been due to inaccurate assessment by the agency. Points have been made about creating incentives for good decision making upstream. It is really important that we have a fuller appraisal of the options, so that overpayments are minimised and dealt with differently to how tax credit overpayments are currently dealt with. That is one of the highest priorities in revising the bill.

John Dickie: I echo that. I do not want to repeat what I said earlier, but the matter is a key example of the policy memorandum and what ministers have said about policy intent not being matched by the detail in the bill. It is clearly stated that the policy intent is not to recover overpayments that are the result of agency error, except in particular circumstances, but nothing in the bill will prevent recovery. The bill enables automatic recovery of overpayments without creating any provision for setting out the circumstances in which that would be reasonable or how they would be recovered.

Jessica Burns: On the duty to notify a change of circumstances and the offence of failing to notify, it can be difficult for people with disabilities or with disabling illnesses who are in the recovery period to say at what point they have crossed back over the threshold to not qualifying for the benefit. It is intimidating; people who recover from severe mental health problems can wonder whether they are defrauding the system because they have not told someone. It is a stressful period for someone who is in that position. I was surprised that the offence of failing to notify could result in a criminalising approach. The provision could be looked at again in order to create a more supportive system whereby, under certain circumstances, people are invited to resubmit and are told that, if they do so, there would be a taper to their entitlement to the benefit.

Alison Johnstone (Lothian) (Green): The balance between primary and secondary legislation was discussed earlier. Future proofing is a concern of mine and of many others who have been in touch. A good example of when the system goes wrong is the way in which the UK Government changed the rules about PIP assessments, because it did not particularly welcome a ruling by a tribunal. If the bill is going to work well in the future, it has to address adequacy. Peter Kelly touched on the issue of uprating. For clarity, I would like to understand whether John Dickie, Peter Kelly and Dr McCormick think that an uprating mechanism should be in the bill, so that it cannot be pushed aside so easily in the future.

John Dickie: A provision for annual uprating for devolved types of assistance is really important. The mechanism for how that might work could be left to regulation, but the provision should be in the bill. For disability and carers' benefits, the primary legislation currently includes annual uprating,

unless the Government changes the law to stop that from happening. That provision has protected disability and carers' benefits in a way that other benefits have not been protected over the past few years.

Alison Johnstone: Would you like to see that approach applied to all benefits? We have seen what has happened to child benefit.

John Dickie: The key thing is to ensure that the bill applies to the types of assistance that are set out as being devolved and which will be covered by the legislation, in order to ensure that there is provision for annual uprating.

Peter Kelly: I echo John Dickie's points. We would like to see that provision in the bill. The evidence is clear that the value of benefits falls behind when there are no processes for annual uprating. We have seen that over 20 or 30 years with the jobseekers allowance, the value of which in relation to average earnings has declined year on year, so that people on those benefits find it difficult to work themselves out of poverty, or just to get by. It is important that uprating be included in the bill.

Dr McCormick: There are three tests that come together with the bill. One is about take-up, which we have discussed. One is about uprating; I agree with what has been said about that: if we consider that parts of the benefits that are coming to Scotland are taken up by population groups in which there are typically much lower employment rates and higher costs, it is even more important that we are clear about a commitment to uprating.

10:30

The third test is about adequacy, which is separate from uprating. We know, for example, that, even with annual uprating, older people with complex disabilities especially, with the costs that they face, are supported very inadequately by the current benefits system. A similar case could be made for some people who live in very remote and rural areas. Adequacy is a longer-term issue that is best dealt with through the pledges that the parties make in the committees and the Parliament and through debate with the public.

A really important public interest issue is involved: there is a public stake. It is great that the experience panels will, in collaboration, try to design and improve the system over time, but there is a risk that we are all dancing in the middle of the ice and not taking the public with us on the issues.

It is really important that we have a long-term debate about adequacy and what the contribution of social security in Scotland and the United Kingdom is to a more adequate living standard for the whole population. Peter Kelly mentioned that.

Those are three points that need to be dealt with. However, I agree that the provision ought to be clearly enshrined in primary legislation.

Peter Kelly: To follow up Jim McCormick's point, it is really important to make the distinction between annual uprating and the process and mechanism for doing that, and adequacy. Jim McCormick's organisation has been at the forefront of developing methodology for trying to understand what we mean by adequacy. We need to move towards considering how we implement things around the minimum income standard. We have seen that in relation to the living wage, which is based on the minimum income standard. It is possible to start moving and to shift the discussion and the terms of debate.

If we cannot have something about adequacy in the bill, perhaps we should link that back to the issue of scrutiny. That would go beyond the technical scrutiny that Jim McCormick and John Dickie have talked about to broader scrutiny of the overall impact of our new social security powers, which is perhaps within the domain of the proposed poverty and inequality commission.

Alison Johnstone: We have not really discussed mandatory reconsideration. Many of the submissions to the committee refer to that process. Does the system of appeals that is laid out in the bill differ markedly from the UK process? I appreciate that there are improvements. For example, people will still receive benefits when they are appealing and there is the time-limit difference, but is the system different enough?

The Convener: We should have short answers, because we are running out of time.

John Dickie: There are differences, but there is a real concern that, in an important respect, the redetermination process that is set out in the bill recreates one of the key barriers to independent appeal that exists in current mandatory reconsideration. That barrier is the requirement to make two applications—to apply in the first instance for an internal redetermination by the agency and, if that is not successful, to make another application in order to go to an independent appeal.

Our key suggestion—we have proposed a mechanism for doing this—is to remove the second barrier, gateway and requirement for another application. We have seen many people fall away at that point and there has been a real reduction in the number of people accessing independent appeals. We should remove that barrier, ensure that people still have the choice to withdraw from the process if they are satisfied that their case is being looked into, and not require an

additional application hurdle to overcome in order to reach the independent appeal.

Peter Kelly: I echo John Dickie's points. Alison Johnstone asked whether the system is markedly different. It is, but in the important respect that John Dickie has highlighted it is not sufficiently different and it repeats some problems that currently exist. That goes back to questions that we have already discussed. I do not think that the policy intent is to deny people access to justice in that way, so that needs to be looked at again.

Jessica Burns: On mandatory reconsideration, the mandatory aspect and the mandatory redetermination aspect should be taken away. People could have the option of asking the agency to think again about the decision, but it should not prevent them from making a direct appeal. There would be nothing to prevent the agency from revising its decision in the period before the appeal was heard. Quite a number of appeals lapse, although not as many as might be imagined. However, at any point, the DWP can make a decision in favour of the appellant and the appeal does not go ahead. An appeal might just impose another month of waiting time before someone gets a decision.

The Convener: Two members have supplementary questions. They will have to be the last questions on the issue because we are running over time and the next panel of witnesses is waiting patiently. Adam Tomkins has a supplementary, then Ruth Maguire will ask one.

Adam Tomkins: I have a very quick question. Thank you, convener, for squeezing me in. There is a bespoke provision in the bill in section 45 regarding the power to provide for top-ups, but there is no provision in the bill that enables the Scottish Government to create new benefits. Should there be?

The Convener: Can we have a straight yes or no, if that is okay?

Adam Tomkins: If the panel cannot answer that fully, perhaps you can come back to us in writing about it. We are out of time, but I think that it is an important question. The power to create new benefits is an important part of a devolved social security system, but there is no provision in the bill for doing that. We have been talking about omissions from the bill, so I wonder whether you think that that is a significant omission. If it is a significant omission, should we do something about it? That is probably too long a question for you to answer in 30 seconds, so if you cannot, perhaps you would not mind writing to us about it, which would be really helpful.

The Convener: Is answering in writing agreeable to the witnesses? I see by your nods that it is.

Ruth Maguire: Is there a danger that if we remove the opportunity for the social security agency to sort something that has gone wrong, that will delay things for claimants? I was interested in what Jessica Burns said about it being not necessarily mandatory, but optional. Obviously, what we are interested in is folk getting money to which they are entitled. If an appeal has to go straight to a formal tribunal, could that just delay things?

John Dickie: There would be nothing to prevent the agency from undertaking an internal redetermination on a claim and changing its decision. That should always be an option. It is right that that is part of the system; ideally, that is where things will get sorted. However, there should be no barrier or additional hurdle in the sense that if that option does not sort the situation, people then have to make another application to get an appeal.

Peter Kelly: I agree with what John Dickie said.

Dr McCormick: Wherever we get to with this part of the system, it is really important that people are crystal clear about what is expected of them in terms of timescales and what they can expect from the agency. Currently, we have very strict requirements around lodging an MR, but it is a black box as to when we will hear because there are no similar requirements for when the Government should respond. I think that there must be a two-way street in that regard, because that would be part of a dignified culture. If we are going to have expectations and responsibilities one way, we have to have them the other way, too.

Jessica Burns: I do not think that there is anything that I can add to that.

The Convener: I thank the panel. I had hoped to ask Dr McCormick more about scrutiny and so on, but you have certainly answered some of what we were going to ask. We will be speaking to Dr McCormick and his advisory group in the future to explore further the issue of scrutiny.

I suspend the meeting for a changeover of witnesses.

10:39

Meeting suspended.

10:41

On resuming—

The Convener: I welcome the second panel of witnesses and thank them for their patience. We have complained on numerous occasions that a Thursday morning is not an ideal time for the

committee to meet. It is generally agreed that we will raise that again with the Presiding Officer.

The witnesses are Jatin Haria of the Coalition for Racial Equality and Rights, Chris Oswald of the Equality and Human Rights Commission, Emma Ritch of Engender and Judith Robertson of the Scottish Human Rights Commission.

I will start with the same question as I asked the previous panel. What are the panellists' thoughts on including principles in the bill and on the seven principles that are set out, which are intended to underpin the new social security system? Anyone who wants to speak can just give me a nod.

Emma Ritch (Engender): Thank you for inviting Engender to speak to you. If we zoom out to the question of what has happened to women in Scotland as a result of social security changes, we see the need to consider gender at all stages when we consider what to do with the new powers that have come to us in Scotland. Like some of the witnesses in the previous panel, Engender advocated through the Smith commission process for the devolution of social security powers, and we have been pleased to be involved in the past few years in discussions about what that should look like.

Some of the unintended consequences of failing to consider gender have been seen in what has happened with welfare reform. When I was previously in front of the committee, it was to talk about the family cap and the rape clause, which represent some of the most acute failures to think about gender that are evident in the social security system.

Our broad point has always been that it is vital to consider gender and women's different experience of social security. One Scot in 10 is a poor woman. The experiences that differ between women and men are vital to consider when we think about how best to use the powers.

We very much welcome the commitment to a human rights-based approach—the broad principles that endorse dignity and respect—that is in the bill. However, we have pointed out that the principle of non-discrimination and equality between women and men is incorporated in the human rights instrument that talks most about social security, which is the International Covenant on Economic, Social and Cultural Rights.

We make the case that the principles should be amended to include non-discrimination and equality, because the enabling framework of the bill means that much will come into being through regulation, as others have pointed out. Unfortunately, we have seen the consequences of primary legislation that does not explicitly refer to gender equality and of the failure to pick up gender in regulation and strategy—an example is the Human Trafficking and Exploitation (Scotland) Act 2015, which has enormous relevance to women and women's equality.

I urge the committee to consider that point. From our conversations with the minister, I think that there is a receptivity to the point that incorporating the principle of non-discrimination and equality would give effect to the ambition that the bill should take a human rights-based approach.

10:45

Jatin Haria (Coalition for Racial Equality and Rights): Thank you for inviting me to the meeting. We totally support having a specific principle on equality in the bill. Unless it is mentioned right there in front of someone's face, equality is usually forgotten about. With a new agency and a new system, unless equality is up front, we know that it will be ignored and that other things will take over. We hope that the committee will support having equality as a key principle.

Judith Robertson (Scottish Human Rights Commission): We welcome the ambition of the Scottish Government, particularly in stating that social security is a human right, and, importantly, that it is essential to the realisation of other human rights, and we welcome the rights-based approach to social security. Those commitments are all welcome.

The principles fundamentally reframe the way in which social security is viewed in Scottish public life and they will underpin the social security charter. They have a fundamental value in setting the terms of the debate differently. However, they do not create stand-alone rights and cannot be directly enforced by individuals, which is a fundamental weakness that our proposals can address. That is particularly important to remember given the emphasis on the principles during the consultation process and the discussions on the bill.

We believe that some areas of the bill could be strengthened significantly to ground them further in human rights standards and to reflect the PANEL principles of participation, accountability, non-discrimination and equality, empowerment and legality. Our submission outlines details of the changes that we think can be made.

First and foremost, we would like the bill to enshrine in Scots law the right to social security, which would underpin everything in the bill. As it stands, the bill does not enshrine that right. The right to social security was recognised as far back as the Universal Declaration of Human Rights in 1948, and it features in a number of regional and international human rights instruments—most notably article 9 of the International Covenant of

Economic, Social and Cultural Rights. Detailed guidance on the content of the right to social security has been provided through general comment 19 from the United Nations committee on economic, social and cultural rights.

The Government and the Parliament are mandated to deliver on the international treaties that the UK has signed up to, which include the International Covenant of Economic, Social and Cultural Rights. General comment 19 is a key part; it describes the right to social security and breaks it down into core components. Some of them have been discussed in detail this morning; that territory is not far from or alien to our discussions. The overriding principles are availability, adequacy and accessibility, and they are in general comment 19 because, globally, they are key standards to be clear on for social security. The accessibility principles are coverage, eligibility, affordability, participation and information, and physical access.

As the bill stands, we have a principle in relation to the right to social security but we do not have the right. We believe that the bill would be strengthened significantly if that right were enshrined in Scots law.

Chris Oswald (Equality and Human Rights Commission): I agree with all my colleagues' points; I will perhaps add a slightly different perspective. The agency and the operation of the social security system in Scotland will be covered by the Human Rights Act 1998 and the equality duties in the Equality Act 2010, so there will be that protection. However, making a human rights challenge or a challenge under the 2010 act is a complex and lengthy process. The incorporation of principles in the charter might present us with an opportunity to have decision making or resolution at a lower level; that will depend on how the charter develops.

As my colleagues have said, it would be extremely helpful to incorporate the International Covenant on Economic, Social and Cultural Rights. Although non-discrimination is part of the human rights principles, the 2010 act takes that a little further and goes into advancing equality in community relations; for reasons similar to those that Emma Ritch mentioned, I believe that it would be useful to reflect that.

I noticed that some submissions mention concerns about the use of the terms "efficient" and "value for money" in relation to the system. I am less concerned about that, as long as we are talking about the administration of the system. The discussion at the end of the previous panel was really helpful. A system that is focused on efficiency and value for money will make the right decision the first time round. One of the most costly and wasteful things in the current UK system is the process of continual appeal, so a focus on efficiency that is beneficial to the claimant would be extremely helpful.

The Convener: Thank you—that is helpful.

Adam Tomkins: I will pick up on Judith Robertson's helpful comments. I note that the Scottish Human Rights Commission's written evidence mentions the status of the charter and states:

> "The charter should be directly enforceable."

Before I ask the other panel members whether they agree with that, will you expand on what you mean by that?

Judith Robertson: The bill lacks clarity on the status of the charter, as has been noted, and there has been some confusion about the charter's purpose. We broadly welcome the charter, potentially—

Adam Tomkins: I presume that you would like to see it before you really welcome it.

Judith Robertson: Yes. In principle, it could be really helpful, but we believe that the right to social security should be set out in the bill, because all else flows from it. The charter should define the right in a way that is accessible to the public, so that people can understand it. In effect, the charter should unpack in an accessible way the content of the right to social security, which should be incorporated in the bill. The charter should not create new rights and entitlements that have no way of being enforced—that is a fundamental caveat. If we put the right in the bill, all else will flow from that.

We appreciate that the charter will be drafted through an inclusive and participatory process, but we believe that, as a minimum, it should reflect the content of the right to social security. Somebody said that we should start with a blank sheet in relation to the charter. The charter is about social security, so it is not a blank sheet; we have to put some caveats around what it focuses on, and focusing it on the right to social security would give it consistency, a framework and—crucially—a grounding in international law.

Adam Tomkins: May I just clarify something? When you say that the charter should be enforceable, do you mean enforceable in court?

Judith Robertson: Well, the right to social security would be enforceable in court. The charter would, from my perspective, define what that right means. There is an option to put in the charter the accountability processes that flow from that. There is a decision to be made about how much detail people want in a charter that says, "Here are your rights—this is what this is actually entitling you to." That is something that a participatory process might identify.

Adam Tomkins: Thank you.

The Convener: Does anyone else want to come in on that point?

Emma Ritch: To answer the direct question, I agree with what Judith Robertson said. Engender's submission suggests that

"The charter should include a mechanism via which claimants could contest a breach".

As Judith says, such a mechanism would need to be scoped out. There is obviously a tension between the ambition of creating a charter that is, as the Government's policy memorandum states, in

"a format that can be easily understood"

and something that is justiciable. That tension perhaps needs to be worked through. However, I am entirely in accord with Judith's view that, without having some kind of redress mechanism—there is possibly a role for an independent scrutiny body—the charter would not have much weight.

Adam Tomkins: That is extremely helpful. I have a final follow-up question directly on that point. If we have a charter that is judicially enforceable, or a right to social security that is judicially enforceable, will that lead to an increase in litigation in the Scottish courts? If so, who will pay for that and should there not be something in the financial memorandum that accompanies the bill about a likely increase in calls on the legal aid budget?

Judith Robertson: To be honest, I think that it is very hard to say. If the right to social security is enshrined in the bill and is therefore justiciable, the processes, policy and regulation that flow from that will have to be compliant with that right, because if they are not, they will contravene the law in the bill. As I say, there is a process whereby all else flows from that.

A comment was made previously about getting it right first and having everything in line; if that is done, it could be very strong. If what I have described is in place—and, in principle, the secondary regulation that flows from this has to be compliant with general comment 19 and ICESCR, and that can in itself be tested, argued, debated and understood within the system—there is a strong framework within which decisions can be made about the whole process that flows from this and issues can be tested, argued, discussed and debated transparently.

There may be cost implications that arise from justiciability, but actually the implications of some processes will be much more rigorously tested up front and in advance, and the legal process that supports the development of regulation would be in place to do that in a way that is clearly compliant within the confines of the law.

At the moment, that is a gap in the bill. I do not want to be cheeky, as the bill's principles try to achieve what I have outlined, but enshrining the right in the legislation would make it strong throughout the process. Ultimately, it would become justiciable, but that is a backstop protection, not the front line of protection. The framework that the bill establishes currently includes all sorts of other protections: predetermination processes, tribunal processes and all sorts of other processes before anyone would get to the point of taking something to court. We are on a journey.

Chris Oswald: It is important to remember that the Human Rights Act 1998 and the Equality Act 2010 apply already in this jurisdiction, so justiciability is on the table immediately. I would hope that the incorporation of principles around equality and human rights would lead to a more anticipatory approach by the agency whereby it would start to identify such issues in advance. Subject to what the charter enables or allows, incorporation would also create the possibility of resolving issues at a lower level without having to go to court to do so. There is an advantage in this approach. The costs of justiciability are there anyway, irrespective of whether such an approach is taken in the bill.

Jatin Haria: As Chris Oswald says, the Equality Act 2010 applies, but we know from the public sector generally that that is not enough. That is why the charter was seen as a good thing. At the moment, the charter sits on its own, because there is no linkage. However, people are saying that they see it as setting an attitude in respect of what the agency will be about and how it will perform its functions. We need to see it.

At the moment, the bill requires users—or claimants—to be consulted on the charter, but there is no requirement to consult equalities groups. We would like the bill to specify that equalities groups should be consulted before the charter is finalised.

11:00

Emma Ritch: I see the virtue in a less adversarial process, in which if an independent scrutiny body is created—I agree with others that it should be—there would be scope for policy concerns to be raised by interested organisations and those concerns would not have to go to law. If Engender, for example, was aware of a widespread unintended consequence in the process or policy of the agency that seemed to go against what I hope will be the policy of equality and non-discrimination in the charter, we could

alert the independent scrutiny body, which could then make a determination. That would be equivalent to the way in which equality bodies tend to operate across Europe. The EHRC is quite unusual in not having that quasi-judicial role. That proposal may be a helpful way in which to bring concerns back into the system and could become a virtuous circle.

Judith Robertson: I endorse that point. Accountability mechanisms in bills such as this one are multifarious—they stack up. At the moment, there are some gaps, particularly in relation to accountability and scrutiny. The process that Emma Ritch describes articulates how the introduction of an additional backstop that is currently not included in the bill would complete that picture.

Ruth Maguire: I wish that we were getting all the benefits, but the fact is that, in the main, it is carers and disability benefits that are being devolved and for which the Scottish Parliament will be responsible. How can the right to social security be enshrined in law, when we have control over only that portion of benefits?

Judith Robertson: That constraint would apply across almost any piece of policy legislation in Scotland. We do not have absolute power over many of the levers of authority. From my perspective, the bill is a landmark piece of legislation. The right to social security will be enshrined only in what the bill can provide—it does not extend into Westminster legislation and the benefit provisions that are not contained in the bill.

However, if that right is included in the bill, it will make it a world-leading piece of legislation—the bill will lead by example. It will also provide what we used to call in my days working for Oxfam the threat of a good example. Good examples test the boundaries of everyone else's systems. That is an important point, although it is not the reason why the right should be included in the bill.

The right to social security should be in the legislation because, in and of itself, it provides a set of principles and frameworks that are consistent and enshrined in international law and which can be understood and worked on. However, it also does lots of other things and has consequences for social security globally. It is not just in Britain that social security has a bad reputation—some countries have very good reputations around social security and others have less good reputations. We have an opportunity to do really well here. The Government is in the right territory and our role is to seek to make the bill as strong as it can be.

Ruth Maguire: I always come back to the people who come into my constituency office and the people I represent. Although I would not argue with anything that you have said—it is laudable—is there not a danger that we are creating a tension in expectations? The people who are using the system and who are entitled to social security will often be receiving services from both Administrations. It might sound strange, but I worry about creating false expectations for the people we represent.

Judith Robertson: If we are to effectively deliver the bill in the spirit in which it has been put forward, which is to put some distance between the way our current social security system is administered and the new system that Scotland will provide, we have to raise expectations.

Ruth Maguire: We have to meet expectations.

Judith Robertson: We have to raise expectations that people's relationship to a social security system can include dignity and respect, that people do not need to feel ashamed of being in receipt of benefits, and that we can change the terms and culture of social security in this country. We cannot do that across the system—that is a clear limitation of where we are with the proposed legislation—but we can do it in the part that we have authority and power over. If we do not do that, we will fail to realise the ambition that it can be done better, done well and done in a way that supports people to receive that to which they are entitled. That is what we want, as people are entitled to those benefits. We want that to be strong and supported.

Chris Oswald: I agree with Judith Robertson on that point. We are where we are and we cannot change the settlement as it stands today, but it is encouraging that Scotland is moving toward a more enabling, rather than punitive, system and that is to be commended.

It is important that we look at the relationships in Scotland with regard to the stuff that we control and have power over. In the social security system that we are developing, the regulations and the operation of the system will be dependent on the adequacy of services on the ground that are provided by local authorities or the voluntary sector. The system will be affected by health and social care integration and it will be hugely influenced by the availability of adequate housing. Therefore, we need to think more about how it fits with other areas of Scottish social policy and the enabling rather than punitive approach that is being adopted in Scotland, rather than worrying too much about what we cannot control at the moment.

I was very interested in the discussion about advocacy that the previous panel had. Although I accept that the provision of advocacy in Scotland is better, it is not perfect and we need to move

towards a system in which advocacy is guaranteed, rather than just saying that people have a right to it. That right should be achievable and real.

Emma Ritch: The question of carers is helpful, so I will talk about that. It illustrates how vital it is to have principles on the face of the bill.

In 2015, the Welfare Reform Committee published its report on women and social security, which made a number of recommendations for the Government, anticipating the Scotland Act 2016 by some months. It said that the Scottish Government needed to look at

"the gender impact of their policy decisions and ... mitigate these"

and that social security programmes

"should be designed to overcome the barriers which prevent ... women's labour market participation",

which a number of Scottish Parliament committees have reflected on. For example, the Economy, Jobs and Fair Work Committee just published a helpful inquiry report on the pay gap.

The reason why that is important for carers is that, at present, the schedule to the bill somewhat replicates the status quo. There is a welcome uplift in the level of support to carers that brings it on a par with other in-work, working-age pieces of social security assistance, but it contains some features that potentially, in regulation, could replicate what we already have. The features are whether a carer is in education, how many hours a week the carer spends caring and what employment they are in, and there is a risk that those things will still function as a barrier to carers getting into the workplace, developing their skills and capacity when they are on their carer journey and, therefore, being appropriately qualified or skilled when their care work ends.

We have an opportunity to be bold and different in the regulation for carers social security assistance. However, without having the principle in the bill, it is not clear what that will look like with regard to gender and the specific impacts on women who care. After all, the majority of carers, and 75 per cent of the recipients of that particular entitlement, are women.

That makes the case for having the principle of equality and non-discrimination in the bill and the vital need to pick up on the challenge from the Welfare Reform Committee in 2015 on the need for the Scottish Government to look at the equality impact assessment for all this stuff in the round and how it articulates with other bits of policy. Engender certainly echoes the disappointment of the Coalition for Racial Equality and Rights in finding the equality impact assessment inadequate at the moment.

George Adam (Paisley) (SNP): I would like to follow up on what Ruth Maguire mentioned. I get the idea that if we enshrine the right to social security as a human right, internationally, people will look at the human rights that we have and it might force other legislatures to think the same way. I get all that—I get the vision thing.

However, Ruth Maguire brought up a practical point about people who are dealing with the day-to-day issues of accessing the social security system. A person may go to a DWP office and say, "I've got this bit of paper from the Scottish Parliament that says I've got social security as a right—I've got the right to be able to do this," and the DWP will say, "No, you havenae." Then the person may say, "Ah, but the Scottish Parliament has passed this bill,"—it is exactly Ruth's point about expectation—and the DWP will say, "We don't recognise that." Then you get into the territory that Adam Tomkins spoke about, if someone ends up going to litigation at a future date and there is different legislation on both sides of the border.

It gets quite complicated when it comes to delivery for the individuals we are trying to help at the end of the day. Does that not build up such an expectation that they could get to the stage where they end up thinking that the bill that says that they have that right is a waste of time?

The Convener: Does anybody want to make a quick comment on that?

Judith Robertson: The complexity of the system is there anyway, to be honest. That is clear. From my perspective, the provision of effective independent advocacy will help people to understand their entitlements and their rights within the process and the limitations on those. That is very important. To be honest, whether or not the right is there, that will be an issue. That is what the previous panel articulated very clearly—the charter, in and of itself, is intended to articulate what people's rights are.

From my perspective, enshrining the right to social security makes that a very clear process. It puts it out there and makes it explicit. It does not apply to Westminster, and people will definitely need help to understand that.

Jatin Haria: I do not want to get into the constitutional question. What George Adam says may be true but there are also benefits. I will give two examples, which are more particular to black and minority ethnic communities. The question of the stigma of claiming benefits is a key issue. If the bill can reduce that stigma for the whole of the benefits system, it will reduce the stigma for all benefit claimants. There is some research that shows that there is underclaiming of benefits within black communities. If we do it better in

Scotland and people claim more of what they are entitled to, I assume that they will increase their claims for reserved benefits as well, so there are definite benefits as well as possible problems.

Mark Griffin: Judith Robertson touched on my question when she mentioned independent advocacy. Do members of the panel feel that there is a need for independent advocacy in the system? Should a right to it be set out on the face of the bill?

Emma Ritch: Engender supports independent advocacy and I think that other submissions have clearly set out what principles should apply in that respect. Entitlement to advocacy should be on the face of the bill, in the charter or in some other appropriate place for the well-rehearsed reasons that the first panel highlighted with regard to its importance, particularly in the context of George Adam's point.

The cat is out of the bag with regard to the different ambitions for a social security system in Scotland. In the roadshows that have happened across Scotland, communities have set out their ambitions for a system with dignity and respect at its heart, and those same communities are expecting to see such a system. Advocacy can be one way of helping those who are least able to articulate and advocate for themselves understand the myriad complexities of those two interlocking systems—which I am sure that no one sitting in this room would have designed had it been up to us to allocate power, responsibility and process between two different parts of the state.

11:15

Chris Oswald: My answer to your question is yes, completely—we should have the right to independent advocacy. However, a more critical issue is people's ability to access it. We have seen massive reductions in the provision of the advice service in Scotland, and the systems themselves are getting more complex.

An issue highlighted in the submissions from the EIA and others is that, with a 30-day appeal window, people might not have access to communications support or advocacy tailored to their specific needs, which could be driven by disability or age. The systems are very complex, and given that many citizens will struggle to deal with them, we need to have advocacy built in.

We also need to talk about the meaning of "adequate independent advocacy" and the potential inadvertent impacts of appeals timetables, which might disadvantage or discriminate against some sections of the community. However, that is all part of the design process, which we are starting to move into.

Judith Robertson: The right to social security, as defined under general comment 19, makes it clear that the social security system would

"ensure the right of individuals ... to seek, receive and impart information on all social security entitlements in a clear and transparent manner."

Enshrining that right on the face of the bill will lead to those principles coming alive, being looked at and being addressed.

We need to remember—and this is where the importance of the PANEL principle of participation comes in—that the lived experience of people engaging with systems like this is one of difficulty. People generally require social security at those times in their lives when they are most vulnerable, and that is the underlying principle upon which we determine whether those rights should be applied.

In looking at all the technicalities of taking a bill forward, we should not forget that we are seeking to meet the requirements under equalities legislation and international human rights law to address the needs of some of the most vulnerable people first, foremost and with priority. That, for me, is what underpins this particular principle.

Chris Oswald: With regard to that response—and going back to something that Jessica Burns mentioned in the previous session—I think that the issue is the attitude of and approach taken by the new social security system. There is nothing to prevent reconsideration before an appeal, for example; after all, advocacy does not have to be adversarial.

It all comes down to the system's purpose. One might say that, in Scotland, the ethos appears to be moving in the direction of promoting the public good, given that the system will be joined up and will work with other parts of the social welfare systems to promote and advance people's income and rights. It could have been posited primarily on the ethos that public money should be protected. In that respect, we are at a very interesting juncture.

Ben Macpherson: I was going to ask a similar question to that asked by Ruth Maguire, but in light of the discussion, I want to clarify something with regard to the questions asked by Ruth and George Adam.

Correct me if I am wrong, but my position is that a full right to social security within Scots and/or international law is clearly not deliverable by the Scottish Government, because of the nature of devolution. Is the proposition, therefore, that the right to social security should come within the competence of the Scotland Act 2016?

Judith Robertson: In this bill, yes.

Ben Macpherson: I am looking at this from a drafting perspective. You are in fact advocating not a right to social security per se but a right to social security within the devolved competences of this Parliament.

Judith Robertson: Yes, that is what it would have to be. There are certain caveats with regard to the creation of the Scotland Act 2016 that have implications in that respect, but we are going to do a piece of work to generate a clear sense of what this will look like in the context of the devolved competence of the Scottish Government and Parliament. We have not done that work yet, but we will.

Ben Macpherson: Thank you for that clarification. I look forward to reviewing that work.

Jeremy Balfour: We have had a very helpful discussion on an important if limited area of the bill, but I am interested in the panel's views on the wider bill. As I asked the previous panel, how much should be in primary legislation and how much should be in secondary legislation and regulations? Having looked at other systems around the world, would you prefer to have more in the bill than there is at the moment, or are you content for it to be followed by fairly detailed regulations? Finally, picking up on a comment made by one of my colleagues, should the bill contain a section that specifically says that we can create new social security benefits?

The Convener: Who wants to pick that up?

Emma Ritch: On the first question about the division between primary and secondary legislation, Engender's submission makes it fairly clear that we want to see more in the bill. Parliamentary scrutiny is vital, particularly when we are considering a social security bill that contains quite a lot and needs to articulate well with another system of significant complexity. We have been particularly sensitised to the flaws of secondary legislation in our recent experience of the rape clause. I do not think that, when the clause was first conceived, it was intended to have the impact that it had; however, a lack of parliamentary scrutiny surely did not help its ultimate shape, and we want to avoid that kind of unintended consequence wherever possible.

As for other systems, we have referred to Canada, where quite detailed rules, including eligibility criteria, are prescribed in primary legislation. Doubtless there are many more examples, and I am sure that others are more qualified than we are to comment on them.

It is vital that new entitlements and the capacity to create them are included in the bill. We would also put in other measures, including the universal credit flexibilities that are now within the power of the Scottish Parliament. Something that we have long called for is individual rather than household payments for universal credit. Given the absolutely uncontested evidence that such a measure is in the interest of women's equality and rights, we want that to be incorporated in the bill for future proofing purposes.

The Convener: Did you want to come in, Chris?

Chris Oswald: No. I was nodding in agreement.

Judith Robertson: My primary comment is about enshrining the right to social security in the bill and what the detail of that would look like in a new section. It would outline a range of processes that would impact on the rest of the bill.

As it stands, there are some gaps in the bill that we would like not to be there, and one of the key ones that I want to be explicit about relates to accountability and the scrutiny mechanism. The issue was discussed in the previous evidence session, and you might well go on to ask about it in your line of questioning. The scrutiny mechanism is absent but, from our perspective, it needs to be in the bill, and it needs to be underpinned by clear principles such as its being independent, its being statutory, its reporting to the Parliament directly, its having a broad mandate with enough powers to carry out that mandate and its having some element of public accountability, with its reports being published and made public. There should be a transparent process around it. The mechanism is absent from the bill and, as far as the question of balance is concerned, it should be included in it.

There are other things that we would strengthen in the accountability process. For a start, there is a duty on ministers to report, but there is little clarity on what they need to report and some clear indicators should be established to set out what ministers should be reporting. If the right to social security is enshrined in the bill, those indicators will be driven by it, and they could be established in a participatory process and be subject to review. There is no issue with flexibility around that, but the fact that they exist could be added to the bill, which would enhance the accountability process.

There is a range of elements that we would add. To be honest, after listening to the session this morning and your conversation about what is and is not in the bill, and given that regulations are subject to less scrutiny, we are of the view that it is better to include more in the bill than less. That is a principle that we hold to.

Jatin Haria: I totally agree with that. I hope that I am not about to go off at a tangent, but we were excited to see in the partial EQIA for the bill ministers saying that the agency must be an exemplar of equality for the Scottish public sector in terms of provision of support to people across all protected characteristics and in terms of the

employment opportunities that are offered. However, that has disappeared from the final EQIA. There is some comment about being an international exemplar with regard to dignity and respect, but that is not quite the same thing as being an exemplar of equality in Scotland. That shows that there has already been some slippage, and we think that the more scrutiny there is of these issues, the better.

The Convener: Alison Johnstone will ask our last question.

Alison Johnstone: I will address my question to Emma Ritch.

The gender impacts of welfare reform are well documented, particularly by Engender, for which many thanks. It is difficult for women who are juggling many responsibilities to access the system in the first place. Do you have a view on the right to income maximisation and on people's understanding of what they are entitled to and where they should go? We know from evidence relating to other Government programmes that efforts to increase that understanding can markedly increase a household's income. Do you agree that there should be a right to income maximisation support, and, if so, what should it look like?

Emma Ritch: Engender has not considered that in detail, so I want to follow up my answer in writing, if I can. I know that the Scottish Government has funded some advocacy programmes that have resulted in some quite significant income maximisation for households.

I entirely agree that the system is confusing at present, and it runs the risk of becoming much more confusing as it tries to articulate with the UK social security system. In our discussions with civil servants, there has been mention of the "no wrong front door" principle, which means that individuals approaching either agency will get signposting and will not be turned away if they have inadvertently approached the wrong agency.

However, there are some things in the bill that might be difficult for women in terms of their propensity to approach agencies with information. One of those is the seeming harshness with regard to the question of overpayments and whether notification might result in the clawing back of overpayments that might well have been the result of the agency making a wrong determination at the start.

In its written submission, Justice Scotland makes an interesting point about criminalisation, saying that the approach, which appears to criminalise mistakes and errors that were made without full knowledge of their impact, seems to sit at odds with the Scottish Government's understanding in other policy domains with regard to reducing female imprisonment. There should be additional support for people as they try to wend their way through this thicket.

I will come back to you on the specific question of the right that you propose.

The Convener: Does anyone have any final comments?

11:30

Judith Robertson: My final comment is on the right to social security in the broader context. Ideally—and this addresses Alison Johnstone's question, too—we would not incorporate the right to social security in isolation. Instead, we would incorporate into Scots law a range of economic, social and cultural rights such as adequate standards of living, the maximisation of income and so on. The right to social security would be one component that we would use to support people's economic, social and cultural rights.

Ideally, all economic, social and cultural rights would be incorporated into Scots law, and we welcome the Scottish Government's recent announcement and establishment of an independent process to consider how that process can be enhanced and developed. My predecessor, Professor Alan Miller, is leading that work, and I think that it is a welcome development as far as the broader context is concerned. Perhaps it can provide some answers to some of the concerns that have been expressed here about what happens if we do this for this particular issue. We need to bring such questions much more broadly into public discussion and debate.

Jatin Haria: We hope that you will support the equality principle that we are arguing for, and we want there to be far more consultation with equality groups throughout the whole process. We have not touched on this, but we hope that as much quality data as possible will be collected and analysed in the process so that we can deal with any discrepancies that arise.

Chris Oswald: The bill and this scrutiny are to be welcomed. We and the Scottish Human Rights Commission see the bill as a fundamental opportunity to advance equality and human rights in a way that is not being done elsewhere. In that respect, we are acting very much as critical friends. As for the point that Jatin Haria made, we are working with the agency to try to get as much data as possible, and I hope that we will get everything that we possibly can get.

An issue that has come up a number of times but which has not really been addressed today is the distinction between errors and omissions on one hand and fraud on the other. We need to be much clearer about that. Clearly, there is

organised fraud relating to social security systems; we know that, and we accept the need for legislation to deal with that. However, the idea that people will have their income withdrawn and then be subjected to lengthy investigations as a result of genuine errors and omissions runs against the spirit of what the legislation is attempting to do as well as convention rights. We are against that.

The Convener: That was very succinct. We all got what you meant.

Emma Ritch: I would make a final call for the incorporation of the principle of equality and non-discrimination in the bill. That is important. We welcome the spirit of the bill, but we believe that the idea of equality could be added into human rights work, where there is a specific impact. For example, in relation to the welcome commitment to training agency staff on human rights-based approaches, our colleagues in race equality and gender equality organisations have front-line experience of working on issues such as the Scottish welfare fund and training for staff, and they could usefully be brought into the mix.

The Convener: Thank you all for your answers. We will follow some of them up. We also look forward to the publication of your report, Judith. If it is published in time, will you pass us a copy?

Judith Robertson: Which one?

The Convener: The one that you were speaking about.

Judith Robertson: Okay.

The Convener: That would be great—thank you. We now move into private session.

11:34

Meeting continued in private until 11:40.

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